

Applicants' Conditions

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

1. Before a Portfolio may rely on the order requested in the application, the operation of the Portfolio in the manner described in the application will be approved by a majority of the outstanding voting securities of the Portfolio, within the meaning of the Act, or if applicable, pursuant to voting instructions provided by shareholders of any Feeder Portfolios investing in the Portfolio or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) (of the Act, if applicable. Before a future Portfolio or Feeder Portfolio may rely on the order requested in the application, the operation of the future Portfolio or Feeder Portfolio in the manner described in the application will be approved by a majority of the outstanding voting securities of the future Portfolio or Feeder Portfolio within the meaning of the Act, or if applicable, pursuant to voting instructions provided by the shareholders of the future Feeder Portfolio in accordance with section 12(d)(1)(E)(iii)(aa) of the Act, or in the case of a future Portfolio or Feeder Portfolio whose shareholders purchase shares in a public offering on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before the shares of the future Portfolio or Feeder Portfolio are offered to the public.

2. A Portfolio's prospectus, a Feeder Portfolio's prospectus or, in the case of a Portfolio offering its shares in a private placement offering, its offering document, will disclose the existence, substance and effect of any order granted pursuant to the application. Each Portfolio and Feeder Portfolio will hold itself out as employing the management structure described in the application. A Portfolio's prospectus, a Feeder Portfolio's prospectus, or in the case of a Portfolio offering its shares in a private placement offering, its offering documents, will prominently disclose that the Adviser has ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a Subadviser, the Adviser will furnish shareholders of the applicable Portfolio and Feeder Portfolio with the information about the Subadviser that would be included in a proxy statement, except as modified to permit Modified

Fee Disclosure. This information will include Modified Fee Disclosure and any changes in such disclosure caused by the addition of a new Subadviser. To meet this obligation, the Adviser will provide shareholders of the applicable Portfolio and Feeder Portfolio, within 90 days of the hiring of a Subadviser, an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit Modified Fee Disclosure.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without such Subadvisory Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the Portfolio, or, if applicable, pursuant to voting instructions provided by shareholders of any Feeder Portfolios investing in such Portfolio or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act, if applicable.

5. At all times, a majority of each Board will be Independent Directors, and the nomination of new or additional Independent Directors will be at the discretion of the then-existing Independent Directors.

6. When a Subadviser change is proposed for a Portfolio with an Affiliated Subadviser, the applicable Board, including a majority of the Independent Directors, will make a separate finding, reflected in the applicable Portfolio's and Feeder Portfolio's Board minutes, that the change is in the best interests of the Portfolio and its shareholders and any Feeder Portfolio investing in the Portfolio and its respective shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0-1(a)(6) under the Act, will be engaged to represent the Independent Directors. The selection of such counsel will be within the discretion of the then-existing Independent Directors.

8. The Adviser will provide the applicable Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per-Portfolio basis. This information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

9. Whenever a Subadviser is hired or terminated, the Adviser will provide the applicable Board with information showing the expected impact on the profitability of the Adviser.

10. The Adviser will provide general management services to each Portfolio, including overall supervisory responsibility for the general management and investment of the Portfolio's assets and, subject to review and approval of the Board, will: (a) set each Portfolio's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or part of the Portfolio's assets; (c) allocate and, when appropriate, reallocate the Portfolio's assets among multiple Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Portfolio's investment objectives, policies and restrictions.

11. No trustee, director, or officer of the Portfolios or Feeder Portfolios or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser except for: (a) ownership of interests in the Adviser or any entity that controls, is controlled by or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

12. Each Portfolio and Feeder Portfolio in its registration statement and each Portfolio offering its shares in a private placement offering, in its offering documents, will disclose the Modified Fee Disclosure.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934; Rel. No. 44916/October 10, 2001]

Order Regarding Government Securities Reconciliations

Section 36 of the Securities Exchange Act of 1934 ("Exchange Act") authorizes the Commission, by rule, regulation, or order, to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or

provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. In light of the events of September 11, 2001, the Commission has determined to provide broker-dealers with further relief under Exchange Act Rules 15c3-1 and 15c3-3 to facilitate the orderly reconciliation of transactions in government securities. Accordingly,

It is ordered, pursuant to Section 36 of the Exchange Act, that, Broker-dealers need not consider the days October 6, 2001 through October 19, 2001, inclusive, as business or calendar days for purposes of taking deductions, when computing net capital under Rule 15c3-1 or for purposes of determining the amount of cash and/or qualified securities required to be maintained in a "Special Reserve Bank Account for the Exclusive Benefit of Customers" in accordance with the formula set forth in Exhibit A to Rule 15c3-3 arising from aged fail transactions in government securities and unresolved reconciliation differences with accounts or clearing corporations or depositories involving government securities.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-25956 Filed 10-15-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44914; File No. SR-NASD-2001-68]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc., to Raise the Per Share Charge for Use of SuperSOES By Non-NASD Members

October 9, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 4, 2001, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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

Nasdaq proposes to increase the per share charge for use of the Nasdaq National Market Executive System ("NNMS" or "SuperSOES") on a pilot basis. This rule filing applies this change to national securities trading Nasdaq-listed securities pursuant to grants of unlisted trading privileges ("UTP Exchanges"), which are not NASD members. The rule filing would become effective immediately upon approval by the Commission and would be implemented on the first day of the month immediately following Commission approval, and would remain in effect, on a pilot basis, until October 31, 2002. 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.³ The text of the proposed rule change is set forth below. Proposed new language is underlined; proposed deletions are in brackets.

* * *

7010. System Services

(a)-(h) No change.

(i) Transaction Execution Services

(1) No change.

(2) Nasdaq National Market Execution System (SuperSOES)

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 (canceling party only)

For a pilot period commencing on November 1, 2001 and lasting until October 31, 2002, the per share charge will be \$0.002 per share executed for all fully or partially executed orders (entering party only).

* * *

³ Nasdaq also filed a companion rule filing (SR-NASD-2001-67) to apply the same rule change to NASD members and to introduce a liquidity provider rebate available to NASD members. See Securities Exchange Act Release No. 44910 (October 5, 2001). SR-NASD-2001-67 is effective upon filing, and Nasdaq will implement it for a pilot period commencing on November 1, 2001 and ending on October 31, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

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.⁴ 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" order to market participants that do not participate in the automatic execution functionality of the NNMS. On September 28, 2001, Nasdaq filed modifications to the pricing structure for SelectNet and the NNMS.⁵ These changes were designed as an interim modification to being 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. In this filing, Nasdaq is

⁴ Securities Exchange Act Release No. 42344 (Jan. 14, 2000), 65 FR 16 (Jan. 25, 2000) (SR-NASD-99-11).

⁵ See Securities Exchange Act Release No. 44899 (October 2, 2001) (File No. SR-NASD-2001-63) and Securities Exchange Act Release No. 44898 (October 2, 2001) (File No. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.