

SPECIAL NASD NOTICE TO MEMBERS 96-81

SEC Transaction Fees Begin January 1, 1997, On Nasdaq And Other Prompt Last Sale Reported Non-Debt Transactions

Suggested Routing

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Executive Summary

In the October *Notices to Members*, the National Association of Securities Dealers, Inc. (NASD) published an FYI alerting members to legislation recently enacted by Congress that authorizes the Securities and Exchange Commission (SEC) to collect a fee (SEC fee) of 1/300th of one percent on the aggregate dollar amount of sales transacted by or through any member other than on a securities exchange for securities subject to prompt last-sale reporting. Effective January 1, 1997, the SEC fee will apply to transactions in securities listed on The Nasdaq Stock MarketSM as well as other non-Nasdaq[®] OTC Equity Securities. This *Special Notice* provides additional information explaining how the new SEC fee will be administered.

Questions regarding this Notice should be directed to T. Grant Callery, General Counsel, NASD, at (202) 728-8285; Anne H. Wright, Associate General Counsel, NASD, at (202) 728-8815; Andrew S. Margolin, Senior Attorney, The Nasdaq Stock Market, Inc., at (202) 728-8869; James Shelton, Billing Manager, NASD, at (301) 590-6757.

Effective Date

It is important to note that the SEC fee is effective **as of January 1, 1997**. This is because the January 1 effective date is established in the Omnibus Consolidated Appropriations Act for Fiscal Year 1997. The fees will then continue through fiscal year 2006 by the National Securities Market Improvement Act of 1996. In fiscal year 2007, the fees decline to 1/800th of one percent.

Covered Securities

Because the SEC fee applies to all

non-debt securities subject to prompt last-sale reporting, it will apply to all domestic and foreign securities listed on The Nasdaq Stock Market, with the exception of convertible debt.

In addition, because NASD[®] rules require prompt last-sale reporting for virtually all non-Nasdaq OTC Equity Securities,¹ the SEC fee will also apply to many securities quoted in the OTC Bulletin Board[®] or in NQB's "Pink Sheets[®]." Specifically, all domestic OTC Equity Securities, ADRs, and Canadian securities traded by or through a member will be subject to the SEC fee. However, it will not apply to transactions in non-Canadian foreign securities because those securities are not currently subject to similar last-sale reporting requirements.²

The SEC fee will not apply to securities in FIPSSM or PORTALSM.

Covered Transactions

The SEC fee applies generally to all sales in covered securities by or through any member otherwise than on a securities exchange, regardless of the capacity in which the member is trading.³ For transactions between two NASD members, the charge will apply to the member on the sell side. For transactions between a member and a customer, the charge will apply to the member.

Collection Mechanism

The SEC fee will be collected in a manner similar to the current fee on Cleared Transactions,⁴ thus payment will be the responsibility of NASD Member Clearing Firms. The NASD will calculate the SEC fee for each NASD Member Clearing Firm based on transaction data submitted into the Automated Confirmation Transaction

ServiceSM (ACTSM). NASD Member Clearing Firms with primary clearing relationships with the National Securities Clearing Corporation (NSCC) or the Stock Clearing Corporation of Philadelphia (SCCP) will have the SEC fees deducted from their respective NSCC or SCCP account on a monthly basis. An NASD generated invoice will be forwarded to the firm as a confirmation of the deduction from their NSCC or SCCP account. The NASD expects payments for the month of January to be deducted during the first week of February, with invoices to follow immediately thereafter. NASD Member Clearing Firms that are considered *self clearing* (i.e., that have no relationship with NSCC or SCCP) will be billed directly with payment due upon receipt.

The NASD recognizes that NASD Member Clearing Firms will need to have necessary systems changes in place prior to the effective date of January 1. The NASD will make every effort to cooperate with these firms to ensure that the SEC fees are being calculated and administered in a consistent manner.

Notice To Customers

The NASD believes that members should provide notice of the SEC fee to its customers to the extent members determine to pass the SEC fee on to them. Given the effective date of January 1, the NASD believes that with respect to timing, the provision of such notice would not be inconsistent with NASD rules or policies requiring adequate prior notice of the

SEC fee, provided members give such notice as soon as practicable.

Off-Exchange Transactions In Exchange-Registered Securities

As previously indicated, the National Securities Market Improvement Act provides that off-exchange transactions in exchange-registered securities (third-market transactions), currently paid directly to the SEC, will be paid through the NASD beginning October 1, 1997.

Rulemaking

It is expected that further rulemaking to implement the SEC fees will be forthcoming from both the SEC and the NASD.

¹ NASD Rule 6600 contains the requirements for reporting transactions in OTC Equity Securities for which real-time trade reporting is not otherwise required.

² Generally, transactions in these securities are reported on T+1.

³ Rule 31-1 under the Securities and Exchange Act of 1934 (Exchange Act) exempts from the SEC fee: (a) transactions in securities offered pursuant to an effective

registration statement under the Securities Act of 1933 (Securities Act) or offered in accordance with an exemption from registration; (b) transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act; (c) the purchase or sale of securities pursuant to and in consummation of a tender or exchange offer; (d) the purchase or sale of securities upon the exercise of a warrant or right (except a put or

call), or upon the conversion of a convertible security; and (e) transactions which are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3-1 under the Exchange Act, and any approved plan filed thereunder.

⁴ Section 8 of Schedule A to the NASD By-Laws.

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