

Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Further, the Commission finds that the proposal is consistent with Section 11(b) of the Act²³ and Rule 11b-1 thereunder²⁴ which allow securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and perfect the mechanism of a national market system.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. This will permit the pilot program to continue and allow the BSE time to consider improvements to its program. In addition, the rule change that implemented the pilot program was published in the Federal Register for the full comment period, and no comments were received.²⁵ Accordingly, the Commission believes that it is consistent with the Act to accelerate approval of the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act²⁶ that the proposed rule change (File No. SR-BSE-96-13) is hereby approved on a pilot basis until December 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:²⁷

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-38185; File No. SR-NASD-97-01]

**Self-Regulatory Organizations;
National Association of Securities
Dealers, Inc.; Order Granting
Accelerated Partial Temporary
Approval of Proposed Rule Change
Relating to Entry of Certain SelectNet
Orders**

January 21, 1997.

I. Introduction

On January 8, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with

the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder² a proposed rule change to clarify members' obligations regarding the use of the SelectNet Service as it will operate under the Commission's new limit order display rule, Rule 11Ac1-4 ("Display Rule") and amendments to Rule 11Ac1-(c)(5) ("ECN Amendment"). 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"). This order temporarily approves the proposed rule change, in part, on an accelerated basis.

II. Description of the Proposal

The NASD has proposed a new Conduct Rule to prohibit members from cancelling or attempting to cancel a broadcast or preferenced order entered into SelectNet until a minimum period of ten seconds has elapsed, and to prohibit the entry of a preferenced order to electronic communications networks that have conditions regarding responses to the order.³

III. Discussion

In August 1996, the Commission adopted a new rule and amendments to an existing rule that went into effect on January 20, 1997.⁴ Upon commencement of the Order Execution Rules, over-the-counter ("OTC") market makers began representing certain

customer limit orders in their quotations in manner significantly different from previously. Moreover, under an amendment to the Quote Rule, electronic communications networks ("ECNs") began entering quotations in the Nasdaq Stock Market in a manner which heretofore was reserved for registered market makers.⁵

To facilitate the ECN Display Alternative envisioned by the Order Execution Rules, Nasdaq has established linkages with four ECNs,⁶ which provide these ECNs a means to display their best market makers' and specialists' quotes and certain customer quotes in the Nasdaq system.⁷ A critical portion of Nasdaq's linkage mechanism involves Nasdaq's SelectNet Service ("SelectNet"). The SelectNet linkage allows NASD members that are not subscribers to a particular ECN to access the ECN's orders that are being displayed in the Nasdaq quote montage via a preferenced order in SelectNet directed to a particular ECN at its displayed price.⁸

Each ECN is required, pursuant to an Agreement signed with Nasdaq and conditions of letters from Commission staff recognizing the ECN as a Display Alternative, to have an automated system designed to respond to a preferenced order received via SelectNet within a few seconds. Consequently, the ECN has only seconds to accept a preferenced order, send the Nasdaq processor an acknowledgement that the order has been accepted, and notify its customer of the order's execution. Although an ECN, upon accepting a preferenced order, notifies its customer of an execution obtained via SelectNet, the execution does not actually occur when the ECN accepts the order but rather when the Nasdaq system processor receives the ECN acknowledgement that it has accepted the order. During the time the Nasdaq

¹ 15 U.S.C. 78s (b)(1).

² 17 CFR 240.19b-4.

³ Rule 3380 is proposed to read (a) Cancellation of a Select Net 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; (b) Prohibition Regarding The Entry of Conditional Orders: No member shall enter an order into SelectNet that is preferenced to an electronic communications network covered by Rule 4623 that has any conditions regarding responses to the order, e.g., preferenced SelectNet orders sent to an electronic communications networks shall not be all or none, or subject to minimum execution size above a normal unit of trading, or deemed non-negotiable.

⁴ See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) adopting Rule 11Ac1-4 ("Limit Order Display Rule") and amendments to Rule 11Ac1-1 ("Quote Rule") (collectively the "Order Execution Rules"). See also Securities Exchange Act Release Nos. 38110 (January 2, 1997), 62 FR 1279 (January 9, 1997) (revising the effective date of the Order Execution Rules to January 13, 1997); and 38139 (January 8, 1997) (revising the effective of the Order Execution Rules until January 20, 1997).

⁵ Rule 11Ac1-1(c)(5) requires a market maker to display in its quote any better priced order the market maker places into an electronic communications network ("ECN Amendment"). Alternatively, the ECN Amendment provides an exception to the market maker's display obligation that depends upon the ECN itself displaying into the consolidated system the best-priced orders entered therein by a market maker or specialist, and allowing brokers and dealers to access such orders ("ECN Display Alternative").

⁶ The four ECNs are B-Trade; Instinet; Island; and Terra Nova.

⁷ ECNs must provide the best prices and sizes that market makers and specialists have entered in the ECN to the public quotation system for inclusion in the consolidated quotation. See Order Execution Rules Adopting Release at 121.

⁸ See Order Execution Rules Adopting Release at 121, noting that the ability of nonsubscribers to access market makers' and specialists' orders entered into an ECN is a fundamental requirement of the ECN Display Alternative.

²³ 15 U.S.C. 78k(b).

²⁴ 17 CFR 240.11b-1.

²⁵ See February 1993 Approval Order, *supra* note 3.

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).

processor is awaiting the ECN's acknowledgement, Nasdaq could presently receive a cancellation message from the broker-dealer that sent the preferred order to the ECN. This will result in the Nasdaq processor accepting a cancellation message that was first in time and rejecting the ECN's acknowledgment message.

Consequently, the ECN would be exposed to executions to its counterpart when the SelectNet order is cancelled.

The Commission believes that it is important for the operation of the SelectNet linkage with ECNs and the ECN Display Alternative that ECNs have a reasonable opportunity to respond to orders preferenced through SelectNet before the orders are cancelled. Because of the structure of the linkage as currently designed, ECNs are potentially exposed to internal customer executions when a cancellation of a SelectNet order occurs. The Commission notes that, on the first day of the Order Execution Rules, there were instances where ECNs experienced delays due to the acceptance of SelectNet preferenced orders that were immediately cancelled. Moreover, the cancellation of SelectNet orders immediately after entry creates significant additional message traffic that can potentially slow the linkage. With respect to SelectNet orders not using the ECN linkage, the Commission also notes that SelectNet orders preferenced to a particular market maker as a practical matter need to be accessible for a minimal length of time in order for responses to be generated by that market maker. Otherwise, if the order may be in the process of being cancelled, market makers will have less incentive to attempt to accept SelectNet orders directed to them. The Commission believes it is important that ECNs, as well as market makers, have a reasonable basis to conclude that when they accept a preferred order it will not be cancelled during the transmission of their response. Therefore, the Commission is approving the proposal for preferenced SelectNet orders on a temporary basis, until July 1, 1997, to evaluate the effects of the proposal on ECNs, market makers, and order entry firms.

In addition to preferenced orders, orders that are sent to ECNs with conditions imposed also create response difficulties on the part of ECNs.⁹ Therefore, Nasdaq has proposed to prohibit members from entering conditional orders into SelectNet when

the orders are preferenced to an ECN.¹⁰ The Commission recognizes that conditional preferenced orders involve difficult programming issues in electronic trading systems. As a result, the ECNs have been unable to modify their systems in preparation for the SelectNet linkage to accept conditional orders via SelectNet. Nonetheless, conditional orders are being routed to ECNs through the linkage, and these orders are subsequently being rejected, causing confusion and unnecessary message traffic. The Commission believes that prohibiting members from preferencing conditional orders to ECNs will eliminate impediments to the operation of the linkage with ECNs. Accordingly, the Commission is temporarily approving proposed Rule 3380(b) until July 1, 1997, to reduce the immediate impact of these orders to the linkage and allow the Commission to better evaluate the impact of the proposal before considering the rule change on a permanent basis.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD, and in particular Sections 15A(b)(6), 15A(b)(9), and 15A(b)(11). In addition, the Commission finds that the rule change is consistent with the Congressional objectives for the National Market System, set out in Section 11A of the Exchange Act, of achieving more efficient and effective market operations, fair competition among brokers and dealers, and the economically efficient execution of investor orders in the best market. The Commission further believes that allowing preferenced orders to be entered into SelectNet and immediately cancelled impedes the operation of the Order Execution Rules, specifically the ECN Display Alternative. Accordingly, the Commission finds good cause for approving the proposed rule change, in part, on a temporary basis until July 1, 1997, prior to the thirtieth day after date of publication of notice of filing thereof in the Federal Register.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (NASD-97-01) be and hereby is approved on a temporary basis, in part, effective January 21, 1997, until July 1, 1997.

¹⁰ For example, an all or none order, an order subject to a minimum execution size above a normal unit or trading, or an order deemed non-negotiable.

¹¹ 15 U.S.C. 78s(b)(2) (1998).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by P.L. 104-13; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments concerning OMB approval of this proposed collection as provided by 5 CFR Section 1320.8(d)(1). Requests for additional information should be directed to the Acting Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402-2801; (423) 751-2523; FAX: (423) 751-3400; E-mail: whmccauley@TVA.gov.

DATES: Comments should be sent to the Acting Agency Clearance Officer no later than March 28, 1997.

SUPPLEMENTARY INFORMATION: The Tennessee Valley Authority is soliciting comments concerning OMB approval of a three-year generic clearance for customer surveys designed to determine customer demographics, preferences, satisfaction, and feedback.

I. Background

In order to comply with the customer consultation requirements of the Government Performance and Results Act of 1993 and to ensure that we are meeting customer requirements and expectations, TVA must conduct periodic customer surveys to determine preferences, satisfaction, solicit feedback and confirm demographics.

II. Current Actions

TVA plans to request OMB approval for a generic clearance for an undefined number of surveys to be conducted over the next three years. For each study that TVA undertakes under this generic clearance, OMB will be notified, at least

⁹ The Commission recently approved an NASD Rule change to prohibit the entry of all-or-none orders in the Small Order Execution System. See Securities Exchange Act Release No. 38156.

¹² 17 CFR 200.30-3(a)(12) (1996).