

Exchange Act for the protection of investors and the public interest.

## V. Conclusion

The Commission finds that Euroclear's application for exemption from registration as a clearing agency meets the standards and requirements deemed appropriate for such an exemption.

*It is therefore ordered*, pursuant to Section 19(a)(1) of the Exchange Act, that the application for exemption from registration as a clearing agency filed by Morgan Guaranty Trust Company of New York, Brussels Office, as operator of the Euroclear System (File No. 601-01) be, and hereby is, approved subject to the conditions contained in this order.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39641; File No. SR-NASD-98-06]

### Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to SelectNet Fees

February 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 30, 1998, the National Association of Securities Dealers, Inc. ("NASD") or "Association") through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") 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 NASD. 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

Nasdaq is herewith filing a proposed rule change to lower the fees charged under NASD Rule 7010(l) for the execution of transactions in SelectNet.<sup>2</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> This filing complements SR-NASD-97-98, which extended Nasdaq's temporary fee reduction to \$1.25 per side for all SelectNet transactions until January 31, 1998. Due to an error in the computer

Under the proposed new SelectNet fee structure, fees would be assessed in the following manner: (1) \$1.00 will be charged for each SelectNet order entered and directed to one particular market participant that is subsequently executed in whole or in part; (2) no fee will be charged to a member who receives and executes a directed SelectNet order; (3) the existing \$2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; and (4) a \$0.25 fee will remain in effect for any member who cancels a SelectNet order. The new fees are effective February 1, 1998, and continue through a 90-day trial period commencing the day Nasdaq's SelectNet fee filing is published in the **Federal Register**.

Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### 7010. System Service

(a)-(k) No Change.

(l) SelectNet Service.

*Effective February 1, 1998*, [T]he following charges shall apply to the use of SelectNet:

Transaction Charge \$2.50/side  
*Directed Order Charge \$1.00 (per execution, entering party only)*

Cancellation Fee \$.25/per order

(m)-(n) No Change.

#### 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 NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at 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

Nasdaq is proposing to lower its SelectNet fees. Currently, both sides of a transaction executed in SelectNet are

assessed \$2.50 each.<sup>3</sup> Nasdaq, recognizing recent significant changes in SelectNet usage, is proposing a new fee structure that responds to this new trading environment and more closely aligns SelectNet fees with current market activity.

SelectNet transaction volume is at historic highs. In August 1997, more than 75,000 daily executions took place in SelectNet. This represented an almost fourfold increase in volume from average daily activity recorded in 1996. Since then, SelectNet volumes have remained at significantly increased levels, with more than 79,000 average daily transactions in November 1997 and over 88,000 in December 1997.

The growth in SelectNet usage can be attributed to a number of factors, most notably the introduction of the SEC Order Execution Rules ("Order Execution Rules") in January of 1997<sup>4</sup> and market maker decisions to electronically communicate with each other, in lieu of the telephone. Nasdaq also used the SelectNet system to create the access linkage with each electronic communication network ("ECN") that sought to display its prices in Nasdaq consistent with the requirements of the Order Execution Rules. Accordingly, SelectNet is the only means of accessing orders displayed in the Nasdaq quote montage by broker-dealers that are not subscribers to the ECN's own network. As such, growth in SelectNet utilization closely tracked the expansion in the number of Nasdaq stocks covered by the Order Execution Rules and the increased use of ECNs to display orders.

Responding to increased SelectNet activity, Nasdaq's new fees reduce SelectNet cost burdens on all users. For example, a directed, and subsequently executed, order under the new fee structure for directed orders will cost only \$1.00, payable by the entering party. In contrast, the present SelectNet fee is \$5.00 with \$2.50 being assessed on both sides of the trade. The proposed \$1.00 fee on the party entering a directed SelectNet order represents a 60% reduction in the fee charged only five months ago, and is 20% less than the current temporarily-reduced fee of \$1.25.

Nasdaq has eliminated any execution fees for directed SelectNet orders

<sup>3</sup> This fee has been temporarily reduced to \$1.25 per side since October 1, 1997. See Securities Exchange Act Release No. 39248 (October 16, 1997), 62 FR 55296 (October 23, 1997). The fee will revert to \$2.50 per side on February 1, 1998, for any orders not covered by the fee reduction (i.e., execution of broadcast orders will continue to be charged at \$2.50 per side).

<sup>4</sup> See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

because Nasdaq recognizes that executing parties provide significant liquidity to the market on a regular and continuous basis. This liquidity, represented by the maintenance of executable quotes accessible through directed SelectNet orders, is of substantial benefit to all market participants. Nasdaq strongly believes that the continued provision of such liquidity should be encouraged and that the elimination of charges on directed order executions obtained through SelectNet is a way to help achieve that goal.

Nasdaq notes that under the Order Execution Rules, any party may have its trading interest reflected in a quotation displayed for possible execution by an incoming directed order. For example, a customer's limit order that improves a market maker's price must now be displayed in that market maker's quote. Under Nasdaq's proposal, it is conceivable that customer limit orders, and the market liquidity they represent, may be handled by market makers at a lower cost than was the case under the old fee structure. Likewise, Nasdaq market makers who maintain executable quotes will also incur no fees when providing liquidity by having their quotes accessed for execution by others through directed SelectNet orders. Moreover, broker-dealers that enter directed orders seeking to access liquidity will also have their fees significantly reduced for any executions they obtain through SelectNet. These fees are also equally applied, with all market participants being charged the same \$1.00 directed order entry fee. In sum, these fee reductions should result in lower overall transaction costs for all SelectNet system users.

While the new fees start February 1, 1998, Nasdaq believes that a 90-day trial period, commencing the date Nasdaq's new SelectNet fees are published in the **Federal Register**, is appropriate due to uncertainty regarding SelectNet usage levels as a result of the fee changes. Nasdaq will continue to monitor usage levels and trading behavior with a view to future modification of SelectNet charges if warranted.

For the reason set forth above, Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Comments were neither solicited nor received.

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

This filing applies to the assessment of SelectNet fees to NASD members, and thus the proposed rule change is effective immediately upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e)(2) of Securities Exchange Act Rule 19b-4 thereunder<sup>5</sup> because the proposal is establishing or changing a due, fee or other charge. At any time within 60 days of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>6</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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

<sup>5</sup> 15 U.S.C. § 78(b)(3)(A)(ii).

<sup>6</sup> In reviewing the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

the principal office of the NASD. All submissions should refer to File No. SR-NASD-98-06 and should be submitted by March 11, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-39637; File No. SR-NASD-98-05]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Modifications to the Small Order Execution System**

February 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 28, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") through its wholly owned subsidiary, Nadsaq Stock Market, Inc. ("Nadsaq"), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one that effects a change in an existing order-entry or trading system of a self-regulatory organization under Section 19(b)(3)(A) of the Act and Rule 19b-4(e)(5) thereunder, which renders the rule effective upon the Commission's receipt of this filing. 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**

Nasdaq is proposing to amend Rule 4730(b)(10) to address problems associated with the rejection of orders in the Small Order Execution System ("SOES") when there is no market maker at the inside quote. Below is the text of the proposed rule change. Proposed new language is in italics; there are no deletions.

#### *4730. Participant Obligations is SOES*

(a) No Change.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).