

The information required by Rule 206(4)-2 is used by the Commission in connection with its investment adviser inspection program to ensure that advisers are in compliance with Rule 206(4)-2. The information required by paragraphs (3) and (4) of the rule is also used by clients. Without the information collected under the rule, the Commission would be less efficient and effective in its inspection program and clients would not have information valuable for monitoring the adviser's handling of their accounts.

The Commission recently adopted amendments to the rule to restrict the application of the rule to those advisers registered with the Commission. The likely respondents to this information collection are those investment advisers that are registered with the Commission after July 8, 1997, are not also registered as broker-dealers, and have custody of clients' funds or securities. The Commission estimates that 111 advisers would be subject to Rule 206(4)-2. The number of responses under Rule 206(4)-2 will vary considerably depending on the number of clients for which an adviser has custody or possession of funds or securities. It is estimated that an adviser subject to this rule would be required to provide an average of 250 responses annually at an average of .5 hours per response. The total annual burden for each respondent is estimated to be 125 hours. The total annual aggregate burden for all respondents is estimated to be 13,875 hours.

Rule 0-2 requires certain non-resident persons to furnish to the Commission a written irrevocable consent and power of attorney that designates the Commission as an agent for service of process, and that stipulates and agrees that any civil suit or action against such person may be commenced by service of process on the Commission. Regulation 279.4, 279.5, 279.6, and 279.7 [17 CFR 279.4, 279.5, 279.6, and 279.7] designate Forms 4-R, 5-R, 6-R, and 7-R as the irrevocable appointments of agent for service of process, pleadings and other papers to be filed by an individual non-resident adviser or an unincorporated nonresident investment adviser, a partnership nonresident investment adviser, or a nonresident general partner of an investment adviser or a nonresident "managing agent" of an unincorporated investment adviser, respectively, which is registered or applying for registration with the Commission as an investment adviser.

It is necessary to obtain the appropriate consent to ensure that the Commission and other persons can institute injunctive actions against

nonresident investment advisers and non-resident partners or managers of investment advisers in cases involving violation of the Investment Advisers Act of 1940 ("Advisers Act") that may result in civil liabilities.

The Commission estimates that there may be an increase in the number of non-resident registered investment advisers, which may be offset by those non-resident general partners or non-resident managing agents of investment advisers that would not register or be registered with the Commission after July 8, 1997 who would not be subject to the Rule 0-2 or the forms.¹ Therefore, non-resident general partners or non-resident managing agents of investment advisers that would be registered with the states after the July 8, 1997 effective date would no longer be subject to Rule 0-2 or be required to file the forms.

The Commission estimates that there would be approximately 300 registrants subject to Rule 0-2. An adviser subject to this rule would be required to file only once, and the Commission estimates that the preparation and filing of any of the forms designated for use pursuant to Rule 0-2 would require approximately one hour of the registrant's time. The total annual burden would be 300 hours.

Rule 203-2 governs withdrawal from registration under the Advisers Act and Form ADV-W is the form for withdrawing registration under the Advisers Act.

To enforce the registration provisions of the Advisers Act and to fulfill its responsibilities under Section 203(h), the Commission must obtain certain information from persons seeking to withdraw from registration. The information required by Form ADV-W enables the Commission to satisfy itself that the activities of person seeking to withdraw from registration do not require such person to be registered and to determine whether terms and conditions should be imposed upon a registrant's withdrawal. Such terms and conditions might include the making of appropriate arrangements with respect to the transfer to clients of client funds and securities in the custody and possession of the adviser or the return to clients of prepaid advisory fees.

After July 8, 1997 (effective date of the Coordination Act), the Commission

¹ On October 11, 1996, President Clinton signed into law the National Securities Markets Improvement Act of 1996 ("1996 Act"). Title III of the 1996 Act, the Investment Advisers Supervision Coordination Act ("Coordination Act"), amended the Investment Advisers Act of 1940 to, among other things, reallocate the responsibilities for regulating investment advisers between the Commission and the securities regulatory authorities of the states.

estimates that only 28 percent of investment advisers currently registered with the Commission will remain eligible for Commission registration. It is estimated that approximately 616 advisers will be withdrawing their registration from the Commission by filing Form ADV-W. The total annual burden for each respondent is estimated to be one hour. The annual aggregate burden for all respondents is estimated to be 616 hours.

The estimated average burden hours are made solely for the purposes of Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 10, 1997.

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38823; File No. SR-NASD-97-01]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Order Amending Effective Date of Proposed Rule Change Relating to Entry and Cancellation of SelectNet Broadcast Orders

July 8, 1997.

I. Introduction

On June 30, 1997, the Securities and Exchange Commission ("Commission")

or "SEC") approved a rule proposal by the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² clarifying the obligations of NASD members regarding the use of the SelectNet Service. The proposed rule change was published for comment in Securities Exchange Act Release No. 38149 (January 10, 1996), 62 FR 1942 (January 14, 1997) ("Notice of Proposed Rule Change"). The Commission subsequently approved a portion of this proposed rule change on a temporary basis.³ No comments were received on the Notice of Proposed Rule Change. The Commission thereafter approved the proposed rule change in its entirety on a permanent basis.⁴

II. Discussion

The Commission approved new conduct rule, rule 3380, to prohibit members from cancelling or attempting to cancel a broadcast or preferenced order entered into Nasdaq's SelectNet Service ("SelectNet") until a minimum period of ten seconds has elapsed ("10-second rule").⁵ The 10-second rule with respect to SelectNet preferenced orders became temporarily effective on January 21, 1997 and was permanently approved on June 30, 1997.⁶ For SelectNet broadcast orders, however, the 10-second rule was permanently approved with an effective date of July 7, 1997.⁷

The NASD has requested that the effective date for the 10-second rule for SelectNet broadcast orders be revised to permit market participants adequate time to adapt computer systems to the

new requirements.⁸ The Commission, therefore, has determined to revise the effective date from July 7, 1997 to a date no later than October 6, 1997. This should afford market participants the time needed to prepare for compliance with the 10-second rule with respect to SelectNet broadcast orders. The NASD will provide notice to its membership of the definitive effective date for the 10-second rule for SelectNet broadcast orders by way of an informational facsimile.

III. Conclusion

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the effective date of the proposed rule change (NASD-97-01) with respect to SelectNet broadcast orders be, and hereby is, revised to a date no later than October 6, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Release No. 34-38833; File No. SR-NASD-97-45]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc., Notice of Proposed Rule Change Relating to Modifications to the Definition of Qualified Independent Underwriter

July 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 26, 1997, the National Association of Securities Dealers Regulation, Inc. ("NASD Regulation") 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 NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁸ Telephone conference between J. Patrick Campbell, Executive Vice President, The Nasdaq Stock Market, Inc., and Howard L. Kramer, Senior Associate Director, Division of Market Regulation, SEC, July 3, 1997.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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

NASD Regulation is proposing to amend Rule 2720 of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), that regulates the conduct of offerings by members of their own securities, those of the member's parent, or an affiliate, and other offerings in which a member has a conflict of interest. NASD Regulation proposes deleting the requirement that a qualified independent underwriter has had net income from operations of the broker/dealer entity or from the pro forma combined operations of predecessor broker/dealer entities, exclusive of extraordinary items, as computed in accordance with generally accepted accounting principles, in at least three of the five years immediately preceding the filing of the registration statement.

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.²

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

NASD Regulation is proposing to delete the eligibility criteria contained in the definition of "qualified independent underwriter" in NASD Rule 2720 that requires a member to have recorded net income in three of the five years immediately preceding the offering.

When a member proposes to participate in the distribution of a public offering of its own or an affiliate's securities, or of securities of a company with which it otherwise has a conflict of interest, NASD Rule 2720 requires that the price at which an equity issue or the yield at which a debt issue is to be distributed to the public

² The text of the proposed rule change is available for review at the principal office of NASD Regulation and in the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 38185 (January 21, 1997), 62 FR 3935 (January 27, 1997), approving until July 1, 1997, a new conduct rule to prohibit members from cancelling or attempting to cancel a preferenced order entered into SelectNet until a minimum period of ten seconds has elapsed and from entering conditional orders preferenced to electronic communications networks.

⁴ See Securities Exchange Act Release No. 38794 (June 30, 1997).

⁵ Conduct rule 3380(a) is proposed to read: Cancellation of a SelectNet Order: No member shall cancel or attempt to cancel an order, whether preferenced to a specific market maker or electronic communications network, or broadcast to all available members, until a minimum time period of ten seconds has expired after the order to be cancelled was entered. Such ten second time period shall be measured by the Nasdaq processing system processing the SelectNet order.

⁶ See Securities Exchange Act Release No. 38185 (January 21, 1997), 62 FR 3935 (January 27, 1997), approving the 10-second rule for SelectNet preferenced orders until July 1, 1997. See also Securities Exchange Act Release No. 38794 (June 30, 1997), approving the rule on a permanent basis.

⁷ See Securities Exchange Act Release No. 38794 (June 30, 1997).