

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 extend its current SelectNet fees. The reasons for Nasdaq's prevailing SelectNet fee structure were fully explained in its original fee structure proposal filed with the Commission in February of this year.² Since then, SelectNet usage has continued at significantly elevated levels, averaging over 100,000 daily executions in both February and March of 1998. As such, Nasdaq believes that an extension of these reduced fees, through August 31, 1998, is warranted. Under the proposed extension, SelectNet fees would continue to 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. Nasdaq will continue to monitor and review SelectNet activity to determine if future changes to its SelectNet fee structure are appropriate. If no further action is taken, SelectNet fees will revert to their original \$2.50 per-side level on September 1, 1998.

For the reason set forth above, Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act,³ 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 or 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 Rule 19b-4 thereunder⁴ 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.⁵

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 the principal office of the NASD. All submissions should refer to the File No. SR-NASD-98-37 and should be submitted by June 29, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-15078 Filed 6-5-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40048; File No. SR-NASD-98-35]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change of Proposed Rule Change by National Association of Securities Dealers, Inc, Concerning Books and Records Requirements

May 29, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on May 14, 1998, 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, II, and III below, which Items have been prepared by NASD Regulation, Inc. ("NASD Regulation").³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

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

NASD Regulation is proposing to amend Rule 3110 (the "Books and Records Rule") of the Conduct Rules of the NASD to: (1) amend the definition of "institutional account" to include the accounts of investment advisers that under the National Securities Markets Improvements Act of 1996⁴ and new rules adopted by the SEC, are now

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1994).

² 17 CFR 240.19b-4 (1997).

³ This proposal rule change replaces proposed rule change File No. SR-NASD-98-30 which has been withdrawn. Letter from John M. Ramsay, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated May 7, 1998. The proposed rule change was originally filed on May 7, 1998, but required a technical amendment to clarify the effective date. Letter from John M. Ramsay, Vice President and Deputy General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated May 14, 1998.

⁴ Pub. L. No. 104-290, 110 Stat. 3416 (1996).

² Securities and Exchange Act Release No. 39641 (February 10, 1998), 63 FR 8241 (February 18, 1998). Nasdaq's current reduced fee structure was approved for a 90-day trial period, commencing the day that proposal was published in the **Federal Register** and would lapse on May 18, 1998, if not extended by this filing.

³ 15 U.S.C. 78o-3(b)(5).

⁴ 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b-4(e)(2).

⁵ 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).

required to register with the states; and (2) exclude certain customer accounts from the requirement to obtain certain tax and employment information from the customer. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are bracketed.

3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

3110. Books and Records

(a) Requirements

Each member shall keep and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this statements of policy promulgated thereunder and with the Rules of this Association.

* * * * *

(c) Customer Account Information

Each member shall maintain accounts opened after January 1, 1991 as follows:

(1) for each account, each member shall maintain the following information:

- (A) customer's name and residence;
- (B) whether customer is of legal age;
- (C) signature of the registered representative introducing the account and signature of the member or partner, officer, or manager who accepts the account; and

(D) if the customer is a corporation, partnership, or other legal entity, the names of any persons authorized to transact business on behalf of the entity;

(2) for each account, other than an institutional account, and accounts in which investments are limited to transactions in [money market funds] *open-end investment company shares that are not recommended by the member or its associated persons*, each member shall also make reasonable efforts to obtain, prior to the settlement of the initial transaction in the account, the following information to the extent it is applicable to the account:

- (A) customer's tax identification or Social Security number;
- (B) occupation of customer and name and address of employer; and
- (C) whether customer is an associated person of another member;

(3) for discretionary accounts, in addition to compliance with subparagraphs (1) and (2) above, and Rule 2510(b) of these Rules, the member shall:

(A) obtain the signature of each person authorized to exercise discretion in the account;

(B) record the date such discretion is granted; and

(C) in connection with exempted securities other than municipals, record the age or approximate age of the customer; and

(4) for purposes of this Rule and Rule 2310 the term "institutional account" shall mean the account of:

(A) a bank, savings and loan association, insurance company, or registered investment company;

(B) an investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or

(C) any other entity (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million.

* * * * *

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. 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

1. Background

The Books and Records Rule requires members to obtain certain information for all accounts. In addition, the Rule requires that for accounts other than institutional accounts and accounts limited to money market funds members must make reasonable attempts to obtain: (i) a customer's tax identification or social security number; (ii) a customer's occupation and the name and address of the employer; and (iii) information about whether the customer is an associated person of another member ("Retail Customer Information"). An "institutional account" is defined in the Rule to include the account of an investment adviser registered with the SEC.

a. *Accounts of Registered Investment Advisers.* The National Securities Markets Improvement Act of 1996⁵ and

new rules recently adopted by the SEC under the Investment Advisers Act of 1940 ("Advisers Act")⁶ allocate regulatory oversight of investment advisers between the SEC and the states. Under the new rules, investment advisers to registered investment companies and investment advisers with assets under management of at least \$25 million generally will register exclusively with the SEC. Most other investment advisers will register exclusively with the states.

The Books and Records Rule provides that for purposes of both the Books and Records Rule and NASD Conduct Rule 2310 ("Suitability Rule"), the term "institutional account" includes the account of an investment adviser registered with the SEC.

Consequently, advisory accounts that were considered to be "institutional accounts" when the Retail Customer Information provision in the Books and Records Rule was adopted now are technically excluded from the definition because they have migrated to state regulation.

b. *Accounts Limited to Mutual Fund Shares.* At its meeting on February 23, 1998, the Investment Companies Committee, a standing committee of the NASD Regulation Board of Directors, considered a proposal by the NASD Regulation staff to amend the Books and Records Rule to exclude directly marketed mutual funds from the obligation to obtain Retail Customer Information. The Committee concurred with the NASD Regulation staff's conclusion that the requirement to obtain Retail Customer Information is burdensome and largely unnecessary as it applies to members who distribute directly marketed mutual funds and other unsolicited accounts that are limited to mutual fund shares and for which no recommendations are made. A primary purpose of obtaining Retail Customer Information is to help a member evaluate the suitability of a recommendation. Consequently, the same regulatory requirement does not apply with respect to accounts that are limited to mutual funds and for which no recommendations are made. Members would continue to be required to make reasonable efforts to obtain Retail Customer Information for retail accounts that are not subject to these limitations. At its meeting on March 19, 1998, the NASD Regulation Board of Directors approved proposed changes to amend NASD Conduct Rule 3110 and authorized the filing of the proposed rule change with the SEC.

⁵ Pub. L. 104-290, 110 Stat. 3416 (1996).

⁶ 15 U.S.C. 80b (1994).

2. Purpose

a. *Institutional Account Definition.*

The Books and Records Rule requires members to maintain certain information for all retail and institutional customer accounts. For retail accounts that are not limited to money market funds, members also must make reasonable efforts to obtain Retail Customer Information. Members do not have to seek this information with respect to their institutional accounts.

Similarly, the Suitability Rule requires members to make reasonable efforts to obtain certain information, such as the customer's financial status and investment objectives, from *retail* customers prior to the execution of a transaction. IM-2310-3 describes members' suitability obligation in making recommendations to *institutional* customers. The primary considerations under IM-2310-3 include the customer's capability to evaluate risk independently and the extent to which individual judgment is exercised when making investment decisions.

The proposed rule change would continue to treat the state-regulated advisory accounts as "institutional accounts" for purposes of the Books and Records Rule and the Suitability Rule. The proposed rule change also would amend the Books and Records Rule to take into account the bifurcation of investment advisers regulation between the SEC and the states by changing the definition of "institutional account" to include both investment advisers required to register with the SEC and those required to register with the states.

b. *Accounts Limited to Transactions in Mutual Fund Shares.* The requirement in the Books and Records Rule to obtain customer employment information was designed to assist members in making suitable recommendations. This information is unnecessary for those accounts that are limited to mutual fund transactions that are not recommended by the member or its associated persons. With regard to the requirement in the Books and Records Rule to obtain a customer's tax identification or social security number, the tax laws already impose obligations on funds to obtain this information.⁷ Finally, the requirement to determine whether a customer is an associated person of another member also is unnecessary because NASD Conduct Rule 3050, which provides the obligations of executing members when

the member knows that a person associated with an employing member has an interest in an account, expressly excludes accounts that are limited to transactions in mutual fund shares.

Of course members would be free to request Retail Customer Information from their customers to meet any other regulatory obligations that may exist.

3. Basis

NASD Regulations believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which require, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. NASD Regulation believes the proposed amendments to the Books and Records Rule that eliminate requirements to obtain Retail Customer Information for institutional accounts and accounts that are limited to mutual fund shares and for which no recommendations are made are consistent with these principles.

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

NASD Regulation has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**.

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.⁸ 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 this filing will also be available for inspection and copying at the NASD. All submissions should refer to File No. SR-NASD-98-35 and should be submitted June 29, 1998.

V. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b)(6) of the Act and the rules and regulations thereunder which require, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change is consistent with the Act in that the proposed rule change protects investors and the public interest by preserving the current operation of the Books and Records Rule with respect to institutional accounts registered with the states. The proposed rule change also facilitates transactions in securities by eliminating requirements to obtain Retail Customer Information for institutional accounts and accounts that are limited to mutual fund shares for which no recommendations are made.

The Commission also finds good cause for approving the proposed rule change prior to the 30th day after publication of notice of filing thereof to ensure that the proposed rule change appropriately preserves the current operation of the Books and Records Rule and the Suitability Rule with respect to institutional accounts. The Commission believes, therefore, that granting accelerated approval of the proposed

⁷ If a customer refuses to provide tax identification, IRS rules require a fund to withhold 31% of all redemptions or distributions.

⁸ In reviewing this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

rule change is appropriate and consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR-NASD-97-35 be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-15079 Filed 6-5-98; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3082]

State of Kentucky; (Amendment #2)

In accordance with a notice from the Federal Emergency Management Agency dated May 13, 1998, the above-numbered Declaration is hereby amended to include Pike County in the State of Kentucky as a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on April 16, 1998 and continuing through May 10, 1998.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: McDowell and Mingo Counties in West Virginia, and Buchanan, Dickenson, and Wise Counties in Virginia. Any counties contiguous to the above-name primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is June 28, 1998 and for economic injury the termination date is January 29, 1999.

The economic injury number for West Virginia is 987600 and for Virginia the economic injury number is 987700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 21, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98-15170 Filed 6-5-98; 8:45 am]

BILLING CODE 8025-01-U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3078]

State of Tennessee; (Amendment #3)

In accordance with a notice from the Federal Emergency Management Agency dated May 18, 1998, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on April 16, 1998 and continuing through May 18, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is June 19, 1998 and for economic injury the termination date is January 20, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 21, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98-15169 Filed 6-5-98; 8:45 am]

BILLING CODE 8025-01-U

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending May 29, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST-98-3889.

Date Filed: May 28, 1998.

Parties: Members of the International Air Transport Association.

Subject: PTC12 Telex Mail Vote 942, Zimbabwe-US/Canada/Mexico fare adjustment, r1-First/Intermediate fares, r2-Normal economy/special fares, Intended effective date: July 1, 1998.

Docket Number: OST-98-3890.

Date Filed: May 28, 1998.

Parties: Members of the International Air Transport Association.

Subject: COMP Telex Mail Vote 941 Reso 010L, Zimbabwe fares—(excluding US/Canada/Mexico), Intended effective date: July 1, 1998.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98-15151 Filed 6-5-98; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG-1998-3897]

Merchant Marine Personnel Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for appointment to membership on the Merchant Marine Personnel Advisory Committee (MERPAC). MERPAC provides advice and makes recommendations to the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U.S. merchant marine.

DATES: Applications must reach the Coast Guard on or before August 1, 1998.

ADDRESSES: You may request an application form by writing to Commandant (G-MSO-1), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001; by calling 202-267-0229; or by faxing 202-267-4570. Submit application forms to the same address. This notice is available on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Steven J. Boyle, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202-267-6890, fax 202-267-4570. For questions on this docket, contact Carol Kelly, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, 202-366-9329.

SUPPLEMENTARY INFORMATION: MERPAC is chartered under the Federal Advisory Committee Act, 5 U.S.C. App. 2. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety and Environmental Protection, on merchant marine personnel issues such as implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, types of marine simulation utilized in lieu of sea service for marine licenses, and regional examination center activities.

MERPAC meets at least twice a year, once at Coast Guard Headquarters, Washington, DC, and once elsewhere in the country. Its subcommittees and working groups may also meet to consider specific problems as required.

The Coast Guard will consider applications for six positions that expire

⁹ 17 CFR 200.30-3(a)(12) (1997).