

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44374; File No. SR-NASD-2001-17]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Revise the Fees Associated With Appeals of Nasdaq Listing Determinations

May 31, 2001.

On March 13, 2001, 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to revise the fees associated with appeals of Nasdaq Listing Determinations. The proposed rule change was noticed in the **Federal Register** on April 11, 2001.<sup>3</sup> No comments were received on the proposed rule change. This order approves the proposed rule change.

#### I. Description of the Proposal

Determinations by the Listing Qualifications Department or the Listing Investigations Department to limit or prohibit the initial or continued listing of an issuer's securities may be appealed by the issuer to the Listing Qualifications Panel (the "Panel") and thereafter to the Nasdaq Listing and Hearing Review Council (the "Listing Council"). Nasdaq has proposed to revise the current fee schedules for issuer requests for the review of listing determinations to both the Panel and the Listing Council to cover the costs associated with the review.

Currently, the fee for an appeal to the Panel based on a written submission from the issuer is \$1,400, and the fee for an oral hearing before the Panel is \$2,300. In addition, the fee for an appeal to the Listing Council is \$1,400.<sup>4</sup> Nasdaq has proposed to change the fee for an appeal to the Panel based on a written submission from the issuer to \$4,000, and the fee for an oral hearing before the Panel to \$5,000. In addition,

Nasdaq has proposed to change the fee for an appeal to the Listing Council to \$4,000.

The fees associated with appeals to the Panel were last revised in 1996.<sup>5</sup> Nasdaq asserts that since that time, there has been an increase in the various costs associated with the review process. Nasdaq asserts in particular that, in 1999, it expanded the review process in part in response to the Commission's findings, which required changes in the process of reviews and an increase in the amount of time spent by Nasdaq staff members dedicated to the review process.<sup>6</sup> Further, Nasdaq has identified other expenses related to the review process that are not covered by the current hearing fees.<sup>7</sup>

The proposed fee for an appeal to the Panel includes all costs of the Office of Listing Qualifications Hearings attributable to the processing of hearing requests and the associated expenses of the Panel.<sup>8</sup> In addition, the proposed fee for an appeal to the panel includes a large portion of the expenses associated with the Office of Appeals and Review,<sup>9</sup> and the Listing Council. The proposed fee for an appeal to the Listing Council under Marketplace Rule 4840(b) will cover the remainder of the expenses of the Office of Appeals and Review and the Listing Council, as well as the Office

<sup>5</sup> See Securities Exchange Act Release No. 37088 (April 9, 1996), 61 FR 16662 (April 16, 1996). In 1999, a \$1,400 fee for appeals to the Listing Council was established, which matched the fee for appeals to the Panel based only on the written record. See Securities Exchange Act Release No. 41367 (May 4, 1999), 64 FR 25942 (May 13, 1999).

<sup>6</sup> See Securities Exchange Act Release No. 41367 (May 4, 1999), 64 FR 25942 (May 13, 1999).

<sup>7</sup> Nasdaq has represented that the other expenses relating to the review process that are not covered by the current hearing fees include the following: overhead, including telephones, supplies, depreciation and occupancy, computer system support, listing qualifications retention analyst and manager review, and a stipend for Panel and Listing Council members. Telephone conversation between John D. Nachmann, Senior Attorney, Office of General Counsel, Nasdaq, and Lisa Jones, Attorney, Division of Market Regulation, Commission (March 30, 2001).

<sup>8</sup> The additional variable fee allocated to issuers who request oral hearings before the panel is designed to recover the additional costs associated with such hearings; specifically, travel expenses for members of the Panel and court reporter time to maintain a transcript of these hearings.

<sup>9</sup> On March 22, 2001, Nasdaq filed a proposed rule change, SR-NASD-2001-02, with the Commission pursuant to Section 19(b)(3)(A) of the Act, and subparagraph (f) of Rule 19b-4 thereunder, that transfers certain responsibilities from the Nasdaq Office of General Counsel regarding the review process to the Office of Appeals and Review, a new unit in the Nasdaq's Listing Qualifications Department. The Office of Appeals and Review will receive requests for review from issuers and will keep records of proceedings.

of General Counsel's time directly related to the appeals process.<sup>10</sup>

#### II. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(5)<sup>11</sup> and Section 15A(b)(6)<sup>12</sup> of the Act. The Commission believes that the proposed rule change is consistent with Section 15A(b)(5) because it helps to provide for the equitable allocation of reasonable dues, fees, and other charges among issuers using Nasdaq, by proposing fees for the review process that are revenue neutral and reflect the costs incurred by Nasdaq to process issuer requests. The Commission also believes that the proposed rule change is consistent with Section 15A(b)(6), which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices as well as to protect investors and the public interest. In particular, the Commission believes that the proposed fees will help Nasdaq to ensure that only qualified issuers are allowed to list or remain listed on Nasdaq.

#### III. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NASD-2001-17) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-14430 Filed 6-7-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SMALL BUSINESS ADMINISTRATION

[License No. 02/02-5377]

### Elk Associates Funding Corporation; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Elk Associates Funding Corporation, 747 Third Avenue, New York, New York 10017, a Federal Licensee under the

<sup>10</sup> The fees proposed in this proposed rule change are designed to recover only the direct costs associated with the review process and do not include various indirect overhead costs that have been identified by Nasdaq as Senior Management, Finance, Human Resources, Administrative Services, Legal (excluding unrelated litigation and international expenses), Economic Research, Nas Tech and Strategic Development.

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 44153 (April 5, 2001), 66 FR 44153 (April 11, 2001) (SR-NASD-01-17).

<sup>4</sup> Pursuant to Marketplace Rule 4840(d), appeals to the Listing Council are based only on the written record unless the Listing Council exercises its discretion to hold an oral hearing. There is no additional fee for an oral hearing before the Listing Council.

Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). Elk Associates Funding Corporation proposes to provide loans to Concorde Cab Corp. and Queens Star Cab Corp. The financings are contemplated for the purchase of taxicab medallions, New York City transfer taxes and taxicab vehicles.

The financings are brought within the purview of sec. 107.730(a)(1) of the regulations because Meryl Sara and Lauren Abate, Associates of Elk Associates Funding Corporation, will own greater than 10 percent of Concorde Cab Corp. and Queens Star Cab Corp., and therefore, Concorde Cab Corp. and Queens Star Cab Corp. are considered Associates of Elk Associates Funding Corporation as defined in section 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Acting Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: May 29, 2001.

**Harry Haskins,**

*Acting Associate Administrator for Investment.*

[FR Doc. 01-14511 Filed 6-7-01; 8:45 am]

**BILLING CODE 8025-01-P**

## SOCIAL SECURITY ADMINISTRATION

### President's Commission To Strengthen Social Security

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Announcement of meeting location and time change.

**DATES:** June 11, 2001, 10 a.m. - 4 p.m.

**ADDRESSES:** Willard Inter-Continental Hotel, 1401 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 628-9100.

**SUPPLEMENTARY INFORMATION:** The May 29, 2001 **Federal Register** notice (FR Doc. 01-13486, 66 FR 29200) announcing the June 11 meeting of the President's Commission to Strengthen Social Security did not include a meeting location. The purpose of this announcement is to provide the meeting location and to note that the meeting will end at 4 p.m. instead of 6 p.m., as previously reported.

The meeting will be open to the public at 11 a.m. The Commission will break for lunch at Noon, and the public meeting will reconvene at 1 p.m. and continue through 4 p.m. In accordance with the Government in the Sunshine Act, 5 U.S.C. 552b(c), the meeting will be closed to the public from 10 a.m. to 11 a.m. to conduct housekeeping business relating solely to Federal personnel rules and practices and other administrative matters.

Dated: June 4, 2001.

**Larry G. Massanari,**

*Acting Commissioner of Social Security.*

[FR Doc. 01-14527 Filed 6-5-01; 4:08 pm]

**BILLING CODE 4191-02-U**

## DEPARTMENT OF STATE

### [Public Notice 3691]

#### Bureau of Educational and Cultural Affairs Request for Grant Proposals: Ukrainian Media Partnership Program

**SUMMARY:** The Europe/Eurasia Division in the Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for the Ukrainian Media Partnership Program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to conduct this program. Grants are subject to availability of funds. Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries \* \* \*; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations \* \* \* and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Fulbright-Hays Act and the FREEDOM Support Act.

Programs and projects must comply with Bureau requirements and guidelines outlined in the Solicitation Package: the Request for Grant Proposals (RFGP) and the Proposal Submission Guidelines (PSI).

### Announcement Title and Number

All communications with the Bureau concerning this Request for Grant Proposals (RFGP) should refer to the announcement title "The Ukrainian Media Partnership Program" and reference number ECA/PE/C/EUR-01-77.

### Program Information

#### Overview

The Bureau of Educational and Cultural Affairs (the Bureau) invites applicants to submit proposals for a project to create and foster long-term relationships between selected American media outlets and Ukrainian media outlets of similar size and between the individual professionals that work at both outlets. Within the framework of these partnerships, Ukrainian professionals in print and broadcast media will have the opportunity to interact with US counterparts and to take part in practical training experiences organized by their US partner. This project seeks to promote the development of free and independent Ukrainian media outlets on the assumption that independent media is critical for the further democratic development of Ukraine.

The Bureau would like to see five partnerships developed under this program. Each Ukrainian media outlet should be matched with an appropriate U.S. media outlet for partnership activities. Proposals should demonstrate geographic diversity by including media outlets from throughout Ukraine. While partnerships should primarily include media outlets in regional capitals or larger regional cities, a Kiev media outlet may be included in one of the proposed partnerships. Applicants should propose at least three partnerships in their submission, but are encouraged to propose all five. When only three or four partnerships are proposed by the applicant, the Public Affairs Section in at the American Embassy in Kiev (PAS) will identify the remaining Ukrainian media outlets who will then be partnered with American media outlets already selected by the applicant. Applicants should explain how proposed matches support the program's objectives and why they expect that the partnerships they are proposing will be sustained beyond the life of the grant. The grantee should work closely with the Bureau and PAS throughout the grant period; specific partnerships will be approved by the Bureau and PAS.

Applicants should explain how partnerships will be structured and what activities they will include. The