

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.

#### 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 submissions, 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 persons, 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 the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-97-6 and should be submitted by November 13, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39250; File No. SR-NASD-97-75]

October 16, 1997.

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Distribution of Information Concerning the Availability of the NASD Regulation, Inc. Public Disclosure Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 14, 1997, NASD Regulation, Inc. ("NASD Regulation") 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 NASD Regulation. NASD Regulation has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning of an existing rule under Section 19(b)(3)(A)(i) of the Act,<sup>2</sup> 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

NASD Regulation is proposing a rule change to amend Conduct Rule 2280 of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to postpone the effective date from September 10, 1997, to January 1, 1998. The text of Rule 2280 is not changed.

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

In its filing with the Commission, NASD Regulation 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 the Item IV below. NASD Regulation 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

On February 11, 1997, NASD Regulation proposed Rule 2280, "Investor Education and Protection," which requires certain NASD members to provide customers with specified disclosures regarding NASD Regulation's Public Disclosure Program in writing not less than once every calendar year. NASD Regulation filed Amendment No. 1 on July 31, 1997. The SEC approved Rule 2280 on September 10, 1997, therefore, the rule was effective on that date. Rule 2280 contemplates that the specified disclosures concerning the Public Disclosure Program will be made through customer account statements or in another type of publication at least once each calendar year. The proposed rule change is necessary to provide

members with sufficient time to comply with the Rule.

Members generally send account statements to customers on a monthly basis if there is account activity, or on a quarterly basis if there is none. Rule 2280, with its current effective date of September 10, 1997, is draconian in that it would leave members with very little time in which to modify their account statement production processes to include the disclosures required under Rule 2280. Members would have only a few weeks to comply with a Rule that envisioned a compliance period of up to one year. Many members have already earmarked their account statements for the remainder of the calendar year with pertinent year-end information, such as tax-related notices, and in many cases there may not be sufficient space to include these additional disclosures without incurring substantial costs. Additionally, for members with customers with inactive accounts, a separate mailing would be required because year-end or fourth-quarter account statements would not comply with Rule 2280 since such notices would not be sent until early 1998.

The Commission's Order approving Rule 2280 noted that the Rule was amended to address concerns that compliance with Rule 2280 would impose "significant costs" on firms that normally do not carry customer accounts and hold customer funds or securities. The case for postponing the effective date of Rule 2280 is even more compelling. In the absence of a postponement of the effective date, many members would be required to create an entirely separate mailing to customers to provide the disclosures required under Rule 2280. The cost of such a mailing would be very significant and would be inconsistent with the objective of Rule 2280, which is to allow members to provide the specified disclosures in a cost-effective manner.

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b) of the Act<sup>3</sup> in that postponing the effective date of Rule 2280 does not diminish the rule's effectiveness in protecting investors and the public interest.

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

NASD Regulation 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.

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

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

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>3</sup> 15 U.S.C. 78o-3.

*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**

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b-4<sup>4</sup> thereunder in that it constitutes a stated policy, practice, or interpretation with respect to the meaning of an existing rule.

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.

**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 Commissions' 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 Number SR-NASD-97-75 and should be submitted by November 13, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-39248; File No. SR-NASD-97-74]

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

October 16, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 14, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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**

Pursuant to Section 19(b)(1) of the Act, the NASD, through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") is herewith filing a proposed rule change to temporarily abate 50% of the fee currently charged under NASD Rule 7010(l) for the execution of a transaction in SelectNet from \$2.50 per side to \$1.25 per side effective October 1, 1997 through December 31, 1997. If no further action is taken, Nasdaq will revert to assessing SelectNet fees at the present level of \$2.50 per side on January 1, 1998.

**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 IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of the statements.

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

Nasdaq is proposing to temporarily abate 50% of the fee currently charged under NASD Rule 7010(l) for the execution of a transaction in SelectNet from \$2.50 per side to \$1.25 per side effective October 1, 1997 through December 31, 1997. The proposed rule change constitutes only a temporary abatement in the fee Nasdaq collects.

Nasdaq believes that the recent volume increases in the market generally and SelectNet usage in particular justify a temporary abatement of fees to SelectNet users. Specifically, SelectNet transaction volume is at an historic high. In August 1997, more than 75,000 daily executions took place in SelectNet. This represents an almost fourfold increase in volume from average daily activity recorded in 1996.

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 this year.<sup>2</sup> Nasdaq used the SelectNet system to create the linkage with each electronic communication network ("ECN") anticipated by the Order Execution Rules. Accordingly, SelectNet has become the chosen means of accessing orders displayed in the Nasdaq quote montage by eligible ECNs such as Instinet. Growth in SelectNet utilization closely tracks expansion in the number of Nasdaq stocks covered by the Order Execution Rules. The speed and volatility of today's markets, software enhancements and a heightened awareness of trading obligations by market participants also has contributed to growth in SelectNet activity as well as an increase in SelectNet revenues. Accordingly, Nasdaq believes that a temporary abatement of these fees for SelectNet users is appropriate.

Nasdaq believes that a temporary fee abatement is preferable to a permanent fee reduction due to both the uncertain future of SelectNet as a service offered by Nasdaq and the significant amount of network capacity consumed by SelectNet Message traffic. If no further action is taken, Nasdaq will revert to assessing SelectNet fees at the present rate of \$2.50 per side on January 1, 1998.

Nasdaq believes that the proposed rule change is consistent with Section

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

<sup>5</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).