

July 30, 1998

Katherine A. England  
Assistant Director  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

**Re: SR-NASD-98-54 - SOES/SelectNet Access**

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed herewith is the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register.

If you have any questions, please contact David A. Spotts, Office of the General Counsel, NASD Regulation, Inc., at (202) 728-8014. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Alden Adkins  
Senior Vice President  
and General Counsel

Attachment

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D. C.

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Form 19b-4

Proposed Rule Change

by

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

Pursuant to Rule 19b-4 under the  
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"), the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiaries, NASD Regulation, Inc. ("NASD Regulation") and The Nasdaq Stock Market ("Nasdaq"), is filing a proposed rule change to clarify the requirements for members to provide electronic access to Nasdaq's SelectNet and SOES order entry systems to public customers and non-members through the member firm's own system.

2. Procedures of the Self-Regulatory Organization

The proposed rule change represents a "stated policy, practice, or interpretation" of the NASD, as that term is defined under Rule 19b-4 of the Act, with respect to the requirements of Nasdaq's SelectNet and SOES order entry systems. The proposed rule change was approved by the Board of Directors of Nasdaq at its meeting on June 25, 1998, which authorized the filing of the rule change with the SEC. No other action by the NASD is necessary for the filing of the rule change. The proposed rule change will be effective immediately.

Questions regarding this rule filing may be directed to Alden Adkins, Senior Vice President and General Counsel, at (202) 728-8332, or David A. Spotts, NASD Regulation, at (202) 728-8014, or Gene Lopez, Vice President, Trading and Market Services, Nasdaq, at (202) 728-6998.

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

This rule change is being filed to clarify the requirements for members to provide electronic access to Nasdaq's SelectNet and SOES order entry systems to public customers and non-members through the member firm's own system.

With the advent of enhanced software and telecommunications capabilities, NASD members are able to provide their customers with efficient electronic access to Nasdaq's execution services, SelectNet and SOES. Several members have asked NASD staff about the requirements for allowing such access. NASD staff envisions that this access capability would operate much the same way that the New York Stock Exchange has allowed its members to offer access to NYSE's DOT system. NASD staff is publishing a Notice to Members ("Notice"), as attached as Exhibit 2, that will clarify the NASD's interpretation of its rules and its contract with members and outlines the issues that NASD members must be aware of in offering their customers electronic access to Nasdaq's execution services. This Notice follows up on an interpretive letter that Nasdaq staff issued to a member this past April regarding non-member access to SelectNet. The Notice provides details not contained in the interpretive letter and expands the discussion to address non-member access to SOES as well as SelectNet. Because each service is different, we have provided two separate discussions for each execution service, SelectNet and SOES.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors.

4. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

The NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change represents a “stated policy, practice, or interpretation” of the NASD, as that term is defined under Rule 19b-4 of the Act, with respect to the meaning, administration, or enforcement of an existing rule, and specifically, with respect to the requirements of Nasdaq’s SelectNet and SOES order entry systems.

Accordingly, The NASD is designating the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule to take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) and Rule 19b-4(e)(1) thereunder.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.
2. Notice to Members.

Pursuant to the requirements of the Securities Exchange Act of 1934, the NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

National Association of Securities Dealers, Inc.

BY: \_\_\_\_\_  
Alden Adkins  
Senior Vice President and General Counsel

Date: November 29, 1999

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- [leave space] ; File No. SR-NASD-98-54)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Public and Non-member Access to Nasdaq's SelectNet and SOES Order Entry Systems through the Member Firm's Own System

**[leave space for date]**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on [leave space], the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiaries, NASD Regulation, Inc. ("NASD Regulation") and The Nasdaq Stock Market ("Nasdaq"), has 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 the NASD. The NASD has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule under § 19(b)(3)(A) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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**

The NASD is proposing to clarify the requirements for members to provide electronic access to Nasdaq's SelectNet and SOES order entry systems to public customers and non-members through the member firm's own system.

II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

In its filing with the Commission, the NASD has 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. The NASD 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

This rule change is being filed to clarify the requirements for members to provide electronic access to Nasdaq's SelectNet and SOES order entry systems to public customers and non-members through the member firm's own system.

With the advent of enhanced software and telecommunications capabilities, NASD members are able to provide their customers with efficient electronic access to Nasdaq's execution services, SelectNet and SOES. Several members have asked NASD staff about the requirements for allowing such access. NASD staff envisions that this access capability would operate much the same way that the New York Stock Exchange has allowed its members to offer access to NYSE's DOT system. NASD staff is publishing a Notice to Members ("Notice"), as attached as Exhibit 2, that will clarify the NASD's interpretation of its rules and its contract with members and outlines the issues that NASD members must be aware of in offering their customers electronic access to Nasdaq's execution services. This Notice follows up on an interpretive letter that Nasdaq staff issued to a member this past April regarding non-member access to SelectNet. The Notice provides details not contained in the interpretive letter and expands the discussion to address non-member access to SOES as well as SelectNet. Because each service is different, we have provided two separate discussions of the issues in the Notice — one for SelectNet and another for SOES.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act.<sup>1</sup> Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

The foregoing rule change will become effective immediately pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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<sup>1</sup> 15 U.S.C. § 78q-3.

#### IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz  
Secretary

## **NOTICE TO MEMBERS**

### **Executive Summary**

In response to several inquiries from NASD members regarding a member's ability to provide electronic access to The Nasdaq Stock Market's ("Nasdaq") SelectNet system to non-member broker-dealers or customers, Nasdaq clarifies that, in the circumstances described below, NASD members that are Nasdaq Workstation II subscribers may choose to provide an electronic transmission of a non-member's order through the member's own system into Nasdaq's SelectNet system.

In addition, NASD members have also raised questions regarding the ability of a Small Order Execution System ("SOES") order entry firm to provide public customers with electronic access to the Nasdaq's SOES. This Notice clarifies that, in the circumstances described below, NASD members that are SOES order entry firms may choose to provide an electronic interface for public customer orders through the member's own SOES order entry system.

Questions regarding this Notice should be directed to Thomas Gira, Vice-President, Market Regulation, NASD Regulation at (301) 590-6895 or Gene Lopez, Vice-President, Trading and Market Service, Nasdaq at (202) 728-6998.

### **Background - SelectNet and SOES**

Nasdaq provides a service known as SelectNet that permits NASD member firms to enter buy or sell orders in Nasdaq securities into the system, directing those orders to a single market maker ("directed orders") or broadcasting the order to market participants ("broadcast orders"). SelectNet facilitates the communication of trading interest between members, the negotiation of orders with the possibility of price improvement, and the dissemination of last sale reports after execution of SelectNet orders. Trades executed through SelectNet are submitted for clearing as locked-in trades. The SelectNet service is available for execution of orders from 9:00 a.m. until 5:15 p.m., Eastern Time.

Nasdaq allows Nasdaq Workstation II subscribers to enter SelectNet orders from a Nasdaq Workstation or through an electronic means known as an Application Programming Interface ("API"). As mentioned above, there are two types of SelectNet orders: (1) directed orders; or (2) broadcast orders. SelectNet orders may be directed to a particular market participant displaying a quotation in the Nasdaq quote montage or the SelectNet order may be generally broadcast to all participants. Orders entered into SelectNet have a minimum lifespan of 10 seconds, that is, they cannot be canceled by the order entry firm until 10 seconds have elapsed. In the case of directed orders, the participant reviewing the order has up to three minutes to respond to the order, unless the party entering the order specified a longer time period. While directed orders generally have a lifespan of three minutes, directed orders sent to a participant at or up to the participant's quoted price and size impose liability on the recipient's part on receipt of the SelectNet order

pursuant to the SEC's firm quote rule, unless an exception to the rule applies.<sup>2</sup> Traditionally, SelectNet has been used by NASD members, market makers and order entry firms alike, to access the quotations of other market makers and ECNs.

Nasdaq also provides a service known as SOES that enables order entry firms and market makers to execute sized-limited orders (agency and risk-less principal) in Nasdaq securities on behalf of public customers. The SOES system enables participants, among other things, to lock in their trades with designated clearance and settlement instructions that provides an automated execution system to public customers.

Only agency orders from public customers no larger than the maximum order size, as defined in NASD Rule 4710(g), received from public customers may be entered by an SOES order entry firm into SOES for execution against an SOES market maker. Agency orders in excess of the maximum order size may not be divided into smaller parts for purposes of meeting the size requirements for orders entered into SOES. The SOES Rules currently contain a specific provision, Rule 4770(c)(4), that requires SOES order entry firms to maintain the physical security of Nasdaq equipment located on the premises of the firm to prevent unauthorized entry of information into SOES. The NASD has, to date, interpreted this provision as barring firms from providing **direct** electronic entry to public customers.

### **Electronic Access to Nasdaq Systems**

With the advent of enhanced software and telecommunications capabilities, NASD members are able to provide their customers with efficient electronic access to Nasdaq's execution services, SelectNet and SOES. This Notice clarifies the NASD's interpretation of its rules and its contract and outlines the issues that NASD members must be aware of in offering their customers electronic access to Nasdaq's execution services. Because each service is different, we have provided two separate discussions for each execution service, SelectNet and SOES.

### **Customer Access To SelectNet**

Recently, several NASD members have inquired about the permissibility under NASD rules and the Nasdaq Workstation II Subscriber Agreement ("NWII Agreement") for an NASD member to permit its customers to enter orders into the member's own electronic system and to re-transmit those orders directly and electronically, without the manual entry of such order by a person associated with the member, into the SelectNet system through an API arrangement. In other words, certain NASD members that connect to Nasdaq through an API want to be able to build an electronic access link that the member provides to certain customers. The customer is then able to enter orders through this member-provided electronic entry point that flow through the member's network into the member's own computer system that electronically connects through the Nasdaq API to the Nasdaq network and the Nasdaq SelectNet application. This notice clarifies that such activity is permissible under NASD rules and the Nasdaq Workstation II

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<sup>2</sup> See Rule 11Ac1-1(c).

Subscriber Agreement, provided that the NASD member undertakes measures to ensure that all relevant NASD rules and system protections are followed, as described below.

- 1. Notice to Nasdaq Acknowledging Responsibility for Orders:** NASD members providing a SelectNet electronic pass-through service to customers must provide a letter to Nasdaq that acknowledges that the NASD member is acting as agent for the non-member in submitting the order through the member's facilities and that the member is responsible for the order sent through SelectNet. Any NASD member providing this service must submit all such orders as an agent on behalf of the customer inputting the order. All orders submitted by customers into SelectNet will have the NASD member's MMID identifier attached to them, and the NASD member (market maker or ECN) receiving the order through SelectNet will know only that another member has attempted to access its Nasdaq-published price.

Further, the NASD member should provide a system description of its facility that provides non-members with SelectNet access. Such system description must provide details on the manner in which orders are received and re-transmitted, including the security and capacity of the member's system, the manner in which the member's system connects to Nasdaq's service, and any internal system protocols designed to fulfill a member's "know your customer" obligations and other regulatory obligations. The letter and system description should be submitted to: **Market Regulation, NASD Regulation, Inc., Rockville, Md. 20850.**

- 2. Compliance With NASD Rules:** Any NASD member that chooses to offer this service to a customer must ensure that orders submitted through this member-provided service comply with SEC and NASD rules. For example, the NASD member must ensure that rules related to the short sale rule, including the affirmative determination rule, are complied with. Similarly, the NASD member must ensure that any obligations regarding limit order protection and display and the electronic communications network ("ECN") rule are met. In particular, if customers use this mechanism to broadcast SelectNet orders, a market maker allowing customers to do so must be cognizant that SelectNet Broadcast is an ECN that is not linked to Nasdaq's quote montage, and accordingly requires the market maker to reflect such price in its quote.
- 3. Internal System Controls Regarding A Member's Procedures for Supervision of Submission of Orders:** NASD Members that provide non-members with SelectNet access should have in place at the time they offer such access to customers and other non-member broker-dealers adequate written procedures and controls that permit the member to effectively monitor and supervise the entry of electronic orders. Among the items that should be found in such written controls and procedures are controls to monitor for: (1) the entry of unauthorized orders; (2) orders that exceed or attempt to exceed credit and other parameters, such as order size, that the member has established for a particular customer; (3) activity by a customer that could be considered manipulative or an attempt to improperly affect the price of the security or related products; (4) violations of the affirmative determination and short sale rules. Whenever possible, these controls should be automated and system driven.

An NASD member providing SelectNet access to non-members should have a signed agreement with the non-member customer that outlines the responsibilities of the member and the customer with respect to the use of this means of access.

- 4. Acknowledgment of Responsibility for Orders:** Any NASD member that provides its customers with access to SelectNet should understand that the member remains responsible for honoring all executions that may occur. Consequently, any NASD member that chooses to provide such service must make appropriate determinations under NASD rules prior to providing the service that the customer is capable of using the means of access being provided by the firm. In particular, the “know your customer rule” embedded in the NASD Conduct rules requires that the member providing customer electronic access to SelectNet assess the ability of the customer to use such access. Further, a member’s customer agreement that permits the customer to access SelectNet should inform the user that the user is subject to potential prosecution under the federal securities laws for illegal activity and that the NASD will monitor all such trading activity so as to detect any such improper activity. Further, the member should inform the customer that if the NASD detects improper activity through the customer’s use of SelectNet, the member’s link to Nasdaq may be terminated if at any time, activity harmful to the integrity of The Nasdaq Stock Market or its system is detected.
- 5. Nasdaq’s Liability:** In allowing members to provide the member’s customers access to SelectNet, Nasdaq, pursuant to its NWII Subscriber Agreement, assumes no liability for any order entered into the member’s system, or through the API, into Nasdaq’s system.
- 6. Nasdaq’s Right to Terminate:** In the event that the member’s use of the API to allow the entry of SelectNet orders by non-members threatens the integrity of Nasdaq’s systems, Nasdaq continues to reserve the right under the NW II Subscriber Agreement to unilaterally and immediately terminate the member’s access.
- 7. Right To Examine:** The member acknowledges that, as an SRO responsible for examining the activity of a member, NASD regulation may examine the member’s books, records and facilities to determine whether a violation of NASD rules and/or the federal securities laws, rules and regulations may have occurred. Such examination may include an examination of the electronic system itself, as well as the member’s records regarding its customers and their activity.
- 8. Clearing Responsibility:** The member providing the electronic connection must be a member of a clearing agency registered with the SEC through which system-compare trades may be settled; or the member must have a correspondent clearing arrangement with an NASD member that can do so. The member providing access must accept and settle each trade executed through this connection or, if settlement is to be made through another clearing member, the clearing member must guarantee the acceptance and settlement of such trades.

- 9. Fees For Execution of SelectNet Orders:** All orders entered by customers into SelectNet are subject to the same fee schedule that Nasdaq has established for the entry of orders by members. For example, Nasdaq currently charges \$1.00 per order executed to the member entering a SelectNet order. As long as that fee is in place, Nasdaq will bill the member entering the customer pass-through order that amount for an execution that the customer receives. Similarly, if a customer using a member's pass-through service enters a broadcast order that is executed, Nasdaq will bill the member \$2.50 for the execution. Under the SEC's Order Handling Rules, the SEC has permitted ECNs the right to charge NASD members that use SelectNet to access the ECN's priced orders displayed in the Nasdaq. NASD members should be aware that if they provide customers with SelectNet access and a customer accesses the order of an ECN that charges for such access, the ECN will bill the member for such access.
- 10. System Setup:** NASD members providing an electronic pass-through of SelectNet orders must use the Nasdaq API between the member's system and Nasdaq's system. NASD members may use service bureaus to develop and operate the electronic access capability. All such API connections must be set up on an eight presentation device to one service delivery platform ratio. If a member chooses to use a service bureau to develop the service, the NASD member is nonetheless responsible for ensuring that all NASD Rules and NWII Subscriber Agreement requirements are complied with. No service bureau is permitted to operate a service on behalf of a member unless the service bureau has entered into an agreement with Nasdaq.

### **Public Customer Access To SOES**

Recently, NASD members have inquired about the permissibility under NASD rules for an NASD SOES order entry firm to permit public customers to enter SOES agency orders into the member's electronic system that provides an electronic interface into the SOES system. Such facilities allow the public customer to enter orders into a member-provided electronic entry device, which flows through the member's network into the member's own computer system and then, without manual intervention, into the SOES system. This Notice clarifies that such activity is permissible under the NASD rules, provided that the NASD member undertakes measures to ensure that all relevant NASD rules and system protections are followed, as described below.

- 1. Compliance With NASD Rules, Including SOES Rules: (Rules 4710- 4770).** Any NASD member that chooses to offer SOES access to a public customer must ensure that orders submitted through this member-provided service comply with SEC and NASD rules, including the SOES rules and its interpretations.<sup>3</sup> For example, the NASD member must ensure that agency orders for public customers are within the maximum order size as required by NASD Rule 4730(c)(3). In addition, agency orders involving a single investment decision in excess of the maximum order size may not be divided into smaller parts for purposes of meeting the size requirements for orders entered into SOES. Thus, trades entered within any five-minute period in accounts controlled by an associated person or customer will be presumed to be based on a single investment decision. Furthermore, members must ensure

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<sup>3</sup> See NASD Notice to Members 88-61, dated August 25, 1988.

that rules related to the short sale rule, including the affirmative determination rule, are complied with.

Finally, members must also be able to continue to meet their obligations to comply with the SEC's confirmation rule, Rule 10b-10.

- 2. Internal System Controls Regarding A Member's Procedures for Supervision of Submission of SOES Orders:** NASD SOES order entry firms that provide public customers with SOES access must have in place at the time they offer such access to public customers adequate written procedures and controls that permit the member to effectively monitor and supervise the entry of electronic orders. Among the items that should be found in such written controls and procedures are controls to monitor for: (1) the entry of unauthorized orders; (2) orders that exceed or attempt to exceed credit or SOES order size and other parameters that the member has established for a particular public customer; (3) activity by a public customer that could be considered manipulative or an attempt to improperly affect the price of the security or related products; (4) violations of the affirmative determination and short sale rules. Wherever possible, such controls should be automated and system driven.

In addition, the firm's procedures must provide for the identification of locations where the firm makes SOES order entry devices available to their public customers and provides on-going technical support and maintenance. If such site does not qualify as a branch office or office of supervisory jurisdiction (OSJ) of the member under NASD rules, a member must still supervise such activity by providing for periodic visits to such locations to ensure that restrictions on activities that the member imposes on such locations are in place and that the site would not be required to be registered as a branch office. For interpretive guidance as to what constitutes a branch office or OSJ in member off-site locations, please see On-Site Trading, Inc. letter dated March 17, 1998. This interpretive letter is available on the NASD Regulation web site at [www.nasdr.com](http://www.nasdr.com).

- 3. Acknowledgment of Responsibility for Orders:** Any NASD member that provides its public customers with access to the SOES system should understand that the member remains responsible for honoring all executions that may occur. Consequently, any NASD member that chooses to provide such service must make appropriate determinations under NASD rules, including the SOES rules, prior to providing the service to a particular public customer that the public customer is capable of using the means of access being provided by the firm. In particular, the "know your customer rule" embedded in the NASD Conduct Rules requires that the member providing customer electronic access to SOES assess the ability of the customer to use such access.
- 4. Right To Examine:** The member acknowledges that, as an SRO responsible for examining the activity of a member, NASD Regulation may examine the member's books, records and facilities to determine whether a violation of NASD rules and/or the federal securities laws, rules and regulations may have occurred. Such examination may include an examination of the electronic system itself, as well as the member's records regarding its public customers and their activity.

5. **Fees For Execution of SOES Orders:** All orders entered by public customers into SOES are subject to the same fee schedule that Nasdaq has established for the entry of orders by members. For example, Nasdaq currently charges \$0.50 per order executed to the member entering a SOES order for a public customer. As long as that fee is in place, Nasdaq will bill the member entering the public customer pass-through order that amount for an execution that the public customer receives.