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.

[FR Doc. 97–18765 Filed 7–16–97; 8:45 am]

BILLING CODE 8010–01–M

[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).

[8] Telephone conference between J. Patrick Campbell, Executive Vice President, The Nasaq 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).

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.

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

[1] 15 U.S.C. 78s(b)(1).

[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.

must be established at a price no higher or a yield no lower than that recommended by a member acting as a ''qualified independent underwriter.'' The qualified independent underwriter must also participate in the preparation of the offering document and is expected to exercise the usual standards of due diligence in respect thereto. The participation of a qualified independent underwriter is intended to assure the public of the independence of the pricing and due diligence functions in a situation where a member is participating in an offering where the member has a conflict of interest.

Because of the important investor protections provided by qualified independent underwriters, they must meet certain standards as prescribed in Rule 2720 of the Conduct Rules. Qualified independent underwriters must have a certain level of experience, demonstrated by having been engaged in the investment banking and securities business for at least five years, by recording net income in three of the five years immediately preceding the offering, by a majority of directors (or general partners) having been actively engaged in the investment banking and securities business for five years, and by acting as manager or co-manager in the underwriting of offerings of a similar size and type for a five-year period prior to the offering.[3]

The net income requirement was adopted in 1972 as part of the original adoption of Rule 2720. At that time, this requirement was viewed as a gauge for monitoring a member's ability to act in such capacity. In the ensuing years, however, amendments to the definition of qualified independent underwriter have imposed more specific requirements that the NASD Regulation believes are more pertinent to ensuring that members have the experience and ability to be effective qualified independent underwriters.

In 1988, the definition of qualified independent underwriter was amended to preclude a member from acting as a qualified independent underwriter if any of its associated persons having supervisory responsibility for organizing, structuring, or performing due diligence with respect to corporate public offerings of securities had within the previous five-year period been convicted, enjoined, suspended, barred, or otherwise subject to disciplinary action by the NASD, SEC or other self-regulatory organizations for violation of the anti-fraud provisions of the federal or state securities laws for distribution-related activities.[4] In addition, the amendments required a qualified independent underwriter to have experience in managing or co-managing public offerings of a size and type similar to the proposed offering. NASD Regulation believes the latter requirement is the most pertinent, because it most directly measures the member's experience in performing the duties and responsibilities necessary of a qualified independent underwriter.

Finally, the amendments restricted the qualified independent underwriter's beneficial ownership of the issuer's voting equity securities to less than 5%. Later amendments in 1994 extended these ownership restrictions to non-voting equity securities, preferred equity and subordinated debt.[5] NASD Regulation believes the amendments to the definition of qualified independent underwriter have significantly improved confidence in the ability, quality, and independence of qualified independent underwriters.

NASD Regulation believes that the net income requirement operates as an arbitrary standard for assessing the abilities of potential qualified independent underwriters, particularly where certain members (that may nonetheless meet high net capital requirements) intentionally avoid experiencing net income for tax reasons. This occurs where a member is organized as either a sole proprietorship, partnership, or subchapter S corporation that routinely distributes its net income to the owner, partners, or shareholders to minimize taxes. NASD Regulation believes the application of the net income requirement is not appropriate in these cases as the legal structure of the member is a business decision within the discretion of the member, and unrelated to the firm's underwriting activities.

NASD Regulation believes a lack of net income also may not be directly connected to the profitability of the member's underwriting activities and thus, not a reliable indicia of underwriting experience, because the overall profitability of a member can be affected by the performance of other business lines within multi-functional members. NASD Regulation believes that losses in one or more departments of a member can unnecessarily disqualify a firm from acting as a qualified independent underwriter.[6] Moreover, they believe lack of net income can reflect accounting anomalies related to infrequent events that result in charges against earnings for mergers, consolidations, restructuring, or divestitures. NASD Regulations believes the lack of net income is also subject to the vagaries of the market, when a decline in income will be attributable to trading activities rather than underwriting.[7] According to NASD Regulation, this was apparent during the five-year periods following the market breaks that occurred in October 1987 and October 1989, when half of members' requests for relief from the net income requirement occurred.[8]

In light of the foregoing, NASD Regulation believes that the net income requirement may operate as an unfair barrier or restraint that disqualifies otherwise qualified firms from acting as qualified independent underwriters. NASD Regulation is therefore proposing to amend rule 2720 to eliminate the net income requirement due to its unreliability as an indicator of a members' ability to act as a qualified independent underwriter. NASD Regulation believes the elimination of the net income requirement will allow the staff to focus on these more substantive requirements when

[3] In addition, qualified independent underwriters may not be an affiliate or own more than 5% of certain securities of the issuing company, are subject to provisions ensuring that associated persons of the member have not been convicted, suspended, barred or otherwise disciplined for actions related to an offering, and must agree to accept the legal responsibilities and liabilities of an underwriter under Section 11 of the Securities Act of 1933.

[4] *See* Securities Exchange Act Release No. 26214 (October 24, 1988), 53 FR 43957 (order approving proposed rule change relating to amendment to definition of qualified independent underwriter); and NASD Notice to Members 88–89 (November 1988).

[5] *See* Securities Exchange Act Release No. 34031 (May 10, 1994), 59 FR 25510 (order approving proposed rule change relating to conflicts of interest in distribution of securities).

[6] For example, one national broker/dealer failed the net income requirement due to its settlement of sales practice abuses in connection with the distribution of non-corporate securities, an activity totally unrelated to its corporate underwriting activities.

[7] The Corporate Financing Committee found that the net income requirement has the potential for increasing costs for issuers when the manager, co-manager, or other distribution participant is ineligible to act as the qualified independent underwriter due to the net income requirement. This will dictate the engagement of another member to act in that capacity for a fee instead of a portion of the gross spread, the cost of which may be passed on to the issuer. This impact is particularly felt by small issuers that may already be charged proportionally higher amounts of underwriting compensation than larger issuers by the qualified independent underwriter.

[8] Hearing Subcommittees of the Corporate Financing Committee have reviewed fourteen requests for exemption from proposed qualified independent underwriters not meeting the net income requirement. From 1984 to the present, Hearing Subcommittees provided thirteen exceptions from the net income requirement, relying on members' extensive underwriting experience managing or co-managing public offerings to compensate for any lack of ongoing profitability.

approving members to be qualified independent underwriters.

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act.[9] in that the deletion of the net income requirement for qualified independent underwriters will eliminate a possible burden on competition that is not necessary in furtherance of the purposes of the Act and will allow the staff to focus on the more substantive requirements for a qualified independent underwriter in the interest of the public and the protection of investors.

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

NASD Regulation 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

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, NW., Washington, DC 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 File No. SR–NASD–97–45, and should be submitted by August 7, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–18833 Filed 7–16–97; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 780–3.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38830; File No. SR–PCX–97–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Public Exchange, Inc. Relating to the Member Surcharge in Arbitration Proceedings

July 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on June 27, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] 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 Exchange submits this proposed rule change to amend Rule 12.32 of the Rules of the Board of Governors of the Exchange relating to the member surcharge in arbitration proceedings. Additions are italicized; deletions are bracketed.

Member Surcharge

Rule 12.32(a) Each member, member organization, or associated person who is named a party to an arbitration proceeding, whether in a Claim, Counterclaim, Third-Party Claim, or Crossclaim shall be assessed a [$200] non-refundable surcharge pursuant to the schedule in Rule 12.32(c) when the Arbitration Department perfects service of the claim naming the member, member organization or associated person on any party to the proceeding. For each associated person who is named, the surcharge shall be assessed against the member(s) or member organization(s) which employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member or member organization shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be subject to reimbursement under Rule 12.31.

(b) For purposes of this Rule, service is perfected when the Arbitration Department properly serves the Respondent(s) to the arbitration proceeding under Rule 12.13(c).

(c) Schedule of Surcharge Rates:

Amount in dispute	*Surcharge*
$.01–$10,000	*$100*
$10,000.01–$50,000	*200*
$50,000.01–$100,000	*300*
$100,000.01–$500,000	*350*
Over $500,000	*500*

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 Exchange 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 Exchange 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

In 1994, the PCX added Rule 12.32 which required any member named as a party to an arbitration proceeding to be assessed a non-refundable, flat $200 surcharge. The surcharge was instituted to help offset the increased resourcing needs resulting from a number of factors, including case growth, more complex cases being filed and arbitrator training. The flat surcharge currently applies to all cases regardless of the dollar amount in controversy. As a result, a member against whom a $500 claim had been filed would be required

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] This proposed rule change replaces SR–PCX–97–20, which has been withdrawn. Letter from Rosemary A. MacGuinness, Director of Arbitration, PCX, to Ivette Lopez, Assistant Director, SEC, dated June 26, 1997.