proposes to modify its proposal by providing for the dissemination of a separate feed of "broadcast" orders entered into SelectNet that will be available to vendors. In particular, the feed to vendors will contain information on all orders broadcast in SelectNet, partial executions of these orders, full executions of these orders, and, if applicable, when these orders timed-out or were canceled.

SelectNet is the service operated by The Nasdaq Stock Market that permits NASD member firms to enter buy or sell orders in Nasdaq securities into the

Second, allowing market makers (or order entry firms) to put their names on broadcast orders might condition or influence the market in a security by advertising the buying or selling power of the member firm. For example, if a broker/dealer that is considered a lead market maker or a major institutional block positioner in a security was interested in buying shares in the stock, it might broadcast a sell order in SelectNet, identify its name on the order, and cause the market to react to the sell interest and the power of the firm's name. Accordingly, other market makers in the stock might react to the sell interest by dropping their hids and the lead market maker would be able to buy stock at a lower price than would otherwise have been the case, simply because it was advertising its name, or conditioning the market. Indeed, similar conditioning effects might be caused by any firm, order entry firm or market maker, by entering orders that are quickly canceled without actual trading interest by the entry firm. ıber firms Accordingly, the NASD proposes that mer enter all broadcast orders anonymously.

Although orders must be entered on an anonymous basis, once two firms are in negotiation over the terms of the broadcast order, the order entry firm may of course identify itself to the contra side. Presently, SelectNet provides members the option of identifying themselves on broadcast orders through their market maker identification symbol, although this alternative is seldom used. The information on SelectNet broadcast orders will be made available to members and nonmember subscribers to the Nasdaq Workstation Level 2 service. This proposal is intended to avoid conditioning the market with orders that might be canceled at any time without actual trading interest by the order entry firm.

Securities Exchange Act Release No. 33938 (Apr. 20, 1994), 59 FR 22033 (Apr. 28, 1994).

system, direct those orders to a single market maker (directed orders) or broadcast the order to all market makers in the security. Originally implemented in its predecessor form in 1988 as the Order Confirmation Transaction service,⁵ the primary function of that service was to offer an automated alternative to the telephone as a method of contacting market makers in times of market stress. To this end, order entry firms could direct an order to buy or sell a Nasdaq security to a single market maker in the issue. When the service was enhanced and renamed SelectNet in 1990.6 the broadcast feature was added to permit a wider dissemination of orders (i.e., "broadcast orders") to all market makers in an issue. In addition, the redesigned system allowed market makers in a subject security to send a broadcast order to all member firms that had designated that security in their SelectNet "watch file,"7 whether the firm was a market maker or not. In 1992, the service was expanded to add preopening and after-hours sessions,8 so that today SelectNet is available for members to negotiate and execute orders from 9:00 a.m. until 5:15 p.m. Eastern Time. The Nasdaq Stock Market operates SelectNet to provide investors and members with an automated system to facilitate communication of trading interest between members, negotiation of orders with the possibility of price improvement with automated, locked-in executions, and dissemination of last sale reports to the tape. In addition, SelectNet retains the original functionality of the service as a replacement for one-on-one communication between members, especially in times of market stress.

Since its enhancement in December 1990, the service has grown in popularity with members and traffic has increased significantly—from an average of 3,000 transactions and 6 million shares daily in the first half of 1991 to over 10,000 transactions and more than 12 million shares daily in December 1994. As the system's usage has increased, institutions and other nonmembers have expressed a desire to view the orders broadcast within the service. Indeed, the Commission's Division of Market Regulation ("Division") recommended that "the NASD [should] examine how to improve access to information regarding orders entered into SelectNet" in its Market 2000 Report.⁹ Accordingly, as noted above, in March 1994, the NASD filed the instant rule proposal with the Commission.

With this amendment to the filing, the NASD now proposes to enhance further the market transparency benefits of the proposal by providing market participants with a more cost-effective and efficient means to receive information on orders broadcast in SelectNet. In particular, by making SelectNet information available to investors without the need for them to procure Nasdaq Workstation Level 2 Service, the NASD believes investors will have ready viewing access to an expanded spectrum of information regarding larger-size orders in Nasdaq securities at an affordable and reasonable cost. With this information, the NASD believes investors will be better able to assess the overall supply and demand for a particular Nasdaq stock, which, in turn, will permit them to effect transactions in a more costeffective manner. Thus, the NASD believes this proposal, as amended, will promote the protection of investors and the maintenance of fair and orderly markets. The NASD also believes that the proposal directly responds to one of the Division's key recommendations designed to improve the transparency of orders broadcast through the SelectNet service.

This proposed amendment also is responsive to comments raised regarding the NASD's proposal. In particular, the Investment Company Institute ("ICI") and the New York Stock Exchange ("NYSE") commented that the SelectNet order information should be made available to all subscribers of Nasdaq Level 2 price information, not just to non-members that possess Nasdaq Level 2 Workstations.¹⁰ Without making the SelectNet order information more broadly available at a lower cost, these commentators maintain that the improvements to market transparency and the benefits to investors resulting from the proposal will be minimal. The

modify its order-entry procedure for SelectNet to ensure that broadcast orders are entered into and displayed through SelectNet anonymously. This feature is proposed for two reasons: To preserve incentives for dealers to continue to make markets that add liquidity to the market and to avoid conditioning the market in one direction or another by orders identified with particular market makers or order entry firms. First, the NASD believes that it is very important to retain incentives for market makers to participate in the market. Market makers put quotes in the Nasdaq system as a form of advertisement that they stand ready and willing to transact business at their quoted prices and sizes There are obligations that accrue to those market makers, however, the NASD and the SEC require market makers to be firm for their quotes and to participate in order execution systems. Enabling order entry firms to advertise buy and sell interest freely, with no concomitant market maker obligations, by attaching their names to SelectNet orders so that anyone with a Workstation would be able to contact the entity directly by telephone, would eviscerate the positive attributes of being a market maker with a quote in the Nasdaq system.

 $^{^5}$ See Securities Exchange Act Release No. 25263 (Jan. 11, 1988), 53 FR 1430 (Jan. 19, 1988).

⁶See Securities Exchange Act Release No. 28636 (Nov. 21, 1990), 55 FR 49732 (Nov. 30, 1990).

⁷The SelectNet watch file is established by each member firm and may contain as many as 300 securities. The member will then receive any directed or broadcast order selected for inclusion in the watch file.

⁸See Securities Exchange Act Release No. 30581 (Apr. 14, 1992), 57 FR 14596 (Apr. 21, 1992).

⁹ Market 2000: An Examination of Current Equity Market Developments, Division of Market Regulation, Securities and Exchange Commission (Jan. 1994).

¹⁰ See letters from Craig S. Tyle, Vice President & Senior Counsel, Securities and Financial Regulation, ICI, to Jonathan G. Katz, Secretary, SEC, dated May 19, 1994, a 2–3, and from James E. Buck, Senior Vice President & Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated June 2, 1994, at 4–7.