

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50629; File No. SR-NASD-2004-166)

November 3, 2004

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice
of Filing of Proposed Rule Change to Modify the Other Securities Fee Schedule

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 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”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to modify the Other Securities fee schedule in NASD Rule 4530.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.³

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4530. Other Securities

(a) Application Fee and Entry Fee

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposed rule change is marked to show changes to NASD Rule 4530 as currently reflected in the NASD Manual available at www.nasd.com. No other pending or approved rule filings would affect the text of this Rule.

(1) When an issuer submits an application for inclusion of any Other Security or SEEDS in the Nasdaq National Market qualified for listing under Rule 4420(f) or 4420(g), it shall pay a non-refundable Application Fee of \$1,000.

[(1)] (2) When an issuer submits an application for inclusion of any Other Security or SEEDS in [The] the Nasdaq National Market qualified for listing under Rule 4420(f) or 4420(g), it shall pay an Entry Fee [fee (\$1,000 of which is a non-refundable processing fee)] calculated based on total shares outstanding according to the following schedule:

Up to 1 million shares	\$ 5,000
1+ to 2 million shares	\$10,000
2+ to 3 million shares	\$15,000
3+ to 4 million shares	\$17,500
4+ to 5 million shares	\$20,000
5+ to 6 million shares	\$22,500
6+ to 7 million shares	\$25,000
7+ to 8 million shares	\$27,500
8+ to 9 million shares	\$30,000
9+ to 10 million shares	\$32,500
10+ to 15 million shares	\$37,500
Over 15 million shares	\$45,000

The applicable Entry Fee shall be reduced by any Entry Fees paid previously in connection with the initial inclusion during the current calendar year of any of the issuer's Other Securities and SEEDS in the Nasdaq National Market.

[(2)] (3) For the sole purpose of determining the Entry Fee, total [Total] shares outstanding means the aggregate of all classes of Other Securities and SEEDS of the issuer to be included in [The] the Nasdaq National Market in the current calendar year as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority.

[(3)] (4) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the Application Fee or Entry Fee [entry fee] prescribed herein.

[(4)] (5) If the application is withdrawn or is not approved, the Entry Fee [entry fee (less the non-refundable processing fee)] shall be refunded.

(b) Annual Fee

(1) The issuer of Other Securities or SEEDS qualified under Rule 4420(f) or 4420(g) for listing on [The] the Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. an [annual fee] Annual Fee calculated based on total shares outstanding according to the following schedule:

Up to [1] <u>5</u> million shares	\$ [6,500] <u>15,000</u>
[1+ to 2 million shares	\$ 7,000
2+ to 3 million shares	\$ 7,500

3+ to 4 million shares	\$ 8,000
4+ to 5 million shares	\$ 8,500]
5+ to [6] <u>10</u> million shares	\$ [9,000] <u>17,500</u>
[6+ to 7 million shares	\$ 9,500
7+ to 8 million shares	\$10,000
8+ to 9 million shares	\$10,500
9+ to 10 million shares	\$11,000]
10+ to [11] 25 million shares	\$[11,500] <u>20,000</u>
[11+ to 12 million shares	\$12,000
12+ to 13 million shares	\$12,500
13+ to 14 million shares	\$13,000
14+ to 15 million shares	\$13,500
15+ to 16 million shares	\$14,000
Over 16 million shares	\$14,500]
<u>25+ to 50 million shares</u>	<u>\$22,500</u>
<u>Over 50 million shares</u>	<u>\$30,000</u>

(2) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the [annual fee] Annual Fee prescribed herein.

(3) For the sole purpose of determining the Annual Fee, total [Total] shares outstanding means the aggregate of all classes of Other Securities and SEEDS of the issuer included in the Nasdaq National Market, as shown in the

issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

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II. 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

The proposed rule change modifies the Other Securities fee schedule contained in NASD Rule 4530. The proposal establishes a new, separate, non-refundable application fee (in addition to the existing entry fee) for "other securities" and SEEDS, and raises the applicable annual fee levels. The proposal also clarifies how the appropriate fee "tier" is determined for an issuer in any given calendar year.

The new application fee and the increase in the annual fee will help Nasdaq recover the often-substantial costs associated with listing the various securities (most of which are known in the industry as "structured products") that will be subject to the revised fee schedule.⁴ The review and listing approval process for many such securities frequently involves extensive product-focused consultations between the Nasdaq staff

⁴ SEEDS are a type of structured product, and, as such, it is equitable that they be subject to the same fee schedule as the other structured products.

and the staff of the Commission and, in many cases, product-specific rule change filings by Nasdaq with the Commission. As the value of such securities is usually linked to the value of other securities or indexes, Nasdaq examines (as part of the initial listing process) and monitors the activity in (on an on-going basis) such “linked” securities and indexes. Nasdaq believes that the new application fee and the revised annual fees will better reflect the actual level and cost of the resources that Nasdaq devotes to listing these securities and overseeing market activities directly or indirectly (i.e., by virtue of linked securities or indexes) related to these securities and their issuers.

Nasdaq believes that the proposed fee levels are both reasonable in light of the associated costs and at the same time responsive to the need to remain competitive relative to other markets. In this regard, Nasdaq notes that the proposed fees will be similar to the existing applicable American Stock Exchange (“AMEX”) fees.⁵

Nasdaq proposes to make all changes effective upon Commission approval, with the exception of the annual fee change, which will become effective on January 1, 2005.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁶ in general and with Section 15A(b)(5) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls.

⁵ See AMEX Company Guide §§ 140 and 141.

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(5).

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

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, 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-2004-166 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-166. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2004-166 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.⁸

J. Lynn Taylor
Assistant Secretary

⁸ 17 CFR 200.30-3(a)(12).