

- Evaluate the accuracy of the burden estimate, including the assumptions and methodological validity used in determining the burden estimate;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden on respondents.

### Overview of Information Collections

*Title:* Nonforeign Area Cost-of-Living Allowance Price Survey and Background Survey.

*OMB Control Number:* 3206-0199.

*Summary:* The Nonforeign Area Cost-of-Living Allowance Price Survey is used by OPM to collect price data in survey areas located in the nonforeign allowance areas and in the Washington, DC, area. The allowance areas are located in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The price surveys will be conducted annually in selected survey areas on a rotating basis.

The Nonforeign Area Cost-of-Living Allowance Background Survey is used by OPM to collect information to identify the services, items, quantities, outlets, and locations that will be surveyed in the annual price surveys. It is also used to collect information on local trade practices, consumer buying patterns, taxes and fees, and other economic characteristics related to living costs. The background survey will be conducted annually on a limited basis.

*Need/Use for Surveys:* The price survey is necessary for collecting living-cost data used to determine cost-of-living allowances (COLAs) paid to General Schedule, U.S. Postal Service, and certain other Federal employees in the allowance areas. The information is used to compare costs in the allowance areas with costs in the Washington, DC, area and to derive a COLA rate when the local cost of living significantly exceeds that in the DC area. The background survey is necessary to determine the continued appropriateness of items, services, and businesses selected for the annual price surveys. OPM uses the information collected under this survey to define the sources and parameters for the price surveys and to improve the COLA methodology.

*Respondents:* OPM will survey selected retail, service, realty, and other businesses and local governments in the allowance areas and in the Washington, DC, area. Approximately 2,200 establishments will be contacted in the price survey, and approximately 30 establishments will be contacted in the

background survey. Participation in the surveys is voluntary.

*Reporting and Recordkeeping Burden:* OPM estimates that the average price survey interview will take approximately 7 minutes, for a total burden of 257 hours. The average background survey interview will take approximately 10 minutes, for a total burden of 5 hours.

Office of Personnel Management.

**Kay Coles James,**  
*Director.*

[FR Doc. 01-26057 Filed 10-16-01; 8:45 am]

**BILLING CODE 6325-39-P**

### SECURITIES AND EXCHANGE COMMISSION

#### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following additional meeting during the week of October 8, 2001: a closed meeting was held on Wednesday, October 10, 2001 at 2:00 p.m.

Commissioner Unger, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(9)(A) and (10) and 17 CFR 200.402(a)(9)(i)(A), (9)(i)(B), and (10), permit consideration of the scheduled matter at the closed meeting.

The subject matters of the closed meeting held on Wednesday, October 10, 2001, was: a regulatory matter regarding financial institutions; and continuation of matters discussed at previous meeting.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: October 11, 2001.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 01-26259 Filed 10-15-01; 12:05 am]

**BILLING CODE 8010-01-M**

### SECURITIES AND EXCHANGE COMMISSION

#### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [To be published on Monday, October 15, 2001].

**STATUS:** Closed meeting.

**PLACE:** 450 Fifth Street NW., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Tuesday, October 16, 2001 at 10 a.m.

**CHANGE IN THE MEETING:** Additional Items.

The following items have been added to the closed meeting scheduled for Tuesday, October 16, 2001:

Institution of injunctive actions; and  
Institution of an administrative proceeding of an enforcement nature.

Commissioner Unger, as duty officer, determined that Commission business required to above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: October 12, 2001.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 01-26272 Filed 10-15-01; 12:43 pm]

**BILLING CODE 8010-01-M**

### SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-44918; File No. SR-NASD-2001-71]**

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify SuperSOES Use Fees and the Liquidity Provider Rebate, Institute a Quotation Update Charge, and Introduce a Mechanism for Sharing Market Data Revenue With Certain NASD Members

October 10, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 9, 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. 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

This is a rule change, on a pilot basis, to: (1) Modify the fees for use of the Nasdaq National Market Execution System ("NNMS" or "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"). Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>1</sup> and Rule 19b-4(f)(2) thereunder,<sup>2</sup> Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization, and therefore the proposed rule change is effective upon filing as applied to NASD members. The rule change will become operative on a pilot basis, commencing on December 1, 2001 and ending on November 30, 2002.<sup>3</sup> 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 italicized; 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:

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

[(2)](B) the individual quotations or indications of interest of broker/dealers utilizing the OTCBB service; and  
[(3)](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.

(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 shall consist of two components, a "Base Credit" and a "Supplemental Credit."<sup>4</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:

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

(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) "Members 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 Executive Services

(1) No change.

(2) Nasdaq National Market Execution System (SuperSOES)<sup>5</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 [November] December 1, 2001 and lasting until [October 31] November 30, 2002, the per share charge will be [\$0.002 per share executed for all fully or partially executed orders (entering party only).] 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)

<sup>1</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>2</sup> 17 CFR 240.19b-4(f)(2).

<sup>3</sup> Nasdaq also filed a companion rule filing (SR-NASD-2001-72) to apply portions of the rule change to national securities exchanges trading Nasdaq-listed securities pursuant to grants of unlisted trading privileges ("UTP Exchanges"). SR-NASD-2001-72 will become effective upon approval by the Commission and will be implemented on the later of (i) December 1, 2001, or (ii) the first day of the month immediately following Commission approval.

<sup>4</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 of Market Regulation ("Division"), Commission, October 10, 2001.

<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.

*Full Contribution UTP Exchanges:*<sup>6</sup>—\$0.003 per share executed for all fully or partially executed orders (entering party only)

(ii) Definition following definitions shall apply to this Rule:

(a) “Full Contribution Member” shall mean an NASD member that reports substantially all of its trade 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 to 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.<sup>7</sup>

(3) No change.

(4) Liquidity provider rebate

For a pilot period commencing on [November] December 1, 2001 and lasting until [October 31] November 30, 2002:

(A) [NASD members] 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.

[(B) NASD members] (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 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 in the Nasdaq quotation montage:

Full Contribution Members—\$0.01 per quotation update

Partial Contribution Members—\$0.03 per quotation update

(j)–(q) No change.

## 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 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 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

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>8</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, 2002, Nasdaq filed modifications to the pricing structure for SlectNet and the NNMS.<sup>9</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 introduce a liquidity provider rebate for NASD members.<sup>10</sup>

With this filing, Nasdaq is introducing a mechanism for sharing market data revenue with NASD members that report substantially all trades through ACT. Nasdaq is also 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. 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

<sup>9</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>10</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>6</sup> For purposes of completeness, NASD has included this provision on per share charges for “Full Contribution UTP Exchanges,” but the provision is not effective until approved by the Commission. See SR–NASD–2001–72.

<sup>7</sup> For purposes of completeness, NASD has included this provision defining “Full Contribution UTP Exchange,” but the provision is not effective until approved by the Commission. See SR–NASD–2001–72.

<sup>8</sup> See Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) (SR–NASD–99–11).

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>11</sup>

<sup>11</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.

#### Liquidity Provider Rebate

Effective on December 1, 2001, Nasdaq will modify the liquidity provider rebate instituted by SR-NASD-2001-67,<sup>12</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 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>13</sup> and similar revenue sharing programs established by UTP Exchanges.<sup>14</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.

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5)<sup>15</sup> of the Act, 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

<sup>12</sup> See *supra* note 10.

<sup>13</sup> See NASD Rule 7010(c)(2).

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

15A(b)(6)<sup>16</sup> of the Act, 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,' simpliciter \* \* \*"<sup>17</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 operations 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>18</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 be 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 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*

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 pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (f) of Rule 19b-4, thereunder because it establishes or changes a due, fee or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, 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, 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 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 the 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-2001-71 and should be submitted by November 7, 2001.<sup>19</sup>

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-26028 Filed 10-16-01; 8:45 am]

**BILLING CODE 8010-01-M**

#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44917; File No. SR-NFA-2001-02]

#### **Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Futures Association Clarifying the Interpretive Notice Regarding Obligations to Customers and Other Market Participants**

October 10, 2001.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and rule 19b-7 under the exchange Act,<sup>2</sup> notice is hereby given that on September 18, 2001, the National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by NFA. The text of the proposed rule change is available for inspection and copying at the places specified in Item IV below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

On August 29, 2001, pursuant to Section 17(j) of the Commodity Exchange Act ("CEA"),<sup>3</sup> NFA requested that the Commodity Futures Trading Commission ("CFTC") make a determination that review of the proposed rule change submitted by NFA to the CFTC is not necessary. The CFTC made such a determination on September 7, 2001.

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

The Commodity Futures Modernization Act of 2000 ("CFMA") amended Section 15A of the Exchange Act to add a new subsection (k),<sup>4</sup> which makes NFA a national securities association for the limited purpose of regulating the activities of NFA Members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.<sup>5</sup> The proposed rule change clarifies that certain provisions of the "Interpretive Notice Regarding Obligations to Customers and Other Market Participants" ("Interpretive Notice") apply only to these NFA

<sup>16</sup> 15 U.S.C. 78o-3(b)(6).

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

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> 7 U.S.C. 21(j).

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

<sup>5</sup> 15 U.S.C. 78o-(b)(11).