

# Notice To Members

National Association of Securities Dealers, Inc.

February 1991

## Number 91-9

### Suggested Routing:\*

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|---|--|--|------------------------------------|
| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Internal Audit                | <input type="checkbox"/> Operations              | <input type="checkbox"/> Syndicate |
| <input type="checkbox"/> Corporate Finance            | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options                 | <input type="checkbox"/> Systems   |
| <input type="checkbox"/> Government Securities        | <input type="checkbox"/> Municipal                     | <input checked="" type="checkbox"/> Registration | <input type="checkbox"/> Trading   |
| <input type="checkbox"/> Institutional                | <input type="checkbox"/> Mutual Fund                   | <input type="checkbox"/> Research                | <input type="checkbox"/> Training  |

\*These are suggested departments only. Others may be appropriate for your firm.

**Subject: Request for Comments From Members on Proposed Changes to the Definition of "Executive Representative" in Article III, Section 3 of the NASD By-Laws; Last Date for Comments: April 1, 1991**

### EXECUTIVE SUMMARY

The NASD requests comments on changes to the definition of "Executive Representative" that are intended to better assure proper communication with members on important matters.

### DISCUSSION

The NASD is in the process of better organizing the means by which it communicates with its members and other interested parties. Concerns have been raised in this process regarding the current definition of "Executive Representative" in Article III, Section 3 of the NASD By-Laws.

The current definition is quite broad and has, in the past, led to the designation as Executive Representative of persons who have limited authority in their firms. Since all important membership communications are directed to Executive Representatives, who are eligible to cast votes on behalf of their respective firms, the Board is concerned that important matters may not be directed to the appropriate person in each member. The Board proposes, therefore, to amend the definition of Executive Representative to require that only persons

of authority in member firms be so designated to the NASD. The Executive Representative list will be maintained separately from the firm contact list in the Central Registration Depository (CRD). This will assure that the Executive Representative will receive all important NASD communications and that routine CRD notices will be directed to the appropriate persons designated by the member.

The NASD urges members and interested parties to comment on this and other relevant issues. Questions may be directed to John Vaughn in the Membership Department at (301) 590-6865 or Craig Landauer in the Office of the General Counsel at (202) 728-8291.

Written comments should be forwarded to Stephen Hickman, Office of the Secretary, National Association of Securities Dealers, Inc., 1735 K Street, NW, Washington, DC 20006-1506. Comments should be received by April 1, 1991.

### TEXT OF PROPOSED BY-LAW CHANGE

#### Article III, Section 3

#### NASD By-Laws

#### Executive Representative

(Note: New text is underlined; deleted text is in brackets.)

Sec. 3. Each member shall appoint and certify to the Secretary of the Corporation one "executive

representative" who shall represent, vote and act for the member in all the affairs of the Corporation, except that other executives of a member may also hold office in the Corporation, serve on the Board of Governors or committees of the Corporation, or otherwise take part in the affairs of the Corporation. A member may change its executive representative upon giving written notice thereof to the Secretary, or may, when necessary, appoint, by written notice to the Secretary, a substitute for its

executive representative. An executive representative of a member or a substitute shall (preferably) be a(n senior executive officer), member of senior management, and registered principal of the member. [if a corporation, a partner in case of a partnership, and the member himself if an individual, but he may be an employee and registered principal of the member, if given authority to act for the member in the course of the Corporation's activities.]

# Notice To Members

National Association of Securities Dealers, Inc.

February 1991

**Number 91-10****Suggested Routing:\***

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| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Internal Audit     | <input checked="" type="checkbox"/> Operations | <input checked="" type="checkbox"/> Syndicate |
| <input checked="" type="checkbox"/> Corporate Finance | <input type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options               | <input type="checkbox"/> Systems              |
| <input type="checkbox"/> Government Securities        | <input type="checkbox"/> Municipal          | <input type="checkbox"/> Registration          | <input type="checkbox"/> Trading              |
| <input type="checkbox"/> Institutional                | <input type="checkbox"/> Mutual Fund        | <input type="checkbox"/> Research              | <input type="checkbox"/> Training             |

\*These are suggested departments only. Others may be appropriate for your firm.

**Subject: Revised Entry and Annual Fees for Nasdaq Issuers — Approval of Amendments to Schedule D****EXECUTIVE SUMMARY**

The Securities and Exchange Commission has approved amendments to Part I of Schedule D to the NASD By-Laws that provide new and separate fee structures for Nasdaq issuers. The new fees went into effect January 2, 1991. They include a one-time entry fee for all issuers and a graduated entry fee for each issue listed on the Nasdaq National Market System. The text of the amendments to Part IV of Schedule D follows this notice.

**BACKGROUND**

On January 2, 1991, the Securities and Exchange Commission (SEC or "Commission") approved amendments to Part IV of Schedule D to the NASD By-Laws that establish new and separate fee structures for Nasdaq issuers effective January 2, 1991.

The NASD's prior fee structure for issuers under Part IV of Schedule D to the By-Laws governing inclusion in the Nasdaq system generally did not distinguish between issues listed on the Nasdaq National Market System (Nasdaq/NMS) and issues that were not listed on Nasdaq/NMS

("regular Nasdaq")(together referred to hereinafter as "The Nasdaq Stock Market<sup>SM</sup>"). With the continued substantial growth in The Nasdaq Stock Market in the last decade, and especially the growth in the quality and competitiveness of Nasdaq/NMS, the NASD believes that changes to the fee structure are necessary and appropriate. The changes to the fee structure announced here more accurately reflect the competitive value that Nasdaq/NMS listings provide to issuers and differentiate between the two segments of The Nasdaq Stock Market.

**SUMMARY OF AMENDMENTS**

The NASD is, therefore, replacing the current provisions of Part IV of Schedule D to the NASD By-Laws with a new structure that distinguishes between Nasdaq/NMS fees in new Sections A and B and regular Nasdaq fees in new Sections C and D. The NASD has adopted a new Section A to charge a one-time entry fee for Nasdaq/NMS listing of \$5,000 per issuer, plus a new graduated fee for each issue listed based on the total number of shares of the listed class of security outstanding. The total Nasdaq/NMS entry fee will not exceed \$50,000 for each Nasdaq/NMS issuer (inclusive of the \$5,000 one-time entry fee), compared with the previous maximum of \$5,000 per issuer during any 24-month period. The Nasdaq/NMS annual fee in

new Section B is a maximum of \$8,000, including the participation fee, which is unchanged.

The NASD has also adopted the \$5,000 one-time entry fee for regular Nasdaq and has raised the maximum entry fee from \$5,000 to \$10,000 per issuer (inclusive of the one-time \$5,000 fee) in new Section C. In addition, the NASD has changed the regular Nasdaq entry and annual fee provisions to consolidate identical fees for different types of securities. New Subsections C.2.(i) and D.1.(i) impose fees on what are now referred to as "equity securities." Each section defines equity securities to mean all securities eligible for inclusion in regular Nasdaq and not otherwise covered by another subsection of each section. A footnote to each section also clarifies that, in the case of units, only the components of the units will be considered an equity security. The purpose of this change is to establish a single fee formula for all types of securities eligible for inclusion unless a unique formula is established for a particular type of security in another subsection of the section. Thus, the language of Subsections C.2.(ii) and D.1.(ii) retains the prior language specifying the calculation of the fee for convertible debentures.

The NASD has also adopted a new nonrefundable \$1,000 processing fee, which will be credited against the applicant issuer's minimum entry fee for applications to both Nasdaq/NMS and regular Nasdaq to cover the costs associated with processing these applications. Previously, issuers were not required to pay any fee to the NASD until their securities had been authorized for inclusion and were trading in The Nasdaq Stock Market.

Each year the NASD receives approximately 200 applications for inclusion in The Nasdaq Stock Market from issuers that are never included. The costs to the NASD of processing these applications are significant, given the number of applications and the complexity of issues that may require resolution. The NASD believes the processing fee will discourage applications by issuers that cannot meet The Nasdaq Stock Market initial inclusion requirements and will encourage all applicant issuers to determine, prior to applying for inclusion in The Nasdaq Stock Market, the likelihood that their securities will qualify for inclusion.

The NASD has also added a provision allowing the waiver of entry and annual fees for both Nasdaq/NMS and regular Nasdaq applicants if, in the discretion of the Board of Governors or its

designee, such a waiver is justified. Previously, Part IV to Schedule D allowed for a waiver of entry fees if comparable fees had been paid in the previous 24 months, or if new securities that qualified for listing were issued as the result of the merger, consolidation, or reorganization of a listed company. When the prior waiver provisions were adopted, virtually all situations where a waiver might be justified fell into the standard categories covered by the provisions. The NASD has increasingly found situations in which granting a waiver under the prior provisions appeared unjustified and other situations where granting a waiver is justified but not permitted by the prior provisions. The new waiver provision allows the NASD more flexibility to waive fees on a case-by-case basis in situations that were not precisely covered by the prior waiver provisions or where other unforeseen considerations might warrant a waiver.

The NASD will consider granting waivers where the facts of the particular situation, including the following, appear to make imposition of a fee inequitable:

- Where the issue currently trades in regular Nasdaq and is seeking inclusion in Nasdaq/NMS.
- Where the company seeking a Nasdaq/NMS listing resulted from a business combination and one or more of the predecessor companies were previously listed on regular Nasdaq or Nasdaq/NMS.
- Where the company has other issues already listed on Nasdaq/NMS.
- Where the company was previously listed on Nasdaq/NMS.
- Any other information deemed material to the company's listing application.

Finally, the NASD has eliminated the current section entitled Interim Inclusion Fee with respect to both Nasdaq/NMS and regular Nasdaq. Any need for a reduced fee for interim inclusion of a security can now be accommodated through the proposed waiver provisions.

Inquiries related to the amendments announced here may be directed to Perry Peregoy, Market Listing Qualifications, at (202) 728-8088, or Elliott R. Curzon, Office of the General Counsel, at (202) 728-8451.

### TEXT OF RULE CHANGE

The following is the full text of amendments

to Part IV of Schedule D to the NASD By-Laws.

(Note: New language is underlined; deleted language is in brackets.)

**SCHEDULE D  
PART IV**

**[NASDAQ ISSUER QUOTATION]  
LISTING FEES**

**THE NASDAQ STOCK MARKET —  
NATIONAL MARKET SYSTEM**

**A. Entry Fee**

1. Each issuer that submits an application for inclusion of any of its securities in the National Market System shall pay a \$1,000 non-refundable processing fee with respect to each application, to be credited against the issuer's entry fee.

2. The issuer of each class of security which is listed in the National Market System shall pay to the Corporation:

a. upon initial entry, a one-time company listing fee of \$5,000; and

b. for each class of security listed, a fee calculated on a graduated rate of \$.005 per share for the first 5 million shares, \$.0025 per share for each share between 5,000,001 and 15 million, inclusive, and \$.001 per share for each share over 15 million, based on the total number of shares outstanding. Entry fees paid by a company for all classes of securities listed on the National Market System, regardless of the date those securities are listed, shall not exceed \$50,000 (inclusive of the \$5,000 company listing fee).<sup>1</sup>

3. The entry fee shall be based on the total number of outstanding securities of the class to be included in the National Market System as shown in the issuer's most recent periodic report or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority and received by the NASDAQ Stock Market.

4. The Board of Governors or its designee, may, in its discretion, waive all or any part of the entry fee prescribed herein.

**B. Annual Fee**

1. The issuer of each class of security which is listed in the National Market System shall pay annually to the Corporation an annual fee for each such class of security to be computed as follows with a maximum annual fee of \$8,000 per issuer;

a. a \$2,000 National Market System participation fee; and,

b. the sum of \$500 or \$.0005 per share outstanding, whichever is higher, up to a maximum of \$6,000 for each security listed in the National Market System.<sup>2</sup>

2. The annual fee shall be based on the total number of outstanding securities of the class included in the National Market System as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority and received by the NASDAQ Stock Market.

3. The Board of Governors, or its designee may, in its discretion, waive all or any part of the annual fee prescribed herein.

4. If a security is removed from the National Market System, that portion of the annual fees for such security attributable to the months following the date of removal shall not be refunded.

**REGULAR NASDAQ SYSTEM**

**[A.] C. Entry Fee**

1. Each issuer that submits an application for inclusion of any class of its securities in the Regular NASDAQ System shall pay a \$1,000 non-refundable processing fee with respect to each application, to be credited against the issuer's entry fee.

[1.] 2. The issuer of each class of security which is [authorized for inclusion] listed in the Regular NASDAQ System shall pay to the Corporation upon initial entry of any of the issuer's securities into the Regular NASDAQ System [an entry] a one-time company listing fee of \$5,000. In addition, for each class of securities listed in the Regular NASDAQ System, the issuer shall pay an entry fee to be computed as follows with a maximum entry fee [during any 24 month period] for all classes of securities listed, regardless of the date those securities are listed, of [\$5,000] \$10,000 per issuer (inclusive of the \$5,000 company listing fee):

(i) Equity Securities — \$1,000 or \$.001 per share outstanding, whichever is higher. For purposes of this section, the term "equity securities"

<sup>1</sup>For purposes of this Part, the term "shares" shall include common and preferred stock, American Depositary Receipts (ADRs), warrants, partnership interests, or any other security listed on the National Market System.

<sup>2</sup>Id.

includes all securities eligible for inclusion in the Regular NASDAQ System not covered by subparagraph (ii) of this section.<sup>3</sup>

- [a. Stock Issues — \$1,000 or \$.001 per share outstanding, whichever is higher;]
- [b. Investment Company Shares — \$1,000 or \$.001 per share outstanding, whichever is higher;]
- [c. Warrant Issues — \$1,000 or \$.001 per warrant outstanding, whichever is higher;]
- [d. Unit Issues]
  - [i] Where one or more of the component securities in the unit is an authorized security in the NASDAQ System — \$1,000;]
  - [ii] Where the component securities in the unit are not authorized securities in the NASDAQ System — \$1,000 or \$.001 per unit initially issued, whichever is higher;]
- [e. Shares of Beneficial Interest — \$1,000 or \$.001 per share outstanding, whichever is higher;]
- [f.] (ii) Convertible Debentures — \$1,000 or \$50 per million dollars face amount of debentures outstanding, whichever is higher[;].
- [g. Securities of Foreign Issuers and American Depositary Receipts — \$1,000.]

[2. The entry fee shall be waived for those securities reentering the NASDAQ System for which an entry fee for the same security has been paid to the Corporation during the twenty-four month period prior to reentry. For purposes of calculating the above-mentioned twenty-four (24) month period the date of reentry shall be the date of receipt of the application for reentry into the NASDAQ System.]

[3. In the case of a merger, consolidation, or reorganization involving at least one issuer of an authorized security, the entry fee shall be waived for the security issued to carry out such merger, consolidation or re-organization provided that such security is promptly authorized for inclusion in the NASDAQ System.]

3. The Board of Governors or its designee may, in its discretion, waive all or any part of the entry fee prescribed herein.

4. [Except for Unit Issues, Securities of Foreign Issuers, and American Depositary Receipts t]The entry fee shall be based on the total number of outstanding securities of the class to be included in the Regular NASDAQ System as shown [on] in the issuer's most recent [Form 10-K filed with the

SEC] periodic report or, in the case of new issues, as shown in the [appropriate prospectus] offering circular, [ . In the case of issuers which are not required to file a Form 10-K with the Commission, the entry fee shall be based on the annual report] required to be filed with the issuer's appropriate regulatory authority and received by the NASDAQ Stock Market.

**[B.] D. Annual Fee**

1. The issuer of each class of security which is [authorized for inclusion] listed in the Regular NASDAQ System shall pay annually to the Corporation an annual fee for each such class of security to be computed as follows with a maximum annual fee of \$6,000 per issuer;

(i) Equity Securities — \$500 or \$.0005 per share outstanding, whichever is higher. For purposes of this section, the term "equity securities" includes all securities eligible for inclusion in the Regular NASDAQ System not covered by subparagraph (ii) provision of this section.<sup>4</sup>

- [a. Stock Issues — \$500 or \$.0005 per share outstanding, whichever is higher;]
- [b. Investment Company Shares — \$500 or \$.0005 per share outstanding, whichever is higher;]
- [c. Warrant Issues — \$500 or \$.0005 per warrant outstanding, whichever is higher;]
- [d. Unit Issues]
  - [i] Where one or more of the component securities in the unit is an authorized security in the NASDAQ System — \$500;]
  - [ii] Where the component securities in the unit are not authorized securities in the NASDAQ System — \$500 or \$.0005 per unit initially issued, whichever is higher;]
- [e. Shares of Beneficial Interest — \$500 or \$.0005 per share outstanding, whichever is higher;]
- [f.] (ii) Convertible Debentures — \$500 or \$25 per million dollars face amount of debentures outstanding, whichever is higher[;].
- [g. Securities of Foreign Issuers and American Depositary Receipts — \$500.]

2. [Except for Unit Issues, Securities of Foreign Issuers, and American Depositary Receipts, t] The annual fee shall be based on the total [amount] number of outstanding securities of the class included in the Regular NASDAQ System as shown

<sup>3</sup>*Id.* In the case of units, each component, but not the unit itself, shall be considered separately as an "equity security" for fee purposes.

<sup>4</sup>See *supra* notes 1 and 3.

[on] in the issuer's most recent [Form 10-K annual report filed with the SEC. In the case of issuers which are not required to file a Form 10-K with the Commission, the annual fee shall be based on the annual] periodic report required to be filed with the issuer's appropriate regulatory authority and received by the NASDAQ Stock Market.

[3. In addition to the annual fee stated above, the issuer of each security designated for inclusion in the NASDAQ National Market System shall pay annually to the corporation a NASDAQ/National Market System participation fee of \$2,000 except with respect to issuers whose annual fee is calculated pursuant to Section B.1.g. above.\* ]

3. The Board of Governors or its designee may, in its discretion, waive all or any part of the entry fee prescribed herein.

4. If a[n authorized] security is removed from the Regular NASDAQ [(or NASDAQ/National Market)] System, that portion of the annual fees for such security attributable to the months following the date of removal shall not be refunded.

#### [C. Interim Inclusion Fee]

[1. In the case of a new issue which is authorized for inclusion in the NASDAQ System and for which an application has been made for listing on a national securities exchange pursuant to Section 12(b) of the Securities Exchange Act of 1934, such issuer shall pay to the Corporation upon entry into the NASDAQ System an Interim In-

clusion Fee to be computed as follows with a maximum Interim Inclusion Fee of \$1,000:]

[a] Stock Issues — \$200 or \$.0005 per share outstanding, whichever is higher;]

[b] Warrant Issues — \$200 or \$.0005 per warrant outstanding, whichever is higher;]

[c] Unit Issues]

[i] where one or more of the component securities in the unit is an authorized security in the NASDAQ System — \$200;]

[ii] where the component securities in the unit are not authorized securities in the NASDAQ System — \$200 or \$.0005 per unit initially issued, whichever is higher;]

[d] Shares of Beneficial Interest — \$200 or \$.0005 per share outstanding, whichever is higher;]

[e] Convertible Debentures — \$200 or \$25 per million dollars face amount of debentures outstanding, whichever is higher;]

[f] Securities of Foreign Issuers and American Depositary Receipts — \$200.]

[2. In the event the issue is not accepted for listing on a national securities exchange within 60 calendar days of inclusion in the NASDAQ System, the entry and annual fees set forth in Sections A and B above shall apply and the Interim Inclusion Fee shall be credited toward the entry and annual fees.]

[\*This exception will expire December 31, 1990.]



# Notice To Members

National Association of Securities Dealers, Inc.

February 1991

**Number 91-11****Suggested Routing:\***

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| <input type="checkbox"/> Corporate Finance            | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options               | <input type="checkbox"/> Systems   |
| <input type="checkbox"/> Government Securities        | <input type="checkbox"/> Municipal                     | <input type="checkbox"/> Registration          | <input type="checkbox"/> Trading   |
| <input type="checkbox"/> Institutional                | <input type="checkbox"/> Mutual Fund                   | <input type="checkbox"/> Research              | <input type="checkbox"/> Training  |

\*These are suggested departments only. Others may be appropriate for your firm.

**Subject: SEC Approval of Amendment to Part I of Schedule C to the NASD By-Laws Regarding Written Notification About Certain Events****EXECUTIVE SUMMARY**

The Securities and Exchange Commission (SEC or "Commission") has approved an amendment that adds a new section to Part I of Schedule C to the NASD By-Laws requiring members to provide notification in writing to the appropriate district office on the occurrence of certain events affecting the ownership or control of a member. Members must comply with the new notification requirement as of February 25, 1991. The text of the amendment follows this notice.

**BACKGROUND**

Prior to the approval of this amendment by the SEC, Schedule C to the NASD By-Laws permitted an NASD member to experience a change in ownership or control without prior review by the appropriate NASD district office. Pursuant to Section (4) of Part I of Schedule C to the NASD By-Laws, in cases where the ownership or control of an existing member changes, the NASD has the discretion to condition continuance in membership on prompt compliance with the pre-membership interview procedures.

Notice of a change in ownership or control of

a member must be filed on a revised Form BD whenever the information previously on file changes. Since the form does not specify a time for filing, a general rule of thumb has developed that filing is required within 30 days. In certain cases, a previously dormant member can become active unexpectedly or can be sold or taken over by new management. While the NASD can conduct a new pre-membership interview, regulatory problems may have occurred already in reference to the merger, purchase, or change of ownership of a member. The NASD believes that prompt written notification of such a change in ownership will allow the NASD to act more expeditiously in determining whether a new pre-membership interview should be scheduled.

**EXPLANATION**

The amendment requires prompt written notification to the member's district office after a specified significant event, rather than prior notification of such an event. Members must provide notification in writing to the applicable district office no later than five business days after a specific event. Prenotification to the district office by the member is permitted but not required.

The amendment focuses on four significant events the NASD has determined require prompt written notification: (1) a merger of a member; (2)



an acquisition by a member; (3) an acquisition of a member or substantially all of its assets; and (4) any change in the equity ownership or partnership capital of the member that results in one person or entity owning 50 percent or more of such equity ownership or partnership capital. The NASD determined that the notification requirement should focus on a change in the ownership structure of the member. A change in the president or chief executive officer of a member does not require prompt written notification unless accompanied by one of the four triggering events.

The Commission approved the new rule on January 9, 1991, in SEC Release No. 34-28757. However, in order to provide sufficient time for members to establish internal procedures to ensure compliance, the NASD is delaying implementation of the notification requirement. Therefore, members' obligation to comply with the new notification requirement shall not start until February 25, 1991.

Questions concerning this notice should be

directed to P. William Hotchkiss, Director, Surveillance, at 202-728-8235, or Craig L. Landauer, Assistant General Counsel, Office of General Counsel, at 202-728-8291.

**TEXT OF NEW SECTION (5) TO PART I  
OF SCHEDULE C TO THE NASD BY-LAWS**

(Note: New language is underlined.)

(5) Notification to the District Office of Certain Events

Members are required to notify in writing the Corporation's District Office for the District in which the member's main office is located no later than ten (10) business days after any of the following specified events: (1) any merger of the member; (2) an acquisition by the member; (3) an acquisition of the member or substantially all of its assets; and (4) any change in the equity ownership or partnership capital of the member which results in one person or entity owning 50% or more of such equity ownership or partnership capital.

# Notice To Members

National Association of Securities Dealers, Inc.

February 1991

## Number 91-12

### Suggested Routing:\*

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## Subject: Board of Governors' Approval of Service Charges for SelectNet<sup>SM</sup> and SOES

### EXECUTIVE SUMMARY

The NASD Board of Governors has approved service charges for SelectNet<sup>SM</sup> and the Small Order Execution System (SOES). The fees include a \$25 monthly emergency market conditions service charge for each Nasdaq Level 2/3 subscriber capable of receiving SelectNet and SOES services and a \$4 per side per transaction fee for SelectNet trades. The fees became effective February 1, 1991.

### BACKGROUND

The Association is establishing an emergency market conditions fee of \$25 per month to be assessed on every Nasdaq Workstation<sup>SM</sup> and authorized Digital Interface Service terminal capable of receiving the SelectNet<sup>SM</sup> and SOES services. Following the market break of 1987, the NASD implemented the Order Confirmation Transaction service (now renamed "SelectNet") as a screen-based communication system to negotiate transactions and replace telephone contact. SOES was also enhanced to require mandatory participation by market makers and to implement certain size requirements for executions in Nasdaq National Market System securities.

Both SOES and SelectNet operate in the same computer facility, and the NASD has recently enhanced each service. In SOES, a limit-order file with potential for matching orders between the inside quotes has been implemented, and SelectNet has been enhanced to facilitate broadcasting of orders to a wider audience and to permit faster and easier negotiations between participants.

These system changes since 1987 have been implemented in part to offer Nasdaq subscribers alternative avenues for trade executions outside of traditional telephone contact in the event of emergency market conditions. The NASD is establishing a monthly \$25 fee for each subscriber to the Nasdaq Workstation and Digital Interface Service that is capable of utilizing the SOES or SelectNet services in order to recover the costs associated with enhancing the systems and of maintaining the excess computer capacity to utilize them in extreme market conditions. The annual revenues to be derived from this emergency systems fee will offset continuing development and operational expenses associated with the systems.

### SELECTNET FEES

The NASD is also establishing service charges for the SelectNet screen-based trading service of \$4 per side per transaction. Modifications to the service were implemented in November 1990 and, since then, the SelectNet service has

been used by members to facilitate screen-based negotiations and to lock in executions for transmission to clearing.

Before the modifications were implemented, the Board had approved a fee based on shares executed in each transaction but, after the system became operational, the NASD polled its members on which rate formula was preferred — share-based versus transaction-based. The membership, including some of the heaviest users of SelectNet, responded favorably to a transaction-based formula. The NASD calculated the transaction charge, therefore, in response to members' feedback, in line with full cost recovery for development and operation of the SOES and SelectNet systems.

The service charge is calculated to recover the costs of developing system modifications and

to support continued operation of the systems. Costs include computer operations in the primary site at Trumbull, Connecticut, with full redundancy in the back-up site at Rockville, Maryland; system utilization of the Nasdaq network; software development and leases; market surveillance system development; and personnel expenses associated with supporting the computer facilities and responding to members' operational concerns.

In addition, the NASD will review the fee schedule as experience with SelectNet warrants, and will adjust the fees depending on utilization of the service and costs of future enhancements and operational support.

All the fees took effect February 1, 1991, although they are subject to SEC approval. Questions on the service charges may be directed to Nasdaq Subscriber Services at (301) 948-6162.

# Notice To Members

National Association of Securities Dealers, Inc.

February 1991

**Number 91-13****Suggested Routing:\***

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**Subject: NASD Charges for Reviewing Advertisements and Sales Literature****EXECUTIVE SUMMARY**

The NASD has filed an amendment to Section 13 of Schedule A to the NASD By-Laws with the Securities and Exchange Commission relating to the NASD's service charge for reviewing advertisements, sales literature, and other similar material. The new charges became effective February 1, 1991. The amended charge is \$25 per item (including video or audio tapes) plus \$5 per page for each page in excess of five pages, or \$5 per minute of video or audio tape for each minute in excess of five. There also is an additional service charge of \$200 for each item submitted for expedited review.

**BACKGROUND**

On January 8, 1991, the NASD filed an amendment to Section 13 of Schedule A to the NASD By-Laws with the Securities and Exchange Commission (SEC or "Commission") relating to the NASD's service charge for reviewing advertisements, sales literature, and other similar material. The amendment was effective on filing, but the NASD did not implement the change until February 1, 1991.

**SUMMARY OF AMENDMENTS**

Section 13 of Schedule A to the NASD By-Laws currently imposes a service charge of \$25 for the review of each item of advertising or sales literature filed with or submitted to the NASD regardless of the length of the material reviewed. The NASD is amending Section 13 to permit the NASD's Advertising Department to charge \$25 plus \$5 per page for each page in excess of five for reviewing printed material and \$25 plus \$5 per minute for each minute in excess of five for reviewing video or audio tape.

The NASD is also amending Section 13 to add a fee for expedited review of items submitted to the Advertising Department. Members may elect to request expedited review of material and pay a \$200 fee for each item. Expedited review would occur within three (3) business days of the receipt of the item by the department unless the department agreed to a shorter or longer period. The department may also, in its sole discretion, refuse requests for expedited review.

The Board of Governors, which approved the amendments, believes that the changes to the service charges are necessary to more closely reflect the actual cost of reviewing material submitted. The additional revenue generated from the amended charges will augment the operating budget of the NASD's Advertising Department, which is responsible for reviewing such material.

Furthermore, the Board believes that imposing additional service charges on longer materials, or materials requiring expedited review, more equitably apportions the costs of review among the members that submit material.

The Board believes it is unfair to charge members the same amount for reviewing a one-page advertisement as for reviewing a 15-page advertisement or for reviewing materials on an expedited basis. With a single, uniform charge, those members that submit shorter documents in effect subsidize the review of longer documents. The Board also believes that imposing a basic fee plus a per-minute charge for reviewing nonprint media is the most equitable method of assessing such submissions. Moreover, if there was no charge for expedited review, all submissions would likely be accompanied by a request for expedited review, which the Advertising Department would be unable to accommodate.

The NASD is also amending Section 13 to clarify that the charges imposed are limited to the pages of printed media or minutes of nonprinted media actually reviewed. By including the word "reviewed" in the amended language, the NASD is expressly limiting the charge to the material actually examined, even though the document submitted may be longer. This amendment would codify the Advertising Department's current practice of not charging for the review of those portions of a document or other submission that ordinarily are not subject to scrutiny, such as financial statements.

Finally, under the current provisions of Section 13 of Schedule A, submissions made pursuant to Article III, Section 35(c)(6) of the NASD's Rules of Fair Practice are exempted from the review fee. Section 35(c)(6) provides for spot-checking procedures of member-firm advertising. The Association recently added rules covering government securities that include a similar advertising spot-check procedure, and it also will be adding rules addressing options communications that will include an advertising spot-check procedure. The NASD is amending Section 13 to eliminate the specific reference to the Section 35 spot-check procedure and is substituting a reference to "spot-check procedures set forth in the Association's

Rules of Fair Practice and Government Securities Rules." This will eliminate the need to amend Section 13 each time another section is amended or renumbered.

Questions regarding this notice may be directed to the NASD's Advertising Department at (202) 728-8330.

### TEXT OF RULE CHANGE

The following is the full text of amendments to Section 13 of Schedule A to the NASD By-Laws.

(Note: New language is underlined; deleted text is in brackets.)

#### Schedule A

\* \* \* \* \*

Section 13 — Service Charge for Advertisement, Sales Literature, and Other Such Material Filed or Submitted

There shall be a service charge [of \$25.00] for each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to the Association, except for items that are filed or submitted in response to a written request from the Association's Advertising Department issued pursuant to the spot check procedures set forth in [Article III, Section 35(c)(6) of] the Association's Rules of Fair Practice and Government Securities Rules[.], as follows: (1) for printed material reviewed, \$25.00, plus \$5.00 for each page reviewed in excess of 5 pages; and (2) for video or audio media, \$25.00, plus \$5.00 per minute for each minute reviewed in excess of 5 minutes.

In addition, where a member requests expedited review of material submitted to the Advertising Department there shall be an additional service charge of \$200 per item. Expedited review shall be completed within three business days, not including the date the item is received by the Advertising Department, unless a shorter or longer period is agreed to by the Advertising Department. The Advertising Department may, in its sole discretion, refuse requests for expedited review.

\* \* \* \* \*

# Notice To Members

National Association of Securities Dealers, Inc.

February 1991

## Number 91-14

### Suggested Routing:\*

- |  |  |  |   |
|--|--|--|---|
| <input type="checkbox"/> Senior Management     | <input checked="" type="checkbox"/> Internal Audit     | <input checked="" type="checkbox"/> Operations | <input checked="" type="checkbox"/> Syndicate |
| <input type="checkbox"/> Corporate Finance     | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options               | <input checked="" type="checkbox"/> Systems   |
| <input type="checkbox"/> Government Securities | <input checked="" type="checkbox"/> Municipal          | <input type="checkbox"/> Registration          | <input checked="" type="checkbox"/> Trading   |
| <input type="checkbox"/> Institutional         | <input type="checkbox"/> Mutual Fund                   | <input type="checkbox"/> Research              | <input type="checkbox"/> Training             |

\*These are suggested departments only. Others may be appropriate for your firm.

### Subject: Presidents' Day — Trade Date-Settlement Date Schedule

Securities markets and the Nasdaq system will be closed on Monday, February 18, 1991, in observance of Presidents' Day. "Regular way" transactions made on the preceding business days will be subject to the settlement date schedule listed below.

Trade Date	Settlement Date	Reg. T Date*
Feb. 8	15	20
11	19	21
12	20	22
13	21	25
14	22	26
15	25	27
18 Markets Closed		—
19	26	28

Brokers, dealers, and municipal securities dealers should use these settlement dates for purposes of clearing and settling transactions pursuant to the NASD Uniform Practice Code and Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice.

Questions regarding the application of these settlement dates to a particular situation may be directed to the NASD Uniform Practice Department at (212) 858-4341.

\*Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker-dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within seven (7) business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column entitled "Reg. T Date."