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 are discussed above.

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. In particular, the Commission requests general comments concerning the NASD's proposal and whether it is consistent with the Act. In addition, the Commission invites interested persons to address the following specific issues:

(1) The Commission recently proposed rules concerning order execution obligations.³² Among other things, the Commission's proposal generally would: (a) require Nasdaq market makers to display in their quotations (1) customer limit orders priced better than the market maker's current quotation, or (2) the size of a customer limit order that equals the current inside bid or offer; and (b) require that market makers offer market orders for certain securities an opportunity for price improvement over the current national best bid or offer. The Commission seeks comment on whether the NASD's proposal is consistent with the Commission's proposal and with the goals set forth in the Commission's release;

(2) The NASD's proposal would eliminate SOES and does not include the immediate automatic execution feature for market orders currently available in SOES. In light of historical concern about the accessibility of market maker quotations,³³ the Commission seeks comment on the possible effects this change could have on the Nasdaq market and retail investors:

(3) The SOES Rules provide a market maker a five-minute period within which to update its quotation or reestablish its exposure limit after its exposure limit has been exhausted. Further, the current operation of SOES allows for a market maker to elect to use an automated quotation update feature which, generally, changes, by a prespecified increment, the market maker's quotation after its SOES exposure limit is exhausted. The NASD's NAqcess proposal would continue both of these features. In light of the automated quotation update feature and the lack of immediate automatic execution that would occur under NAqcess, the Commission seeks comment on whether there is a continuing need for the five-minute grace period;

(4) The NASD proposes to modify the methodology for calculating the inside Nasdaq market to include both dealer quotations and NAqcess limit orders. If a NAqcess limit order equals or improves the best market maker quotation, it will be included in the Nasdaq inside market and disseminated as the inside quotation, including the aggregate size of all orders at that price. Further, the NASD proposes to use a unique indicator to denote when the inside market is represented by a NAgcess limit order, rather than a dealer or UTP exchange quotation. The Commission requests comment on whether using an indicator for a NAqcess limit order is appropriate;

(5) As discussed above in the NASD's proposal, priority of NAqcess executions when the best bid or offer consists of both a market maker quotation and a NAqcess limit order would be based on time priority. For example, if the inside bid consists of two market makers' bids and a NAgcess limit order, and the market makers' bids were received before the NAqcess limit order, the first two incoming market orders would be delivered to the market makers and subject to potential rejection within 20 seconds, rather than delivered to the limit order for immediate automatic execution. The Commission seeks comment on whether limit orders priced equal to the inside dealer quote should be given priority over market maker quotations, the implications of such a rule, and the relative costs and benefits of such a rule, particularly

given that orders against market makers are delayed for 20 seconds but are executed immediately if matched with NAqcess limit orders;

(6) The proposal would limit the maximum order size for market orders to 1,000 shares (depending on certain trading characteristics of the security). For limit orders, the maximum order size would be 1,000 shares for all securities, except for limit orders in Nasdag 100 securities for which the maximum limit order size would be 3,000 shares. The Commission seeks comment on the appropriate maximum order size for NAqcess limit orders, and whether different thresholds should be established for different Nasdaq securities. Further, the Commission notes that the Commission's recent proposal concerning order execution obligations generally would require display of limit orders of 10,000 shares or less; the Commission requests comment on the interaction between this aspect of the Commission's proposal and the NASD's proposal;

(7) The proposed NAqcess rules would limit access to the system to agency orders entered by member firms on behalf of public customers. Generally, the proposal would exclude: (a) accounts of persons associated with any member firm, and (b) the immediate family of any person associated with a member. The Commission is interested in commenters' views on the appropriateness of these exclusions. Specifically, the Commission requests comment on: (a) whether proprietary market and limit orders should be allowed or, alternatively, whether only proprietary limit orders should be allowed; (b) whether orders from the immediate family of members should be permitted; and (c) whether orders from non-member broker-dealers (e.g., options market makers and UTP specialists) to member broker-dealers should be permitted;

(8) Under the proposal, any firm holding a protectible customer limit order would be required to execute contemporaneously (*i.e.*, within 60 seconds of the trade report), up to the size of the reported transaction, the customer limit order at the limit order price if an inferior-priced execution is reported in that security. The Commission requests comment on the appropriateness of this time period;

(9) The NASD's proposal includes Rules of Fair Practice that generally would prohibit a member from trading at a price inferior to a viewable NAqcess limit order and require that orders held outside of NAqcess be provided price protection substantially equivalent to that which NAqcess orders would have.

³² Securities Exchange Act Release No. 36310 (Sept. 29, 1995), 60 FR 52791 (Oct. 10, 1995).

 $^{^{33}}$ Division of Market Regulation, SEC, The October 1987 Market Break 9–19 (1988).