

and (c). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another portion of the same Fund. The relief would not apply if the Affiliated Broker-Dealer (except by virtue of serving as Subadviser to a discrete portion of a Fund) is an affiliated person or a second-tier affiliate of LAMCO, the Unaffiliated Subadviser to the Unaffiliated Portion of the Fund, or any officer, director or employee of the Multi-Managed Fund.

3. Applicants believe that the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c). Applicants assert that the interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Portion it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair as required by rule 17e-1(a). Applicants also note that an Unaffiliated Subadviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Portion.

C. Purchases of Securities From Offerings With Affiliated Underwriters

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of such is an officer, director, member of an advisory board, investment adviser, or employee of the company, or an affiliated person of any of those persons. Section 10(f) also provides that the Commission may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f-3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f-3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Subadviser, although under contract to manage only a distinct portion of a Fund, is considered an investment

adviser to the entire Fund. As a result, applicants believe that all purchases of securities by an Unaffiliated Portion from an underwriting syndicate a principal underwriter of which is an Affiliated Underwriter would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit an Unaffiliated Portion to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Fund. The requested relief would not be available if the Affiliated Underwriter (except by virtue of serving as Subadviser to a discrete portion of a Fund) is an affiliated person or a second-tier affiliate of LAMCO, the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion of the Fund, or any officer, director, or employee of the Multi-Managed Fund. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase will be in accordance with the conditions of rule 10f-3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the "dumping" of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Funds because a decision by an Unaffiliated Subadviser to purchase securities from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for "dumping." In addition, applicants assert that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Fund relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser and will be operated in the manner described in this application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer or Affiliated Underwriter (except by virtue of serving as Subadviser to a discrete portion of a Fund) will be an affiliated person or a second-tier affiliate of LAMCO, any Unaffiliated Subadviser or any officer, director or employee of a Multi-Managed Fund.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadvisers concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Portion of a Fund during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f-3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion of the Fund with purchases by an Unaffiliated Portion.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-1734 Filed 1-24-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Agency 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 meeting during the week of January 24, 2000.

A closed meeting will be held on Tuesday, January 25, 2000 at 11:00 a.m.

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

Commissioners, Counsel to the Commission, the Secretary to the

Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters 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)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matters of the closed meeting scheduled for Tuesday, January 25, 2000, will be:

A litigation matter;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

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: January 20, 2000.

Jonathan G. Katz,
Secretary.

[FR Doc. 00-1806 Filed 1-21-00; 2:40 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42344; File No. SR-NASD-99-11]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., To Modify the NASD's Small Order Execution System and SelectNet Service

January 14, 2000.

I. Introduction

On February 5, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")¹ and Rule 19b-4 thereunder² to amend the rules governing Nasdaq's Small Order Execution System ("SOES") and SelectNet Service ("SelectNet"). Notice of the proposed rule change was published for comment in the **Federal Register** on April 22, 1999.³ The Commission received 79 comment letters regarding the proposal.⁴ On August 24, 1999, December 8, 1999, and January 4, 2000, Nasdaq filed Amendment Nos. 1, 2, and 3 to the proposal.⁵ This order approves the proposed rule change, as amended.

II. Description of the Proposal

A. Background

The NASD implemented SOES in 1984 to provide for the automatic execution of small retail agency orders at the best bid or offer (the "inside

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 41296 (April 15, 1999), 64 FR 19844. In addition to providing notice of the current proposal, Securities Exchange Act Release No. 41296 also re-opened the comment period for File No. SR-NASD-98-17, regarding Nasdaq's proposal to establish an integrated order delivery and execution system ("IODES Proposal"). The IODES Proposal was published for comment in the **Federal Register** on March 12, 1998. See Securities Exchange Act Release No. 39718 (March 4, 1998), 63 FR 12124. Subsequently, the Commission extended the comment period for the IODES Proposal through May 8, 1998. See Securities Exchange Act Release No. 39794 (March 25, 1998), 63 FR 15471 (March 31, 1998).

⁴ A list of the commenters appears in Appendix A.

⁵ See letter from Robert E. Aber, General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division of Market Regulation ("Division"), Commission, dated August 24, 1999 ("Amendment No. 1"); letter from Thomas P. Moran, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated December 8, 1999 ("Amendment No. 2"); and letter from Thomas P. Moran, Assistant General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division, Commission, dated January 4, 2000 ("Amendment No. 3"). Amendment Nos. 1 and 2 responded to concerns raised by the commenters. Specifically, Amendment No. 1 discussed electronic communication network ("ECN") participation in the proposed Nasdaq National Market System ("NNMS"); ECN reserve size interaction with NNMS; unlisted trading privilege ("UTP") exchange participation in NNMS; the elimination of SelectNet preferencing; NNMS fees; order entry firm participation in NNMS; the timeframe for implementing NNMS; and the continuation of SelectNet. Amendment No. 2 discussed the five-second interval delay between automatic executions; the elimination of SelectNet liability orders; SelectNet preferencing away from the inside market; technology concerns; the potential for manipulative order entry strategies; the reserve size feature; the maximum order size for NNMS; and the elimination of the No Decrementation functionality. Amendment No. 3 revised NASD Rule 4730 (to be renumbered as NASD Rule 4753) to provide that the delay between SOES executions during locked and crossed markets for market makers in SmallCap securities will remain at five seconds.

market").⁶ Orders entered into SOES generally are routed automatically on a rotating basis to the SOES market makers displaying the best bid or ask price. SOES also allows market participants to "preference" (i.e., direct) an order to a designated market maker.⁷ SOES currently provides for "tiered" maximum order sizes in Nasdaq National Market ("NNM") securities of 1000, 500, or 200 shares, depending on the trading characteristics of a security.⁸ The maximum SOES order size for Nasdaq SmallCap securities is 500 shares.⁹ SOES participation is mandatory for all market makers in NNM securities¹⁰ and voluntary for market makers in Nasdaq SmallCap securities. SOES reports trades for public dissemination and sends both sides of a transaction to the applicable clearing corporations designated for clearance and settlement.

SelectNet is an electronic, screen-based order routing system that allows market makers and order entry firms (referred to collectively as "participants") to negotiate securities transactions in Nasdaq securities through computer communications rather than by telephone.¹¹ Unlike SOES, SelectNet does not provide automatic executions. SelectNet allows participants to negotiate for a larger size or a price superior to the current inside quote. In addition, SelectNet participants may indicate that an order or counter-offer will be in effect from between three and 99 minutes, specify a day order, and indicate whether price or size are negotiable or whether a specific minimum quantity is acceptable. Participants may accept, price improve, counter, or decline a

⁶ See Securities Exchange Act Release Nos. 21433 (October 29, 1984), 49 FR 44042 (November 1, 1984) (File No. SR-NASD-84-26) (notice of proposal to implement SOES); and 21743 (February 12, 1985), 50 FR 7432 (February 22, 1985) (order approving File No. SR-NASD-84-26).

⁷ See Securities Exchange Act Release No. 25791 (June 9, 1988), 53 FR 22594 (June 16, 1988) (order approving File No. SR-NASD-88-1) ("1988 Order").

⁸ See 1988 Order and NASD Rule 4710(g).

⁹ See NASD Rule 4710(g).

¹⁰ See 1988 Order and NASD Rule 4611(f).

¹¹ The Commission approved SelectNet, which originally was referred to as the Order Confirmation Transaction Service, on a permanent basis in 1988. See Securities Exchange Act Release No. 25690 (May 11, 1988), 53 FR 17523 (May 17, 1988) (order approving File No. SR-NASD-88-11). See also Securities Exchange Act Release Nos. 28636 (November 21, 1990), 55 FR 49732 (November 30, 1990) (order approving File No. SR-NASD-90-51) (implementing enhancements to SelectNet); and 30581 (April 14, 1992), 57 FR 14596 (April 21, 1992) (order approving File No. SR-NASD-91-51) (expanding SelectNet's hours of operation to include a pre-opening session from 9:00 a.m. to 9:30 a.m. Eastern Time and an after-hours session from 4:00 p.m. until 5:15 p.m. Eastern Time).