

Members 97-57.<sup>8</sup> In that Notice of Members, Nasdaq presented several examples of customer order scenarios and addressed members' responsibilities under the Manning Rule, best execution principles, and the SEC Order Handling Rules<sup>9</sup> in executing customers' orders. In analyzing a scenario in which one customer limit order could cross another customer limit order, Nasdaq stated *marketable* limit orders are the equivalent of market orders and should be treated as such under best execution principles, which, in the example described above, dictate that the order that is received first should be executed first.

Accordingly, Nasdaq believes the Manning Rule, which is designed to protect consumer limit orders, should not be applicable to *marketable* customer limit orders because such orders are functionally equivalent to market orders and should be treated as such. To find otherwise would enable orders, which in reality are market orders, to be nominally designated as limit orders and essentially jump the queue of market orders for execution. In fact, in applying the exclusion, Nasdaq would consider it a violation of a market maker's best execution obligation if the market maker executes the marketable customer limit order before market orders that are in the queue.

The proposed interpretation is limited to customer limit orders that are *already marketable when received* by market makers. If the limit order becomes marketable while in possession of the market maker, the limit order would be protected under the Manning Rule.

Finally, nothing in the interpretation alters a market maker's obligation to execute the customer limit order at the limit price or better or to display the order as required by Rule 11Ac1-4 under the Act.<sup>10</sup>

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)<sup>11</sup> of the Act in that the proposed rule change is

<sup>8</sup> See Answer to Question Number 6 in NASD Notice to Members 97-57 (Interpretations of SEC Order Handling Rules, NASD Limit Order Protection Rules, And Members Best Execution Responsibilities).

<sup>9</sup> See Securities Exchange Act Rule 11Ac1-1, 17 CFR 240.11Ac1-1 and Securities Exchange Act Rule 11Ac1-4, 17 CFR 250.11Ac1-4.

<sup>10</sup> Subject to certain exceptions, Rule 11Ac1-4(b)(2) requires a market maker to display the full price and size of customer limit orders that: (i) would improve the market maker's bid or offer; or (ii) are equal to the market maker's bid or offer, the national best bid or offer and represent more than a de minimis change in the market maker's quoted size. 17 CFR 240.11Ac1-4(b)(2).

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest by preventing orders, which in reality are market orders, from receiving execution priority by being nominally designated as limit orders. The proposal would eliminate an unwarranted advantage that customers that place marketable limit orders have over those customers that place market orders.

### 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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and subparagraph (f) of Rule 19b-4<sup>13</sup> thereunder in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. Specifically, the proposal is an interpretation that harmonizes IM-2110-2 with the Commission's and the Association's published positions regarding the proper handling of marketable customer limit orders.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.<sup>14</sup>

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f).

<sup>14</sup> In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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-99-44 and should be submitted by November 5, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41988; File No. SR-NASD-99-58]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Nasdaq International Service Pilot Program

October 7, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 6, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Nasdaq Stock Market, Inc. ("Nasdaq"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

accelerated approval to the proposed rule change.

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

The NASD proposes to extend for one year: (1) The term of the Nasdaq International Service ("Service") pilot program and (2) the effectiveness of certain rules ("International Rules") that are unique to the Service. The proposed rule change does not entail any modification of the International rules. The present authorization for the Service and the International Rules expires on October 9, 1999. With this filing, the pilot program for the Service and the International Rules would be extended until October 9, 2000.

### **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 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 III 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*

##### **1. Purpose**

The NASD proposes to extend for an additional year, until October 9, 2000, the pilot operation of the Service and the effectiveness of the International Rules governing broker-dealers' access to and use of the Service. The existing pilot operation of the Service and the International Rules was originally authorized by the Commission in October 1991<sup>3</sup> and the Service was launched on January 20, 1992. The pilot has since been extended and is currently set to expire on October 9, 1999.<sup>4</sup>

<sup>3</sup> See Securities Exchange Act Release No. 29812 (October 11, 1991), 56 FR 52082 (October 17, 1991).

<sup>4</sup> See Securities Exchange Act Release No. 33037 (October 8, 1993), 58 FR 53752 (October 18, 1993) (extending the pilot for two years through October 11, 1995); Securities Exchange Act Release No. 36359 (October 11, 1995), 60 FR 53820 (October 17, 1995), (extending the pilot for two years through October 11, 1997); Securities Exchange Act Release No. 39216 (October 7, 1997), 62 FR 53673 (October 15, 1997) (extending the pilot for one year through October 9, 1998); Securities Exchange Act Release No. 40528 (October 7, 1998), 63 FR 55165 (October

The Service supports an early trading session running from 3:30 a.m. to 9:00 a.m. Eastern Time on Each U.S. business day ("European Session") that overlaps the business hours of the London financial markets. Participation in the Service is voluntary and is open to any authorized NASD member firm or its approved broker-dealer affiliate in the U.K. A member participates as a Service market maker either by staffing its trading facilities in the U.S. or the facilities of its approved affiliate during the European Session. The Service also has a variable opening feature that permits Service market makers to elect to participate starting from 3:30 a.m., 5:30 a.m. or 7:30 a.m. Eastern Time. The election is required to be made on a security-by-security basis at the time a firm registers with the NASD as a Service market maker.<sup>5</sup> At present, there are no Service market makers participating in the Service.

As noted above, the NASD is seeking to extend the pilot term for one year. During this period, the NASD will continue to reevaluate the Service's operation and consider possible enhancements to the Service to broaden market-maker participation. The NASD continues to view the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by Nasdaq. Accordingly, the NASD believes that this pilot operation warrants an extension to permit possible enhancement that will increase the Service's utility and attractiveness to the investment community.<sup>6</sup> The NASD maintains its belief that it is extremely important to preserve this facility and the opportunities it provides, especially in light of the increasingly global nature of the securities markets and the trend of cross-border transactions generally.

In addition, the Service still serves an invaluable role as a critical early warning mechanism in the context of significant changes involving Nasdaq software and hardware systems. Specifically, because the Service operates in the early morning hours prior to the opening of trading in the

14, 1999) (extending the pilot for one year through October 9, 1999).

<sup>5</sup> Regardless of the opening time chosen by the Service market maker, the Service market maker is required to fulfill all the obligations of a Service market maker from that time (*i.e.*, either 3:30 a.m., 5:30 a.m. or 7:30 a.m.) until the European Session closes at 9:00 a.m. Eastern Time. See Securities Exchange Act Release No. 32471 (June 16, 1993), 58 FR 33965 (June 22, 1993) (approval of File No. SR-NASD-92-54).

<sup>6</sup> Assuming that the pilot term is extended, the NASD will continue to supply the Commission with the statistical reports prescribed in the initial approval order for the Service order at six month intervals.

domestic session of Nasdaq, the Service has provided for the early detection of systems or communications problems when Nasdaq implements these systems changes.

##### **2. Statutory Basis**

The NASD believes the proposed rule change is consistent with Sections 11A(a)(1)(B)<sup>7</sup> and (C)<sup>8</sup> and 15A(b)(6)<sup>9</sup> of the Act. Subsections (B) and (C) of Section 11A(a)(1)<sup>10</sup> set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market through the use of advanced data processing and communications techniques. Section 15A(b)(6)<sup>11</sup> requires, among other things, that the NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The NASD believes that the proposed extension of the Service and the International Rules is fully consistent with these statutory provisions.

#### *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*

Written comments were neither solicited nor received.

### **III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 20549-0609. Copies of the submission, all subsequent amendments, all written statements

<sup>7</sup> 15 U.S.C. 78k-1(a)(1)(B).

<sup>8</sup> 15 U.S.C. 78k-1(a)(1)(C).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>10</sup> 15 U.S.C. 78k-1(a)(1).

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NASD-99-58 and should be submitted by November 5, 1999.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with Sections 11A(a)(1)(B) and (C) and 15A(b)(6) of the Act.<sup>12</sup> The Commission believes that, in connection with the globalization of securities markets, the Service provides an opportunity to advance the statutory goals of: (1) Achieving more efficient and effective market operations; (2) broader availability of information with respect to quotations for securities; (3) the execution of investor orders in the best market through the use of advanced data processing and communications techniques; and (4) fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

The Commission continues to view the Service as a significant experiment in expanding potential opportunities for international trading via a system operated by Nasdaq. The Service is intended to promote additional commitments of member firms' capital to market making and to attract commitments from firms based in Europe that currently do not function as Nasdaq market makers. Although there are no Service market makers participating in the Service, the NASD plans to reevaluate the Service's operation and consider possible enhancements to the Service to broaden market maker participation. Additionally, the Service provides an early warning system when Nasdaq implements significant changes involving its hardware and software systems. Because the Service operates before the opening of the domestic

session of Nasdaq, the Service allows for the early detection of systems or communication problems. Accordingly, the Commission believes that this pilot operation warrants an extension to permit possible enhancements that will increase the Service's utility and attractiveness to the investment community. Any changes to the operation of the Service will be filed pursuant to Section 19(b)(2) of the Act.<sup>13</sup>

Pursuant to Section 19(b)(2) of the Act,<sup>14</sup> the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that it is appropriate to approve on an accelerate basis the one year extension of the Service, until October 9, 2000, to ensure the continuous operation of the Service, which is set to expire on October 9, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-NASD-99-58) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41993; File No. SR-NASD-99-47]

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

October 8, 1999.

Pursuant Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 20, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule

change as described in Items I and II below, which Items have been prepared by Nasdaq. On September 29, 1999, Nasdaq filed with the Commission Amendment No. 1 to the proposed rule change.<sup>3</sup> Nasdaq has designated this proposed rule change as establishing or changing a due, fee or other charge under Section 19(b)(3)(A) of the Act,<sup>4</sup> which renders the proposed rule change effective upon receipt of the filing by the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq is proposing to make changes to NASD Rule 7010, which sets forth the SelectNet fee schedule. Proposed new language is italicized; proposed deletions are in brackets.

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#### 7000. CHARGES FOR SERVICES AND EQUIPMENT

##### 7010. System Services

(a)-(h) No Change

(i) SelectNet Service

[Effective February 1, 1998, t] The 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

*For a pilot commencing October 1, 1999, and lasting until March 31, 2000 an NASD member who enters a directed SelectNet order that is subsequently executed in whole or in part will have its monthly Directed Order Charges assessed as follows:*

*\$1.00 per order for the first 50,000 directed orders executed that month*

*\$0.70 per order for the next 50,000 directed orders executed that same month*

*\$0.20 per order for all remaining directed orders executed that same month*

*Executions resulting from broadcast messages will continue to be assessed at a \$2.50 per side rate.*

<sup>3</sup> Amendment No. 1 makes several technical, non-substantive changes to Nasdaq's proposal. See letter from Thomas Moran, Assistant General Counsel, Nasdaq, to Mignon McLemore, Attorney, Division of Market Regulation, Commission, dated September 28, 1999 ("Amendment No. 1").

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> The proposed rule change is deemed filed as of the date Amendment No. 1 was received by the Commission.

<sup>12</sup> In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.