Advisor, or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Manager or an entity that controls, is controlled by or is under common control with a Manager.

8. When a change in Manager is proposed for a Fund with an Affiliated Manager, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Fund's Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Advisor or the Affiliated Manager derives an inappropriate advantage.

9. Each Fund will include in its registration statement the Aggregate Fee Disclosure.

10. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

11. The Advisor will provide the Board, no less frequently than quarterly, with information about the Advisor's profitability on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Manager during the applicable quarter.

12. Whenever a Manager is hired or terminated, the Advisor will provide the Board with information showing the expected impact on the Advisor's profitability.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45719; File No. SR–Amex–2002–28]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Implementation of a Start-Up Fee for Specialist Participants in the Exchange's Program To Trade Nasdaq Securities on an Unlisted Basis

April 9, 2002.

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 3, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") 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 the Exchange. 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

The Exchange proposes to charge a one-time start-up fee to specialist participants in the Exchange's program to trade Nasdaq securities on an unlisted basis. The text of the proposed rule change is available at the Amex and at the Commission.

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

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange is implementing a program to trade Nasdaq securities on an unlisted basis, which, according to the Exchange, involves significant technology enhancements, Trading Floor renovations, marketing expenses and other start-up costs. To defray the Exchange's costs of establishing the Nasdaq Unlisted Trading Privileges ("UTP") program, the Exchange proposes to assess a start-up fee on the specialist firms participating in the program.

The Exchange plans to list approximately 100 Nasdaq securities, and it anticipates that these securities will be equally allocated among five participating specialist firms so that each firm has a critical mass of securities (approximately 20 apiece) to dedicate sufficient resources to the program to make it a success. The Exchange, consequently, would divide the approximately $5 million cost of the program equally among the participating specialists.

In the event that there are fewer than five specialist firms in the UTP program, the Exchange still would admit approximately 100 securities to dealings and would allocate more than 20 stocks to one or more specialists. The Exchange, in this circumstance, would raise the $5 million needed to fund the program by dividing the cost of the program among the participating specialist firms in proportion to the number of securities that they are allocated, provided, however, that the start-up fee would be at least $1 million per specialist firm.

In the event that there are six qualified specialists that participate in the program or if the Exchange so decides, the Exchange would admit approximately 120 Nasdaq securities to dealings. The cost of the program would increase to approximately $6 million as a result of this expansion to include more securities. If the Exchange expands the program to approximately 120 securities, the Exchange anticipates that these securities would be allocated so that each specialist firm has at least the critical mass of securities to dedicate sufficient resources to make the program a success (approximately 20 securities apiece). In addition, it is possible that one or more firms might be allocated more than 20 securities if the Exchange determines to admit approximately 120 securities to dealings. The Exchange would divide the $6 million cost of the expanded program among the participating specialists in proportion to the number of securities that they are allocated, provided, however, that the start-up fee would be at least $1 million per specialist firm.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[3] in general, and furthers the objectives of section 6(b)(4)[4] in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities.

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

The Exchange does not believe that the proposed rule change will impose

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments on the proposed rule change 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)(ii) of the Act [5] and subparagraph (f)(2) of Rule 19b–4 thereunder [6] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such 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**

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–28 and should be submitted by May 7, 2002.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [7]

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45721; File No. SR–NASD–2002–12]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Establishment of a Subordination Agreement Investor Disclosure Document

April 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly owned subsidiary NASD Regulation, Inc. (''NASD Regulation'') 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 NASD Regulation. The Association filed Amendment No. 1 to the proposed rule change on March 21, 2002.[3] 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**

NASD Regulation has filed with the Commission a proposed rule change that would require, as part of a subordination agreement, the execution of a Subordination Agreement Investor Disclosure Document (''Disclosure Document''). The proposed form of the Disclocure Document is as follows:

**SUBORDINATION AGREEMENT**

**INVESTOR DISCLOSURE DOCUMENT**

**PLEASE READ THIS DOCUMENT CAREFULLY BEFORE DECIDING TO ENTER INTO A SUBORDINATION AGREEMENT WITH A BROKER/DEALER. SUBORDINATION AGREEMENTS ARE AN INVESTMENT. THESE INVESTMENTS CAN BE RISKY AND ARE NOT SUITABLE FOR ALL INVESTORS. AN INVESTOR SHOULD NEVER ENTER INTO A SUBORDINATION AGREEMENT WITH A BROKER/DEALER UNLESS HE/SHE CAN BEAR THE LOSS OF THE TOTAL INVESTMENT.**

Subordination agreements are complicated investments. A subordination agreement is a contract between a broker/dealer (the borrower) and a lender (the investor), pursuant to which the lender lends money and/or securities to the broker/dealer. The proceeds of this loan can be used by the broker/dealer almost entirely without restriction. The lender agrees that if the broker/dealer does not meet its contractual obligations, his/her claim against the broker/dealer will be subordinate to the claims of other parties, including claims for unpaid wages. Lenders may wish to seek legal advice before entering into a subordination agreement.

**KEY RISKS**

All investors who enter into Subordination Agreements with broker/dealers should be aware of the following *key risks*:

Money or securities loaned under subordination agreements are not customer assets and are not subject to the protection of the Securities Investor Protection Corporation (SIPC). In other words, your investment in the broker/dealer is *not* covered by SIPC. Nor are subordination agreements generally covered by any private insurance policy held by the broker/dealer. Thus, if the broker/dealer defaults on the loan, the investor can lose all of his/her investment.

- The funds or securities lent to a broker/dealer under a subordination agreement can be used by the broker/dealer almost entirely without restriction.
- Subordination agreements cause the lender to be subordinate to other parties if the broker/dealer goes out of business. In other words, you, as an investor, would be paid after the other parties are paid, assuming the broker/dealer has any assets remaining.
- The NASD Regulation approval of subordination agreements is a regulatory function.

It does *not* include an opinion regarding the viability or suitability of the investment. Therefore, NASD Regulation approval of a subordination agreement does not mean that NASD Regulation has passed judgment on the

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 21, 2002, the Association filed, pursuant to Rule 19b–4 of the Act, an amendment to its initial Form 19b–4, which made certain clarifications to the proposed disclosure document.