

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50860; File No. SR-NASD-2004-166)

December 15, 2004

Self Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Modifying the Other Securities Fee Schedule

On October 29, 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 modifying the Other Securities fee schedule in NASD Rule 4530 by establishing a new, separate, non-refundable application fee for “other securities” and SEEDS and raising the applicable annual fee levels. The proposed rule change was published for comment in the Federal Register on November 10, 2004.³ The Commission received no comments on the proposal.

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 national securities association⁴ and, in particular, the requirements of Section 15A of the Act⁵ and the rules and regulations thereunder. The Division finds specifically that the proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50629 (November 3, 2004), 69 FR 65237.

⁴ In approving this proposed rule change, the Commission notes that it 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.

rule change is consistent with Section 15A(b)(5) of the Act,⁶ which requires that the rules of an association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. Specifically, the increase is intended to reflect the costs that Nasdaq has represented it incurs for the services provided to issuers.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR-NASD-2004-166) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland
Deputy Secretary

⁶ 15 U.S.C. 78o-3(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).