15A(b)(6) of the Act[5] in that it is designed to prevent fraudulent and manipulative acts and facilitates transactions in securities. In particular, Nasdaq believes this temporary amendment to the existing rule should provide market makers with certainty regarding whether they are entitled to an exemption under the rule which should promote market efficiency and enhance the orderliness of the market during a transition period. Nasdaq further believes the proposed rule change should also help in reducing investor confusion at this time and thereby promote efficient and fair markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Nasdaq has requested that the Commission find good cause pursuant to Section 19(b)(2)[6] for approving the proposed rule change prior to the 30th day after its publication in the Federal Register. The date that the Order Handling Rules go into effect and Nasdaq must make system changes to accommodate the new regulatory requirements is January 10, 1997. Because Nasdaq believes that market makers must be provided with information regarding the exemption from the short sale rule as soon as possible before February 1, 1997, Nasdaq requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register. The alternative is potential confusion and market disruption as market makers may be unsure about whether they are in fact eligible to sell short in the course of their market making activities.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–96–55, and should be submitted by January 16, 1997.

[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–150 Filed 1–3–97; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–38084; File No. SR–NASD–96–48]

Self-Regulatory Organizations; Notice of Proposed Rule Changes by the National Association of Securities Dealers, Inc. Relating to: (1) Rule 4770 of the SOES Rules, Regarding the Fees Charged for Executions and Cancellation of Orders Entered in SOES, and (2) Rule 7010, Related to Charges for Orders and Cancellation of Orders Entered Into SelectNet

December 24, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1996, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''), The Nasdaq Stock Market, Inc., (''Nasdaq''), a wholly owned subsidiary of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), is herewith filing a proposed rule change to amend: (1) Rule 4770 of the Small Order Execution System (''SOES'') Rules, regarding the fees charged for executions and cancellation of orders entered in SOES, and (2) Rule 7010, related to charges for orders and cancellation of orders entered into SelectNet. Nasdaq has requested that the Commission approve the proposed rule change on an accelerated basis. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

Rule 4700 Small Order Execution System (SOES)

* * * * *

Rule 4770.

[A fee of $.005 per share shall be assessable to SOES Market Makers for all transactions executed through SOES provided, however, that the minimum charge per execution shall be $.50 and the maximum charge per execution shall be $1.00.]

(a) A fee for orders executed through SOES shall be assessed, to be allocated as follows: the SOES Market Maker executing the order shall be assessed $0.50 per transaction and the SOES Order Entry Firm of SOES Market Maker entering the order shall be assessed $0.50 per order.

(b) For each order entered by a SOES Order Entry Firm of a SOES Market Maker that is cancelled, the SOES Order Entry Firm or SOES Market Maker that cancels such order shall be assessed a fee of $0.25.

* * * * *

Rule 7000 Charges for Services and Equipment

* * * * *

Rule 7010 System Services

(a)–(d) No changes.

(e) SelectNet Service.

The following charges shall apply to the use of SelectNet:

Transaction Charge—$2.50/side

Cancellation Fee—$.25/per order

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change.The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD and Nasdaq have evaluated the current fee structures for SOES and the SelectNet system that will be changed to accommodate the new SEC rules regarding a Nasdaq market maker's order handling obligations, *i.e.*, Rule 11Ac1–4 (the customer limit order display rule) and amended Rule 11Ac1–1 (amendments to the firm quote rule regarding the display of priced orders entered by market makers or specialists into electronic communications networks (''ECNs'').[1] The NASD and Nasdaq have determined, as explained below, to restructure SOES and SelectNet fees because of changes to their operation as addressed in recently filed NASD proposed rule changes stemming from the SEC's new rules. All of the recommended fee changes are contingent upon commencement of the new NASD rules.

(1) SOES Fees

SOES is Nasdaq's small order execution system in which orders 1,000 shares or less are automatically executed against available Nasdaq market makers.

In a separate rule filing before the Commission,[2] Nasdaq has proposed to make significant changes to SOES to permit market makers to comply with new obligations to display customer limit orders in their quotations and to execute orders at such quotes only up to actual displayed size, as opposed to an artificial ''tier size'', as currently occurs. Moreover, among other things, the NASD and Nasdaq have proposed to allow market makers to enter customer market and marketable limit orders into SOES, unlike the current SOES Rules which prohibit market maker entry of such orders, unless the market makers self-preference those orders, i.e., direct them to themselves. Because the order handling rules change the current approach to market maker quoting in Nasdaq securities from a pure dealer-driven quote to a more order-driven quote, the NASD and Nasdaq believe that the disparate application of the current SOES fee structure to the market maker should be changed to take into account the new process by which quotes are established and orders are executed. Accordingly, the NASD and Nasdaq propose to establish a charge assessed against both sides to the transaction regardless of the size of the transaction—both the order entry firm and the market maker will be charged for the execution in SOES. Under the new fee structure, if an order entry firm or a market maker were to enter an order of 1,000 shares into SOES, and that order were executed against a single market maker, the firm entering the order (whether a market maker or order entry firm) would be assessed $.50 and the market maker executing the order would be assessed $.50. If a SOES order entered by an order entry firm were executed against multiple market makers, the order entry firm would be charged a single $0.50 fee while each market maker participating in the executions would also be charged a $.50 fee.

The NASD and Nasdaq have proposed this charge against both parties to an execution in recognition of the significant market structure changes caused by the SEC rules, the respective use of Nasdaq facilities to support SOES operations by both market makers and order entry firms, and the significant benefits that both sides of the trade receive in the new SOES. Unlike in the past when the quotations represented solely market maker proprietary interest, in the new environment market makers may be displaying a priced order under the customer limit order display rule. Because market makers may be quoting a particular price in order to attract order flow, it is appropriate to assess them a reasonable fee for using SOES to obtain executions.

The fee structure is fair and reasonable in that it is similar to transaction charges assessed in the securities industry for automatic executions. The system that the NASD and Nasdaq are providing to the membership attempts to provide members with an economically efficient means of accessing public quotations and executing securities transactions at these published prices. Moreover, it equitably allocates charges to both sides of the transaction that are utilizing this public facility, both of whom benefit from the execution and both of whom consume resources in utilizing the system. In this new structure, there is no reason to allocate all of the costs in operating SOES to the market maker. Instead, the more equitable allocation of costs is to charge both the order entry firm and the order execution firm. In this way, both parties to the transaction are allocated the costs that Nasdaq incurs in developing and operating this system.[3]

(2) SOES and SelectNet Cancellation Fees

The NASD and Nasdaq also authorized a new fee related to cancellations entered into SOES and SelectNet.[4] The fee adopted for orders entered into either system is $0.25 for each order cancelled. Neither SOES nor SelectNet currently have an order cancellation fee. However, Nasdaq has taken note of the significant number of orders entered into both systems and cancelled, sometimes almost simultaneously with order entry. By way of example, on a typical day, approximately 161,400 SelectNet orders may be entered, while approximately 125,600 of such orders are cancelled. Only 19,000 are executed. In SOES, of approximately 100,000 orders entered, 30,000 typically are cancelled.[5] Moreover, many cancellations occur within a 30 second period after order entry. For example, on November 8, 1996, the heaviest user of SelectNet entered 70,000 orders, and cancelled a total of almost 64,000 orders, of which 30,000 were cancelled within 30 seconds of order entry. Such use of the system requires that Nasdaq construct its system to handle the large system and network utilization that occurs in such use. Accordingly, recognizing that order cancellations consume significant system resources, Nasdaq adopted a cancellation fee to achieve an equitable allocation of the communications costs associated with the Nasdaq network

[1] *See* Securities Exchange Act Release No. 37619A (September 6, 1996); 61 FR 48290 (September 12, 1996) (Order Handling Rules Adopting Release).

[2] *See* Securities Exchange Act Release No. 38008 (December 2, 1996); 61 FR 64550 (December 5, 1996); (publishing notice of filing of SR–NASD–96–43).

[3] Under NASD Rules, members are permitted to either absorb the costs assessed, or to pass the fee along to the ultimate customer.

[4] It should be noted that SelectNet fees will remain as currently structured. It should also be noted that the SelectNet transaction fee applies to both sides of the transaction. Moreover, the fee will apply to all parties using the system, including electronic communications networks whose priced orders are accessed by NASD members entering orders into SelectNet,

[5] Data was extracted from November 20, 1996, data.

among all firms that utilize the capacity of the system.

Nasdaq believes that for the foregoing reasons the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act in that the proposed fees provide for the equitable allocation of reasonable fees among members using facilities and systems operated by Nasdaq meet the requirements of Section 15A(b)(5) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D. C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–96–48 and should be submitted by January 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–152 Filed 1–3–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38087; File No. SR–PSE–96–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Stock Exchange Incorporated Relating to Its Rules on Executions of ''Odd Lot'' Equity Orders

December 24, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 1996, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On December 17, 1996, the PSE submitted an amendment (''Amendment No. 1'') to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to amend its rules on executions of ''odd lot'' equity orders. Under the rule change, odd lot limit orders will be placed in the front of the book for priority and book display purposes. The rule change will also modify the basis on which limit, stop limit and stop orders must be executed. In addition, the rule change will prohibit certain practices involving the entry of odd-lot orders. Finally, the proposal will modify the Exchange's odd lot rule in order to remove certain provisions that no longer apply to executions of odd lot orders on the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE to Janet Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC, dated December 17, 1996. In Amendment No. 1, the PSE clarified the purpose of the rule change and made technical corrections to the text of the rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory Organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing this rule change in order to provide better service to customers and to be competitive with other exchanges.[4] The Exchange is proposing to modify Rule 5.34(b) (''Odd Lot Executions'') to provide as follows:

First, with regard to market orders, the proposal states that an odd lot market order shall be executed off the price reflected in the consolidated quote system's best bid/offer. (The current rule states that such orders shall be filled at the price of the first round lot transaction which takes place on the primary market, plus if a buy order, or minus if a sell order, an odd lot differential, if any.)

Second, with regards to limit orders, the proposed rule states that an odd lot limit order shall be filled at, or better than, the price of the first regular way round lot transaction that is at, or better than, the limit order's price printed on the consolidated tape from the security's primary market.[5] It further states that such odd lot orders shall be allowed to establish precedence without regard to priority of existing round-lot bids or offers at that price. (The current rule states that such orders shall be filled at the price of the first round lot transaction which takes place on the primary market, which in the case of a buy order is below the specified limit by the amount of the trading differential, or by a greater amount; or which in the case of a sell order is above the specified limit by the amount of the trading differential, or by a greater amount; plus

[4] *See* Amendment No. 1, *supra* note 3.

[5] *See* amendment No. 1, *supra* note 3.