

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51005; File No. SR-NASD-2004-142)

January 10, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change to Establish Fees for Companies with a Dual Listing on the New York Stock Exchange and Nasdaq

On September 28, 2004, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt a fee schedule for issuers that are dually listed on the New York Stock Exchange (“NYSE”) and Nasdaq. The proposed rule change was published for comment in the Federal Register on December 3, 2004.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

The filing establishes a fee schedule for NYSE issuers that chose to dually list on Nasdaq during Nasdaq’s initial pilot, January 12, 2004, to December 31, 2004. The annual listing fee for dually listed issuers will be \$15,000. It will apply to NYSE issuers that are currently dually listed, as well as issuers who choose to do so in the future. Nasdaq will use the fee to support the cost of issuer services, including regulatory oversight and to fund future product and service investments.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50741 (November 29, 2004), 69 FR 70296.

registered securities association⁴ and, in particular the requirements of Section 15A of the Act.⁵ The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(5)⁶ and 15A(b)(6)⁷ of the Act, in that Nasdaq's dual listing program with the lower listing fee has the potential to bring new issuers that would not otherwise dually list, to the Nasdaq market. Without this program, it is unlikely that an issuer would choose to dually list its securities. Nasdaq believes that issuers that dually list may eventually determine to transfer their listings to Nasdaq.⁸ The Commission believes that competition among listing markets has the potential to benefit the public, issuers, and the listing markets.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NASD-2004-142) be, and it hereby is, approved.

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

Jill M. Peterson
Assistant Secretary

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(5).

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ See also Securities Exchange Act Release No. 51004, January 10, 2005, re fees for exchange listed issuers that transfer to Nasdaq.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).