

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44704; File No. SR-NASD-2001-51]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Opening of Nasdaq's SelectNet Service at 8:00 a.m. Eastern Time

August 15, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 14, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(5) thereunder,⁴ as one effecting a change in an existing order-entry or trading system of a self-regulatory organization, which renders the proposal effective upon filing with the Commission. 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

Nasdaq proposes to open its SelectNet service ("SelectNet") at 8:00 a.m. Eastern Time ("ET"). Nasdaq will implement this rule change on September 4, 2001. The text of the proposed rule change is below. Proposed new language is in italics.

4720. SelectNet Service

- (a)-(c) No Change.
- (d) *Hours of Operation*

The SelectNet Service shall operate from 8:00 a.m. ET to 6:30 p.m. ET.

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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 Section 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

I. Purpose

Nasdaq's SelectNet Service is an order negotiation and delivery service that allows market participants to direct or broadcast orders to buy or sell Nasdaq securities to market makers or Electronic Communication Networks ("ECNs"). Trades executed through SelectNet are confirmed to the parties and the trade is automatically sent to Nasdaq's Automated Confirmation Transaction Service ("ACT") and sent to clearing as "locked-in" transactions. Currently, Nasdaq operates SelectNet from 9 a.m. to 6:30 p.m. ET. In response to requests from market participants seeking to expand their usage of SelectNet's communication and execution capabilities prior to normal market hours, Nasdaq has determined to open SelectNet one hour earlier, starting at 8 a.m. ET. Nasdaq will commence operating SelectNet at 8 a.m. starting September 4, 2001. Opening SelectNet earlier should further assist market participants in accessing trading partners prior to the Nasdaq market open. In turn, this enhanced access will provide more opportunities for Nasdaq market participants to manage pre-open order flows and engage in robust price discovery.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with section 15A(b)(6) of the Act,⁵ in that the proposal is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in processing information with respect to and

facilitating transactions in securities, as well as removing impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 proposal has become effective pursuant to section 19(b)(3)(A) of the Act,⁶ and Rule 19b-4(f)(5)⁷ thereunder, in that it effects a change in an existing order-entry or trading system of a self-regulatory organization that does not: (1) Significantly affect the protection of investors or the public interest, (2) impose any significant burden on competition, or (3) have the effect of limiting the access to or availability of the system.

At any time within 60 days of the filing 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.

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 20549-0609. 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 provision

¹⁶ 17 CFR 200.30-3(a)(16).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(5).

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(5).

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 Association. All submissions should refer to file number SR-NASD-2001-51 and should be submitted by September 11, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44706; File No. SR-NASD-2001-50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating To Trade Reporting of Listed Securities

August 15, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 13, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its 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 Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,³ which renders the proposal effective upon filing with the Commission. On August 14, 2001, Nasdaq amended the proposal.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ See August 13, 2001 letter from Thomas P. Moran, Office of General Counsel, Nasdaq to Alton Harvey, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq converted the proposal to a non-controversial filing pursuant to Rule 19b-4(f)(6). 17 CFR 240.19b-4(f)(6). Nasdaq has asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay contained in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

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

Nasdaq proposes to make permanent 90-second trade reporting for over-the-counter transactions in listed securities that take place between 4 p.m. and 6:30 p.m. Eastern Time ("ET"). This proposed rule change is designed to conform the trade reporting obligations for transactions involving listed securities with those now in place for Nasdaq National Market, SmallCap, Convertible Debt and over-the-counter equity issues that were alerted as part of a separately operating pilot program extending the availability of several Nasdaq services and facilities until 6:30 p.m. ET.⁵ The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

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6400. REPORTING TRANSACTIONS IN LISTED SECURITIES

6420. Transaction Reporting

(a) When and How Transactions are Reported

(1) Registered Reporting Members shall transmit through ACT, within 90 seconds after execution, last sale reports of transactions in eligible securities executed during the trading hours of the Consolidated Tape otherwise than on a national securities exchange. Registered Reporting Members shall also transmit through ACT, within 90 seconds after execution, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between 4 p.m. and [5:15] 6:30 p.m. Eastern Time. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.

(2)(A) No Change

(B) Non-registered Reporting Members shall, within 90 seconds after execution, transmit through ACT or the ACT Service Desk (if qualified pursuant to Rule 7010(i), or if ACT is unavailable due to system or transmission failure, by telephone to the Nasdaq Market Operations Department, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between the hours of 4 p.m. and [5:15] 6:30 p.m. Eastern Time. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.

(3)(A) All members shall report transactions in eligible securities executed outside the hours of 9:30 a.m. and [5:15] 6:30 p.m. Eastern Time as follows:

⁵ See Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 10, 1999) (SR-NASD-99-57) (order extending the operation of certain Nasdaq services and facilities until 6:30 p.m. ET).

(i) by transmitting the individual trade reports through ACT on the next business day (T+1) between 8 a.m. and [5:15] 6:30 p.m. Eastern Time;
(ii) No Change.
(iii) No Change.

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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 its proposal and discussed any comments it received regarding the proposal. 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

Nasdaq's Third Market is a quotation, communication and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX"). The NASD collects quotations from broker-dealers that trade these securities over-the-counter and provides such quotations to the Consolidated Quotation System for dissemination. Additionally, the NASD collects trade reports from these broker-dealers trading such securities in the over-the-counter market and provides the trade reports to the Consolidated Tape Association ("CTA/CQA") for inclusion in the Consolidated Tape. From 9:30 a.m. to 4 p.m. Eastern Time, NASD members registered as CQS market makers use Nasdaq's Computer Assisted Execution System ("CAES") to access the quotes of other CQS market makers and the Intermarket Trading System ("ITS") to access the quotes of other U.S. exchanges. Operation of ITS/CAES after 4 p.m. is consistent with all rules and procedures currently applicable to ITS/CAES trading and quotation activity during normal market hours.

In October of 1999, the Commission approved, on a pilot basis until March 1, 2000, a Nasdaq rule change mandating 90-second trade reporting of transactions in listed securities executed by NASD members in the third market until 6:30 p.m. ET. Previously, NASD member firms had to report such transactions within 90 seconds only until 5:15 p.m. ET. Due to an