

initiated the request for information or testimony.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5)<sup>5</sup> in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will foster regulatory cooperation among self-regulatory organizations and thereby promote better regulated and fairer markets.

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

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No comments were solicited or received in connection with 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 self-regulatory organization 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.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. 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 Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principle office of the CSE. All submissions should refer to File No. SR-CSE-98-03 and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-33556 Filed 12-17-98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40784; File No. SR-NASD-98-44]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Enhanced Supervision of Unregistered Persons Performing Limited Marketing Activities**

December 11, 1998.

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 July 6, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly-owned subsidiary, the NASD Regulation, Inc. ("NASDR") 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 the NASDR. On December 2, 1998, the NASDR submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit

<sup>6</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 Gary L. Goldsholle, Assistant General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 30, 1998 ("Amendment No. 1"). In Amendment No. 1, the NASDR proposes to amend its filing by deleting its reference to the use by member firms of third-party telemarketing firms for limited marketing activities.

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**

The NASDR is proposing to amend Rule 1060 and create a new Interpretative Material, IM-3010, to codify existing practice by exempting from registration persons whose securities business is limited to certain limited marketing activities and specify supervisory requirements for members concerning such unregistered persons. Below is the text of the proposed rule change. Proposed new language is in italics.

### **1060. Persons Exempt From Registration**

(a) The following persons associated with a member are not required to be registered with the Association:

- (1) persons associated with a member whose functions are solely and exclusively clerical or ministerial;
- (2) persons associated with a member who are not actively engaged in the investment banking or securities business;

(3) persons associated with a member whose functions are related solely and exclusively to the member's needs for nominal corporate officers or for capital participation; and

(4) persons associated with a member whose functions are related solely and exclusively to:

(A) effecting transactions on the floor of a national securities exchange and who are registered as floor members with such exchange;

(B) transactions in municipal securities, except as provided in Rule 1110 hereof, or

(C) transactions in commodities; and  
(5) *persons associated with a member whose investment banking or securities business is limited to marketing activities through the telephone or other electronic communications media for the following:*

- (A) *extending invitations to firm-sponsored events at which any substantive presentations and account or order solicitation will be conducted by appropriately registered personnel;*
- (B) *inquiring whether the prospective or existing customer wishes to discuss investments with a registered person; and*

(C) *inquiring whether the prospective or existing customer wishes to receive investment literature from the firm.*

*In connection with subparagraphs (A), (B) and (C), unregistered persons shall be permitted to mention the products and services generally available from*

<sup>5</sup> 15 U.S.C. 78f(b)(5).

the member, provided, however, that such unregistered persons shall not discuss the attributes or merits of any particular investment products or services or class of products or services, pre-qualify prospective customers as to financial status and investment history and objectives, or solicit new accounts or orders. Nothing in this subparagraph shall affect the ability of administrative personnel to contact customers regarding clerical or ministerial matters affecting a customer's account(s).

**IM-3010. Supervision of Solicitation and Marketing Activities by Unregistered Persons**

Each member employing or using unregistered associated persons in accordance with Rule 1060(a)(5) (hereinafter referred to as "unregistered marketers") shall ensure that the member's supervisory system includes the following:

(a) *Background Investigation.* Prior to employing or using an unregistered marketer, the member shall conduct a reasonable investigation into the background of such person to determine that he or she is not subject to a disqualification as defined in the Association's By-Laws.

(b) *Instruction and Training.* The member, or a person designated by the member, shall instruct all unregistered marketers acting on behalf of the member concerning the scope of their permissible activities, including: the matters that they may discuss pursuant to Rule 1060(a)(5), the telemarketing time-of-day and disclosure obligations required under Rule 2211, and the requirement to make and maintain a centralized do-not-call list pursuant to IM-3110 and to refrain from soliciting customers whose names are included on the list.

(c) *Designated Principals.* The member shall designate one or more principals who shall be responsible for implementing and overseeing the member's supervisory system concerning the employment or use of unregistered marketers;

(d) *Signed Acknowledgment.* The member shall not permit unregistered marketers to contact customers on behalf of the member until the unregistered marketer acknowledges, in writing or by electronic means, that he or she:

- (i) is an associated person of the member;
- (ii) as an associated person:
  - a. is not subject to a disqualification as defined in the Association's By-Laws; and
  - b. submits to the authority of the jurisdiction of the Association and

(iii) has been instructed by the member, or a person designated by the member, concerning the permissible activities of unregistered marketers, as specified in subparagraph (b).

(e) *Compensation.* Unregistered marketers shall be compensated on an hourly or salary basis only, and shall not receive any bonus or additional compensation or other incentives tied to transactions.

(f) *Monitoring.* Registered persons shall periodically monitor calls made by unregistered marketers to ensure that they comply with the limitations described in Rule 1060(a)(5).

(g) *Recordkeeping.* The member shall prepare written records demonstrating compliance with the provisions of this interpretation, which shall include reports documenting the frequency of periodic monitoring and the results of such monitoring. The member also shall keep copies of all scripts used by unregistered marketers calling on their behalf. The member shall preserve each record for a period of not less than three years from the date the record was created, the first two years in a readily accessible place. In addition, the member shall retain the acknowledgment required in subparagraph (d) for a period of not less than three years from the date an individual ceased marketing on behalf of the member, the first two years in a readily accessible place.

**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 NASDR 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 NASDR 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**

**Background**

The Association's current policy, contained in Notice to Members ("NTM") 88-50, permits unregistered individuals to extend invitations to firm-sponsored events and to inquire whether a prospective customer wishes to discuss investments with a registered person or receive investment literature.

The proposed rule change adds certain specific supervisory requirements concerning the activities of these unregistered persons, while codifying in the NASD's rules the extent to which such persons may act on behalf of a member without registration.

Specifically, under the proposed rule change, members using unregistered persons for the permitted activities will be required to supervise and periodically monitor such persons to ensure that their marketing activities do not exceed the narrowly prescribed limits. In addition, members will be required to conduct a background investigation on unregistered persons, provide instruction and training on the scope of their limited permissible activities, designate one or more principals to be responsible for the marketing activities of unregistered persons, and compensate such unregistered persons on an hourly or salary basis only. Any unregistered person who proposes marketing to customers on behalf of a member also must acknowledge in writing certain matters, including that he or she submits to the authority of the Association.

**The Proposal in Notice to Members 97-58**

In August 1997, in NTM 97-58, the NASDR proposed a requirement to register all persons associated with or used by a member who communicate with the public for the purpose of soliciting the purchase of securities or related services or identifying prospective customers. The proposal contained an exemption permitting unregistered persons to communicate with existing customers of a member firm for three limited activities: (1) extending invitations to firm-sponsored events; (2) inquiring whether a customer wishes to speak with a registered person; and (3) inquiring whether a customer wishes to receive investment literature from the firm.

The proposed rule change herein, like its predecessor in NTM 97-58, is designed to address the use of high pressure and aggressive cold calls by unregistered persons, often using specially designed scripts. It also addresses the NASDR's concern that members may not be consistently applying the current cold calling requirements and that members may be employing unregistered persons under the guise of performing the limited functions described above, when in fact such persons are engaged in much broader solicitation activities. Finally, it addresses the NASDR's concern that unregistered persons soliciting

customers may provide inaccurate or misleading information to customers.

Based upon the comments received in response to NTM 97-58, and input provided by the various NASD standing committees, the NASDR is recommending an alternative approach. The proposed rule change is no longer as much a general rule on "cold calling" per se as it is a rule addressing the circumstances under which unregistered persons may conduct limited marketing activities, such as extending invitations to firm-sponsored events, inquiring whether a prospective or existing customer wishes to speak with a registered person or receive investment literature.

The proposed rule change represents a significant shift from the position articulated in NTM 97-58. This shift stems from the NASDR's conclusion after considering all of the input received in the rulemaking process, that registration may not be the most appropriate regulatory mechanism to address the NASDR's concerns. This point was raised by many of the commenters and committees that considered the initial proposal. In general, the commenters and committees believe that registration would not address the substance of cold calls, which, they believe, is what really should be of concern to the NASDR. The commenters and committees also believe that registration should not be required of persons who perform the limited functions permitted in NTM 88-50. Registration, they argue, would be a costly and impractical solution to a problem that is more effectively addressed through increased supervision and enforcement.

### The New Proposal

The NASDR's proposed rule change codifies generally the current restrictions governing the use of unregistered persons that engage in marketing activities as set forth in NTM 88-50, and establishes more comprehensive supervisory responsibilities of members towards such unregistered persons. The NASDR believes that the proposed rule change would achieve several important regulatory objectives. First, it would educate members about their responsibilities regarding the use of unregistered persons that engage in marketing activities. Second, it would signal to the membership the NASDR's renewed attention to the problem of marketing. Third, and perhaps most importantly, since the new rule would require SEC approval, it would provide a clear, and in some cases, an additional and more easily provable basis on

which to bring enforcement actions against firms and individuals that exceed the narrow boundaries established for the use of unregistered persons to engage in marketing activities.

The proposed rule change also seeks a more careful balance between the burdens and benefits of registration. While avoid the expense of registration, the NASDR believes the proposed rule change retains many of the protections that registration would provide. Under the proposed rule change, line NTM 88-50, members would be required to conduct a reasonable background investigation to determine that no prospective unregistered person who intends marketing to customers on behalf of the member is subject to a disqualification as defined by the By-Laws. In addition, under the proposed rule change, such unregistered persons would continue to be deemed associated persons, and thus, subject to the jurisdiction of the Association. The proposed rule change makes the status of unregistered persons who perform limited marketing activity more clear than NTM 88-50 by requiring all such persons to execute an acknowledgment stating that they are associated persons and subject to the Association's jurisdiction. Persons performing these functions, however, would not be required to complete the series 7 examination—an examination that the staff believes is unnecessary for the limited activities permitted by unregistered persons. NASDR staff considered implementing a specific "cold calling" exam but concluded that there would not be sufficient material to make such an examination meaningful.

While the proposed rule change was originally conceived to address problems resulting from cold calling activity, the current proposal covers activity occurring in electronic communications media generally. In light of the rapid growth of the Internet and other electronic communications media, the proposed rule change ensures that the requirements imposed by these new rules cannot be circumvented by moving marketing activity from the telephone to non-traditional media. If, for example, a member uses an unregistered person to post a message inviting the public to a seminar on an Internet bulletin board or during a conversation in a chat room, such conduct should be subject to the same requirements and supervision as communication over the telephone.

The proposed rule change is based upon the premise, as articulated in NTM 88-50, and set forth in NASD Rule 1031(b), that persons associated with a

member who are engaged in the investment banking or securities business for the member, including the functions of solicitation" are required to register as a "representative." Rule 1060 lists a series of exemptions from registration for certain categories of persons associated with a member. Proposed new rule 1060(a)(5) would add a new category and exempt persons whose investment banking or securities business is limited to marketing to customers through the telephone or other electronic communications media for the following: (1) extending invitations to firm-sponsored events at which any substantive presentations and account or order solicitation will be conducted by appropriately registered personnel; (2) inquiring whether the prospective or existing customer wishes to discuss investments with a registered person; and (3) inquiring whether the prospective or existing customer wishes to receive investment literature from the firm. By including marketing towards existing as well as prospective customers, the new rule makes clear that contacts with existing customers should be governed by the same restrictions as contacts with prospective customers.

New rule 1060(a)(5) clarifies what unregistered persons may say in connection with their marketing activities. Specifically, the rule states that "unregistered persons shall be permitted to mention the products and services generally available from the member, provided that they do not discuss the attributes or merits of any particular investment products or services, pre-qualify prospective customers as to financial status and investment history and objectives, or solicit new accounts or orders." In addition, new rule 1060(a)(5) states that it shall not affect the ability of administrative personnel to contact customers regarding clerical or ministerial matters affecting a customer's account.

### Supervisory Responsibilities

The comprehensive supervisory responsibilities set forth in the proposed rule change contain many of the supervisory responsibilities set forth in NTM 88-50, with several significant additions. The supervisory responsibilities contained in NTM 88-50 and codified in the proposed IM-3010 are: (1) Instructing unregistered persons who are marketing on behalf of a member concerning the scope of their permissible activities; (2) conducting a reasonable investigation into the background of any potential unregistered person to determine that

such person is not statutorily disqualified from becoming associated with the member; and (3) compensating unregistered persons on an hourly or salary basis only, without any bonuses or other incentives tied to transactions.

The additional supervisory obligations that would be imposed by the proposed rule change include a requirement for members to obtain an acknowledgement from any unregistered person who intends marketing to customers on behalf of the member stating that he or she: (1) Is an associated person of the member; (2) as an associated person (a) is not subject to a disqualification as defined in the By-Laws and (b) submits to the jurisdiction of the Association; and (3) has been instructed by the member, or a person designated by the member, concerning the scope of permissible marketing activities in which such unregistered persons may engage.

The proposed rule change also would require members to periodically monitor the activities of unregistered persons marketing on their behalf to confirm that such persons are complying with the limitations placed upon them. The NASDR proposes allowing members to determine what level and form of monitoring is appropriate, although we would expect members to increase the frequency of monitoring in response to complaints or other indicia that marketing abuses may be taking place. Members may satisfy the monitoring requirements in a variety of methods, including periodically "listening in" on marketing calls, or contacting previously marketed persons to determine the scope of any communication by the unregistered person. Whatever method members choose, they would be required to maintain a written record of the verification procedures used and the results of the periodic monitoring.

The recordkeeping requirements of the proposed rule change are an integral part of the supervisory system. The signed acknowledgements and records of periodic monitoring will help provide assurance that the restrictions placed upon unregistered marketers are being followed. NASDR staff has also included a specific requirement for members to maintain copies of all scripts used by unregistered persons calling on their behalf. Scripts used by marketers frequently contain the issues to be discussed and suggested responses to questions that may arise during a conversation. From a regulatory perspective, scripts are often very probative of the substance of a cold call or marketing effort, and thus would be particularly useful in determining

whether a member's use of unregistered marketers is in compliance with the limitations imposed by the proposed rule.

The proposed rule change also would require members to designate one or more registered principals to be responsible for overseeing the member's supervisory obligations relating to the employment and use of unregistered persons engaged in marketing on behalf of the member. The NASDR believes that firms are likely to be more diligent in supervising unregistered persons if members designate specific individuals with responsibility for overseeing such activity.

#### **Additional Issues**

Some banks and bank affiliated firms have argued that the proposed rule change could unduly limit marketing activities by bank employees. Although the NASDR preliminarily believes that the potential customer protections that will be derived from the increased supervision of the activities of unregistered persons outweigh these concerns, we would be interested in receiving further comments on the advisability of applying these rules to bank employees, as well as any possible bases for excluding such employees. In particular, for example, would it be appropriate to exclude entities that are otherwise regulated under federal or state law, such as banks and insurance companies?

We also wish to obtain further public comment on whether the proposed rule change should be modified to reach the activities of unregistered third-party telemarketing firms that independently generate leads and then sell such leads to member firms. Since the Association's jurisdiction would not extend to communications by third-party telemarketing firms that are not made on behalf of a particular member, we are concerned about a potential loophole in our proposed rule change in that members may be able to avoid application of the proposed rule change simply by purchasing leads from third-party telemarketing firms that independently generate leads and/or prequalify customers but do not do so on behalf of any particular member. On the other hand, if a member repeatedly purchases leads from a third-party telemarketing firm, the NASDR would take the position that the third-party telemarketing firm is impliedly acting on behalf of the member and would be subject to the provisions of the proposed rule change.

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

The NASDR believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>4</sup> which require that the Association adopt and amend its rules to promote just and equitable principles of trade, and generally provide for the protection of investors and the public interest. The NASDR believes that the proposed rule change codifying the Association's marketing and cold calling restrictions, with the addition of specified supervisory requirements, will sharply and effectively limit the marketing activities of unregistered persons while ensuring the member firms closely supervise and monitor the activities of unregistered persons marketing on their behalf.

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

The NASDR does not believe 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.

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

NASD's Notice to Members 97-58 was published for comment in August 1997. Forty-three comments were received in response to the Notice. Of the forty-three comment letters received, 14 were in favor of the proposal and 25 were opposed, and 4 expressed no opinion.

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

Within 35 days of the 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 self-regulatory organization 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.

#### **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. In addition to any other issues that the public may wish to address, the

<sup>4</sup> 15 U.S.C. 78o-3(b)(6).

Commission specifically requests comments on the following questions:

Should NASD member firms be permitted to use third-party telemarketing firms for the limited marketing activities set forth in the proposal (*i.e.*, as unregistered marketers)?

To what extent are third-party telemarketing firms currently used by member firms for cold calling or marketing purposes?

What types of member firms typically rely on third-party telemarketing firms to conduct cold calling on their behalf (*i.e.*, large firms, medium-sized, or small firms)?

The proposal requires member firms to "periodically monitor" the calls made by unregistered persons on their behalf to ensure that the discussions are limited to permissible topics. There is, however, no requirement that such calls be tape recorded. How would member firms monitor calls by unregistered persons working off-site at third-party telemarketing firms or working for member firms off-site?

If a member firm can use third-party telemarketers, how can a member firm be certain that unregistered persons working for third-party telemarketing firms will limit their conversations with existing and prospective members to the permissible topics?

Will the required "reasonable background investigation" be sufficient to ensure that individuals who have been suspended from the industry are not permitted to engage in limited marketing activities?

Would member firms be able to adequately supervise the limited marketing activities of employees of third-party telemarketing firms?

What steps should firms take if a third-party telemarketer fails to comply with these requirements?

What should the NASD do to ensure that such limited marketing activities conducted off-site at third-party telemarketing firms are appropriately supervised by member firms?

If the use of third-party telemarketing firms is permitted, the proposal would require employees of third party telemarketing firms to acknowledge in writing or electronically that they are associated persons. The Commission notes that there is no requirement for an electronic signature or any other heightened restrictions in place. Will an electronic acknowledgment provide the member firm and the NASD with sufficient information as to the true identity of the individual?

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 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-98-44 and should be submitted by January 8, 1999.

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

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40783; File No. SR-NASD-98-84]

### 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

December 11, 1998.

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 on November 9, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") 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.

<sup>5</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.

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

Nasdaq is filing a proposed rule to extend, through March 31, 1999, the fees currently charged under NASD Rule 7010(1) for the execution of transactions in SelectNet. 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. If no further action is taken, SelectNet fees will revert to their original \$2.50 per-side level on April 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. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth below in Sections A, B, and C, 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

Nasdaq is proposing to again extend its current reduced 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.<sup>3</sup> Since then, SelectNet usage has continued at significantly elevated levels, averaging over 150,000 daily executions in September of 1998 and 180,000

<sup>3</sup> See Securities Exchange Act Release No. 39641 (February 10, 1998), 63 FR 8241 (February 18, 1998). Nasdaq's current reduced fee structure was originally approved for a 90-day trial period, commencing the day the proposal was published in the *Federal Register*. The reduced fees were extended in May and September of 1998 and would have expired on November 30, 1998, if not extended by this filing. See Securities Exchange Act Release No. 40427 (September 10, 1998); 63 FR 49724 (September 17, 1998).