

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53696; File No. SR-NASD-2006-047)

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the NASD Rule 4500 Series to Describe an Application of Nasdaq's Authority to Waive Fees and to Make Certain Technical Changes

April 21, 2006

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 4, 2006, 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") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as "constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule" under Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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

Nasdaq proposes to modify the NASD Rule 4500 series to describe an application of Nasdaq's authority to waive fees and to make certain technical corrections. Nasdaq will implement the proposed rule change immediately.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

The text of the proposed rule change is available at NASD, at the Commission, and at NASD's Web site (http://www.nasdaq.com/about/RuleFilingsListings/Filings_Listing.stm).

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

1. Purpose

In January 2005, the Commission approved a proposed rule change by Nasdaq to eliminate the entry and application fees under NASD Rules 4510(a) and 4520(a) for companies listed on a national securities exchange (an "exchange") that transfer their listing to the Nasdaq National Market or the Nasdaq Capital Market.⁵ This filing was based on Nasdaq's belief that assessing initial listing fees against issuers that have already paid fees to list on another market imposes a burden on the competition between exchange markets and markets other than exchange markets, a competition that is one of the central goals of the national market system.⁶ In approving that proposed rule change, the Commission stated its belief that such a program "may ultimately benefit issuers and

⁵ Securities Exchange Act Release No. 51004 (January 10, 2005), 70 FR 2917 (January 18, 2005)(SR-NASD-2004-140).

⁶ 15 U.S.C. 78k-1.

investors because competition among listing markets has the potential to enhance the quality of services that listing markets provide.⁷

Based on recent experience with companies considering switching from other markets, Nasdaq has determined that companies are also reluctant to switch markets during the beginning and middle of the year, because they will have already paid a non-refundable annual listing fee to another market. As a result, Nasdaq proposes to allow issuers a credit in the pro-rated amount of any annual listing fees paid to the other exchange, for the period of time after the transfer. This credit will be used to offset the annual fee otherwise payable to Nasdaq for that period under NASD Rule 4510(c), 4510(d), or 4520(c), and cannot exceed that fee.

In light of a switching issuer's prior payment to another market, Nasdaq believes that providing such a credit to switching issuers is entirely consistent with an equitable allocation of listing fees. Further, Nasdaq notes that it does not expect the financial impact of this proposed rule change to be material to Nasdaq, as issuers will only receive a one year credit and, even with the proposed rule change in place, a change in listing venue is a major step for an issuer, and therefore Nasdaq does not expect that the number of switching issuers in a given time frame will be sufficient to have a material effect on Nasdaq's financial resources or commitment to its regulatory oversight of the listing process or its regulatory programs. Further, Nasdaq anticipates that it will make up any short-term costs through the long-term receipt of applicable listing fees.

In addition, Nasdaq proposes to codify that a credit is available to an issuer that previously paid a dual listing annual fee and determines to cease its dual listing and

⁷ See footnote 5, supra.

remain listed on Nasdaq. As in the case of a company transferring between the Nasdaq National Market and the Nasdaq Capital Market,⁸ such an issuer will be allowed a credit against the annual fee otherwise due in the year of the transfer for the portion of the dual list annual fee attributable to the period of time following the transfer.

While NASD Rules 4e510(c)(2), 4510(d)(3), and 4520(c)(3) provide Nasdaq with the discretion to waive all or part of the annual listing fees, Nasdaq has determined to codify the existence of these credits given their applicability to any issuer switching from an exchange or terminating a dual listing.

Nasdaq also proposes to modify the text of NASD Rules 4510(c)(5) and 4520(c)(8) to clarify that the annual fee for an ADR or closed-end fund that is dually listed on the Nasdaq National Market, and a closed-end fund that is dually listed on the Nasdaq Capital Market, is \$15,000, the same as for any other dually listed security.

Finally, Nasdaq proposes to make technical corrections to more clearly describe the termination of a dual listing, correct an error in the numbering of the subparagraphs of NASD Rule 4520(a), correct a reference in NASD Rule 4520(c)(8), and to delete IM-4500-2 and IM-4500-3, which no longer have any applicability.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁹ in general, and with Sections 15A(b)(5) and (6) of the Act,¹⁰ in particular, in that it is designed to provide an equitable allocation of reasonable dues, fees, and charges among members and issuers and other persons using any facility or

⁸ NASD Rules 4510(c)(3), 4510(d)(6), and 4520(c)(5).

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3(b)(5) and (6).

system which NASD operates or controls, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change will assure that an issuer is not required to pay duplicative fees to multiple markets, thereby removing an impediment to issuers transferring from another market to Nasdaq.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act¹¹ and Rule 19b-4(f)(1) thereunder,¹² in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

¹¹ 15 U.S.C. 78s(b)(3)(A)(i).

¹² 17 CFR 240.19b-4(f)(1).

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form

(<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2006-047 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-047. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2006-047 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Nancy M. Morris
Secretary

¹³ 17 CFR 200.30-3(a)(12).