

Commission notes that the relief provided under temporary Amex Rule 220T applies in limited circumstances. Specifically, the Commission notes that under temporary Amex Rule 220T a member may use a personal cellular telephone only if the member has provided the Amex with a written statement indicating that service on the member's Exchange-provided telephone is limited significantly. In addition, a member may not continue to use a personal cellular telephone after full service is restored to the member's Amex telephone systems. The Commission also notes that temporary Amex Rule 220T provides safeguards in connection with the use of personal cellular telephones. In this regard, temporary Amex Rule 220T requires a member to maintain records of his or her cellular telephone calls, including logs of calls placed, for a period of not less than one year. In addition, as described more fully above, temporary Amex Rule 220T specifies procedures applicable to a floor broker who receives an incoming call on a cellular telephone or initiates an outgoing call on a cellular telephone.

A proposed rule change filed under Rule 19b-4(f)(6) normally requires that the self-regulatory organization give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. However, Rule 19b-4(f)(6)(iii) permits the Commission to waive the five-business day pre-filing notice requirement. The Amex has asked the Commission waive the pre-filing notice requirement. The Commission finds good cause to waive the five-business day pre-filing requirement because the Exchange's staff discussed with the Commission staff the need for an extension of temporary Amex Rule 220T prior to filing the proposed rule change. In addition, the Commission notes that the Amex submitted a draft of its proposal for review prior to filing the proposal.

#### IV. 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 with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 Amex. All submissions should refer to File No. SR-Amex-2001-86 and should be submitted by November 9, 2001.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-26400 Filed 10-8-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

### Self Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Nasdaq National Market Execution System Fees Charged to Non-Members

October 12, 2001.

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 9, 2001, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, 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. On October 11, 2001, Nasdaq filed Amendment No. 1 with the Commission.<sup>3</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 the Proposed Rule Change

Nasdaq proposes to modify the fees for use of the Nasdaq National Market Execution System ("NNMS" or "SuperSOES") charged to national securities exchanges trading Nasdaq-listed securities pursuant to grants of unlisted trading privileges ("UTP Exchanges"), on a pilot basis.<sup>4</sup> The rule filing will become effective upon approval by the Commission and will be implemented the later of (i) December 1, 2001, or (ii) the first day of the month immediately following Commission approval. The rule filing will remain in effect, on a pilot basis, until November 30, 2002. During the pilot period, Nasdaq will assess the effect of the rule change on market participants and Nasdaq and may file additional changes to the level or structure of its fees. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in brackets.

\* \* \* \* \*

#### 7010. System Services

##### (a)(1) Nasdaq Level 1 Service

The charge to be paid by the subscriber for each terminal receiving Nasdaq Level 1 Service is \$20 per month. This Service includes the following data:

(A) inside bid/ask quotations calculated for securities listed in The Nasdaq Stock Market and securities quoted in the OTCC Bulletin Board (OTCBB) service;

(B) the individual quotations or indications of interest of broker/dealers utilizing the OTCBB service; and

(C) last sale information on securities classified as designated securities in the Rule 4630, 4640, and 4650 Series and securities classified as over-the-counter equity securities in the Rule 6600 Series.

<sup>4</sup> Nasdaq also filed a companion rule filing (SR-NASD-2001-71) to apply these rule changes to NASD members. See Securities Exchange Act Release No. 44918 (October 10, 2001). SR-NASD-2001-71, proposes on a pilot basis, or: (1) Modify the fees for use of SuperSOES; (2) modify Nasdaq's liquidity provider rebate; (3) institute a quotation update charge; and (4) introduce a mechanism for sharing market data revenue with NASD members that report substantially all of their trades through the Automated Confirmation Transaction Service ("ACT"). SR-NASD-2001-71 is effective upon filing, and Nasdaq will implement it for a pilot period commencing on December 1, 2001 and ending on November 30, 2002.

<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.

<sup>3</sup> See Letter from John M. Yetter, Assistant General Counsel, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission (October 11, 2001) ("Amendment No. 1"). Amendment No. 1 is a technical amendment that amends the proposed rule language to clarify that the filing seeks to modify the fees for use of NNMSs by non-NASD members. Amendment No. 1 also notes that the rule filing, once effective, will be implemented the later of (i) December 1, 2001, or (ii) the first day of the month immediately following Commission approval, and will remain in effect, on a pilot basis, until November 30, 2002.

*(2) Market Data Revenue Sharing*

For a pilot period commencing on December 1, 2001 and lasting until November 30, 2002, Full Contribution Members (as defined in Rule 7010(i)(2)) shall receive a market data revenue sharing credit. The total credit consist of two components, a "Base Credit" and a "Supplemental Credit."<sup>5</sup>

(A) A Full Contribution Member's Base Credit shall be calculated in accordance with the following formula:  

$$\text{Base Credit} = (0.50) \times (\text{Eligible Revenue}) \times (\text{Member's Volume Percentage})$$

(B) A Full Contribution Member's Supplemental Credit shall be calculated in accordance with the following formula:

Supplemental Credit = (Eligible Revenue  $\times$  (Member's Volume Percentage)  $\times$  (Member's Overall Volume Percentage, not to exceed 10%))

(C) Definitions. The following definitions shall apply to this Rule:

(i) "Eligible Revenue" shall mean:

a. the portion of the net distributable revenues that Nasdaq, through the NASD, is eligible to receive under the Nasdaq UTP Plan, that is attributed to the Nasdaq Level 1 Service for Eligible Securities, minus

b. the portion of the fee charged to Nasdaq by NASD Regulation, Inc. for regulatory services allocated to the Nasdaq Level 1 Service for Eligible Securities.

(ii) "Eligible Securities" shall mean all Nasdaq National Market securities and any other security that meets the definition of "Eligible Security" in the Nasdaq UTP Plan.

(iii) "Member's Volume Percentage" shall mean the average of:

a. the percentage derived from dividing the total number of trades in Eligible Securities conducted on non-Nasdaq transaction systems that the member reports in accordance with NASD trade reporting rules to the Automated Confirmation Transaction Service ("ACT") by the total number of trades in Eligible Securities reported to ACT by NASD members, and

b. the percentage derived from dividing the total number of shares represented by trades in Eligible Securities conducted on non-Nasdaq transaction systems that the member reports in accordance with NASD trade reporting rules to ACT by the total number of shares represented by all

trades in Eligible Securities reported to ACT by NASD members.

(iv) "Member's Overall Volume Percentage" shall mean the average of:

a. the percentage derived from dividing the total number of trades in Eligible Securities that the member reports in accordance with NASD trade reporting rules to ACT by the total number of trades in Eligible Securities reported to ACT by NASD members, and

b. the percentage derived from dividing the total number of shares represented by trades in Eligible Securities that the member reports in accordance with NASD trade reporting rules to ACT by the total number of shares represented by all trades in Eligible Securities reported to ACT by NASD members.

(v) "Nasdaq UTP Plan" shall have the meaning set forth in NASD Rule 4720.

(b)-(h) No change.

(i) Transaction Execution Services.

(1) No change.

(2) Nasdaq National Market Execution System (SuperSOES).<sup>6</sup>

(A) The following charges shall apply to the use of the Nasdaq National Market Execution System:

Order Entry Charge: \$0.10 per order entry (entering party only)

Per Share Charge: \$0.001 per share executed for all fully or partially executed orders (entering party only)

Cancellation Fee: \$0.25 per order cancelled (cancelling party only)

(B)(i) For a pilot period commencing on December 1, 2001 and lasting until November 30, 2002, the per share charge will be determined as follows:

Full Contribution Members: \$0.002 per share executed for all fully or partially executed orders (entering party only)

Partial Contribution Members: \$0.003 per share executed for all fully or partially executed orders (entering party only)

*Full Contribution UTP Exchanges:*  
*\$0.003 per share executed for all fully or partially executed orders (entering party only)*

(ii) Definitions. The following definitions shall apply to this Rule:

a. "Full Contribution Member" shall mean an NASD member that reports substantially all of its trades during regular market hours through the Automated Confirmation Transaction Service; provided, however, that for the first three months of the pilot period, all NASD members shall be deemed to be

Full Contribution Members. Nasdaq may request that a member submit data demonstrating that it satisfies the definition of a Full Contribution Member, and may deem a member that fails to submit such data upon request to be a Partial Contribution Member.

b. "Partial Contribution Member" shall mean any NASD member that is not a Full Contribution Member.

c. "Full Contribution UTP Exchange" shall mean any national securities exchange trading Nasdaq securities pursuant the Nasdaq UTP Plan (as defined in NASD Rule 4720) that chooses to participate in the automatic execution functionality of the Nasdaq National Market Execution System.

(3) No change.

(4) Liquidity provider rebate.

For a pilot commencing on December 1, 2001 and lasting until November 30, 2002:

(A) Full Contribution Members that do not charge an access fee to market participants accessing their quotations through the Nasdaq National Market Execution System will receive a rebate of \$0.001 per share when their quotation is executed against by a Nasdaq National Market Execution System order.

(B) Partial Contribution Members that do not charge an access fee to market participants accessing their quotations through the Nasdaq National Market Execution System will receive a rebate of \$0.0005 per share when their quotation is executed against by a Nasdaq National Market Execution System order.

(C) Full Contribution Members and Partial Contribution Members will receive a rebate of \$0.001 per share when they send a Nasdaq National Market Execution System order that executes against the quotation of a market participant that charges an access fee to market participants accessing its quotations through the Nasdaq National Market Execution System.

(5) Quotation Updates.

For a pilot period commencing on December 1, 2001 and lasting until November 30, 2002, the following charges shall apply to NASD members for quotation updates at the Nasdaq quotation montage:

Full Contribution Members: \$0.01 per quotation update

Partial Contribution Members: \$0.03 per quotation update

(j)-(q) No change.

<sup>5</sup> Nasdaq corrected a typographical error that appeared in the proposed rule language. Telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, October 10, 2001.

<sup>6</sup> Nasdaq corrected a typographical error that appeared in the proposed rule language. Telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, October 10, 2001.

## 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

#### 1. Purpose

On January 14, 2000, the Commission issued an order approving a rule change that: (1) Established the NNMS, a new platform for the trading of Nasdaq National Market ("NNM") securities; (2) modified the rules governing the use of SelectNet for trading NNM issues; and (3) left unchanged trading of Nasdaq SmallCap securities through the Small Order Execution System ("SOES") and SelectNet.<sup>7</sup> Nasdaq began implementing these system changes on July 9, 2001 and completed implementation on July 30, 2001. Through these changes, the NNMS has become the primary trading platform for NNM securities, and SelectNet is intended to be used primarily for the transmittal and execution of "non-liability" orders for market makers in NNM securities, as well as the transmittal and execution of "liability" orders to market participants that do not participate in the automatic execution functionality of the NNMS. On September 28, 2001, Nasdaq filed modification to the pricing structure for SelectNet and the NNMS.<sup>8</sup> These changes were designed as an interim modification to begin the process of aligning the charges to market participants for using the NNMS and SelectNet more closely with the costs of providing these services and the benefits that they provide to market participants. On October 3, 2001,

Nasdaq filed a rule change, on a pilot basis, to increase the per share charge for use of the NNMS, and introduced a liquidity provider rebate for NASD members.<sup>9</sup>

With this filing and SR-NASD-2001-71, Nasdaq is making additional modifications to the fees for use of the NNMS and the liquidity provider rebate to calibrate the level of fees and rebates to the contributions that each type of market participant makes to the support of the Nasdaq market. Nasdaq is also introducing a mechanism for sharing market data revenue with NASD members that report substantially all trades through ACT. Finally, Nasdaq is introducing a quotation update charge.

Nasdaq represents that the proposal is designed to enhance market efficiency and fairness by offering incentives to market participants that provide liquidity through the NNMS and support Nasdaq operations through trade reporting. The proposal imposes new charges on market participants that use the Nasdaq quotation mechanism to quote, but do not provide meaningful liquidity by exposing and executing orders in Nasdaq. The proposal seeks to reward those who provide meaningful quotes and expose orders for execution in Nasdaq, while building in economic incentives to discourage posting of inefficient quotations that impose burdens on system capacity. In particular, Nasdaq is concerned about the extent to which the quotes of market participants that are displayed in Nasdaq are accessed and/or reported through non-Nasdaq systems. Market participants may advertise their liquidity on Nasdaq, but contribute very little to supporting the quotation, execution, and regulatory infrastructure that underpins the Nasdaq market.

The proposal delineates three types of market participants. A "Full Contribution Member" is defined as an NASD member that reports substantially all of its trades during regular market hours through ACT (either directly or as a result of an execution through a Nasdaq transaction execution system). All other NASD members would be considered "Partial Contribution Members" under the proposal. For the first three months of the pilot period, all NASD members are deemed to be Full

Contribution Members. Thereafter, Nasdaq may request that a member submit data demonstrating that it satisfies the definition of a Full Contribution Member, and may deem a member that fails to submit such data upon request to be a Partial Contribution Member. A "Full Contribution UTP Exchange" is defined as any UTP Exchange that chooses to participate in the automatic execution functionality of the NNMS.

*Charges for order execution and quotation updates.* Under the proposal, the per share charge for orders executed in the NNMS by Partial Contribution Members and Full Contribution UTP Exchanges will increase to \$0.003 per share and will remain at \$0.002 per share for Full Contribution Members. Nasdaq is also instituting a quotation update fee that is applicable to NASD members (but not UTP Exchanges), in recognition of the fact that the ability to post quotes in the Nasdaq quotation montage provides market participants with the valuable opportunity to advertise the liquidity that they offer. Nasdaq believes that the absence of any charges for quotation updates has encouraged market participants to quote inefficiently, imposing unnecessary burdens on Nasdaq system capacity. Moreover, to the extent that quotations are accessed through non-Nasdaq systems, the firms that post the quotations are currently free riding on the quotation infrastructure provided by Nasdaq. Accordingly, Nasdaq will charge Full Contribution Members \$0.01 each time their quotation is updated and Partial Contribution Members \$0.03 each time their quotation is updated.<sup>10</sup>

*Liquidity Provider Rebate.* Effective on December 1, 2001, Nasdaq will modify the liquidity provider rebate instituted by SR-NASD-2001-67,<sup>11</sup> by setting the rebate for Partial Contribution Members that do not charge an access fee to market participants accessing their quotations through the NNMS at \$0.0005 per share when their quotation is executed against via the NNMS. The rebate for Full Contribution Members that do not charge an access fee to market participants accessing their quotations through the NNMS will remain \$0.001 per share when their quotation is executed against via the NNMS, and a rebate of \$0.001 per share will remain for all members when they send an NNMS order that executes against the quotation of a market

<sup>7</sup> See Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) (SR-NASD-99-11).

<sup>8</sup> See Securities Exchange Act Release No. 44899 (October 2, 2001) (SR-NASD-2001-63) and Securities Exchange Act Release No. 44898 (October 2, 2001) (SR-NASD-2001-64). SR-NASD-2001-63 applied the new fees to NASD members, effective upon filing, and was implemented on October 1, 2001. SR-NASD-2001-64 will apply the new fees to UTP Exchanges and will be implemented on the first day of the month immediately following Commission approval.

<sup>9</sup> See Securities Exchange Act Release No. 44910 (October 5, 2001) (SR-NASD-2001-67) and Securities Exchange Act Release No. 44914 (October 9, 2001) (SR-NASD-2001-68). SR-NASD-2001-67 applied these pilot changes to NASD members, effective upon filing, for a pilot period from November 1, 2001 through October 31, 2002. SR-NASD-2001-68 will apply the increase in the per share charge to UTP Exchanges, and will be implemented on the first day of the month immediately following Commission approval.

<sup>10</sup> A quotation update charge will not be imposed on UTP Exchanges at this time, because the Nasdaq Unlisted Trading Privileges Plan (the "Nasdaq UTP Plan") does not currently authorize such a charge.

<sup>11</sup> See *supra* note 9.

participant that charges an access fee to market participants accessing its quotation through the NNMS.

*Market Data Revenue Sharing.* Nasdaq proposes to share a portion of market data revenue with Full Contribution Members, the members that do the most to generate such revenues. The proposal is similar to the transaction credit already in effect to share Consolidated Tape Association revenue with NASD members that trade exchange-listed stocks through Nasdaq's Intermarket Trading System<sup>12</sup> and similar revenue sharing programs established by UTP Exchanges.<sup>13</sup> A member's total credit will consist of two parts, a Base Credit and a Supplemental Credit.

A member's Base Credit will be 50% of the product of Eligible Revenue and the Member's Volume Percentage. Eligible Revenue is defined as (i) the portion of the net distributable revenues that Nasdaq, through the NASD, is eligible to receive under the Nasdaq UTP Plan, that is attributed to the Nasdaq Level 1 Service for NNM securities or other securities covered by the Nasdaq UTP Plan ("Eligible Securities"), minus (ii) the portion of the fee charged to Nasdaq by NASD Regulation, Inc. ("NASDR") for regulatory services allocated to the Nasdaq Level 1 Service for Eligible Securities. The Member's Volume Percentage is defined as the average of (i) the percentage derived from dividing the total number of trades in Eligible Securities conducted on non-Nasdaq transaction systems that the member reports in accordance with NASD trade reporting rules to ACT by the total number of trades in Eligible Securities reported to ACT by NASD members, and (ii) the percentage derived from dividing the total number of shares represented by trades in Eligible Securities conducted on non-Nasdaq transaction systems that the member reports in accordance with NASD trade reporting rules to ACT by the total number of shares represented by all trades in Eligible Securities reported to ACT by NASD members. In other words, the Base Credit is 50% of the net Level 1 revenue attributable to the member's reports of non-Nasdaq transaction system trades in Eligible Securities, with the pool of sharable revenue being comprised of Level 1 revenues distributable to Nasdaq under the UTP

Plan minus an allocated portion of the NASDR regulation fee, and the member's non-Nasdaq transaction system trade report activity being measured by total number of trades and share volume.

In addition, a member may receive a Supplemental Credit, equal to a percentage of the product of Eligible Revenue and the Member's Volume Percentage. The percentage will be the lesser of 10% or the Member's Overall Volume Percentage, which is defined as the average of (i) the percentage derived from dividing the total number of trades in Eligible Securities that the member reports in accordance with NASD trade reporting rules to ACT by the total number of trades in Eligible Securities reported to ACT by NASD members, and (ii) a percentage calculated by dividing the total number of shares represented by trades in Eligible Securities that the member reports in accordance with NASD trade reporting rules to ACT by the total number of shares represented by all trades in Eligible Securities reported to ACT by NASD members. In other words, the Supplemental Credit of up to 10% is based upon all of the member's trade reports, as measured by the total number of trades and share volume.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,<sup>14</sup> which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and Section 15A(b)(6) of the Act,<sup>15</sup> which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As the Commission has noted in the context of another self-regulatory organization's fees, the Act "prohibits 'unfair discrimination,' not 'discrimination' simpliciter \* \* \*."<sup>16</sup> Nasdaq believes that the proposed fee structure distinguishes among market participants in order to reward those who do the most to finance market innovations such as SuperSOES and who contribute the most to the liquidity and efficient operation of Nasdaq's market, while imposing higher fees on market participants that receive the

benefits of posting quotations on Nasdaq systems but pay relatively little to support the operation of those systems. Thus, the economic incentives embodied by the new fee structure are designed to promote behavior that benefits both the market structure that Nasdaq offers to investors and Nasdaq as a business. As another self-regulatory organization noted when it established a credit available only to certain of its market participants, "measures \* \* \* designed to promote and encourage certain behaviors and/or discourage others \* \* \* [are] an appropriate, nondiscriminatory business strategy."<sup>17</sup>

Moreover, Nasdaq believes that the level of fees charged to market participants under the proposal is reasonable. Nasdaq anticipates that overall fees for the NNMS, SelectNet, and SOES, net of the liquidity provider rebate and the market data revenue sharing credit, will be comparable to overall fees for the NNMS, SelectNet, and SOES under Nasdaq's recently implemented pricing changes. Such fees are, in turn, estimated to slightly lower than overall fees for SelectNet and SOES prior to the introduction of the NNMS.

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

Nasdaq does not believe that the proposed rule change will impose 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

Nasdaq did not solicit or receive written comments on the proposed rule change.

## 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.

<sup>12</sup> See NASD Rule 7010(c)(2).

<sup>13</sup> See, e.g., Securities Exchange Act Release No. 41238 (March 31, 1999), 64 FR 17204 (April 8, 1999) (SR-CSE-99-03); Securities Exchange Act Release No. 40591 (October 22, 1998), 63 FR 58078 (October 29, 1998) (SR-BSE-98-9); Securities Exchange Act Release No. 38237 (February 4, 1997), 62 FR 6592 (February 12, 1997) (SR-CHX-97-01).

<sup>14</sup> 15 U.S.C. 78o-3(b)(5).

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

<sup>16</sup> Securities Exchange Act Release No. 37250 (May 29, 1996), 61 FR 28629 (June 5, 1996) (SR-CBOE-96-23) (quoting *Timpinaro v. SEC*, 2 F.3d 453, 456 (D.C. Cir. 1993)).

<sup>17</sup> Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR-Phlx-2001-49).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 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 NASD. All submissions should refer to File No. SR-NASD-2001-72 and should be submitted by November 9, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-26401 Filed 10-18-01; 8:45 am]

**BILLING CODE 8010-01-M**

#### SMALL BUSINESS ADMINISTRATION

##### Region VIII: Wyoming Regulatory Fairness Board; Public Hearing

The Small Business Administration Region VIII Wyoming Regulatory Fairness Board and the SBA Office of the National Ombudsman, will hold a Public Hearing Monday, October 29, 2001 at 8:30 a.m. at the Best Western Dunmar Inn, 1601 Harrison Dr. (Highway 30 West), Evanston, Wyoming 82930, phone (307) 789-3770, to receive comments and testimony from small business owners and representatives of trade associations concerning regulatory enforcement or compliance actions taken by federal agencies.

Anyone wishing to make an oral presentation must contact Mr. Mahlon Sorensen, Regulatory Fairness Coordinator, in writing by letter or fax no later than October 22, 2001, in order to put on the agenda. Mahlon Sorensen, Regulatory Fairness Coordinator, Wyoming District Office, U.S. Small

Business Administration, 100 East "B" Street, Suite 4001, Casper, Wyoming 82601, (307) 261-6503 phone (307) 261 6535 fax.

**Steve Tupper,**

*Committee Management Office.*

[FR Doc. 01-26330 Filed 10-18-01; 8:45 am]

**BILLING CODE 8025-01-P**

#### SMALL BUSINESS ADMINISTRATION

##### Region V: Wisconsin District Advisory Council; Public Meeting

The Small Business Administration Region V Wisconsin District Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting at 12 noon central time on Wednesday, October 24, 2001, at the MMAC building, 756 North Milwaukee Street, 4th Floor, Milwaukee, Wisconsin 53202, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Yolanda Staples Lassiter, in writing by letter or fax no later than Monday, October 22, 2001, in order to be put on the agenda. The contact information is as follows: Yolanda Staples Lassiter, EDS, U.S. Small Business Administration, 310 West Wisconsin Ave, Suite 400, Milwaukee, Wisconsin 53202, telephone—(414) 297-1090 or (414) 297-3928 fax.

**Steve Tupper,**

*Committee Management Officer.*

[FR Doc. 01-26331 Filed 10-18-01; 8:45 am]

**BILLING CODE 8025-01-P**

#### DEPARTMENT OF STATE

##### [Public Notice 3820]

##### Culturally Significant Objects Imported for Exhibition Determinations: "The Emergence of Jewish Artists in Nineteenth Century Europe"

**DEPARTMENT:** United States Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920),

as amended, I hereby determine that the objects to be included in the exhibit "The Emergence of Jewish Artists in Nineteenth Century Europe," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the exhibit objects at The Jewish Museum, of New York, NY, from on or about November 18, 2001, to on or about March 17, 2002, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619-6529). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: October 11, 2001.

**Patricia S. Harrison,**

*Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.*

[FR Doc. 01-26398 Filed 10-18-01; 8:45 am]

**BILLING CODE 4710-08-P**

#### DEPARTMENT OF STATE

##### [Public Notice 3799]

##### Advisory Panel to the United States Section of the North Pacific Anadromous Fish Commission; Notice of a Closed Meeting

The Advisory Panel to the United States Section of the North Pacific Anadromous Fish Commission will meet on October 29, 2001, at the Victoria Conference Center, 720 Douglas Street, Victoria, B.C. V8VV 3M7, Canada. This session will involve discussion of the Eighth Annual Meeting of the North Pacific Anadromous Fish Commission, to be held on October 28–November 2, 2001. The discussion will begin at 8 a.m. and is closed to the public.

The members of the Advisory Panel will examine various options for the U.S. position at the Ninth Annual Meeting. These considerations must necessarily involve review of sensitive matters, the disclosure of which would frustrate U.S. participation at the Annual Meeting. Accordingly, the determination has been made to close the 8:00 a.m. meeting pursuant to Section 10(d) of the Federal Advisory

<sup>18</sup> 17 CFR 200.30-3(a)(12).