

(ii) as to which NASD 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 proposal 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NASD-2003-145. 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, comments should be sent in hardcopy or by e-mail but not by both methods.

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 will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. NASD-2003-145 and should be submitted by January 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 03-30841 Filed 12-12-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48889; File No. SR-NASD-2003-178]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Certain Listing Fees for Foreign Issuers and To Make a Technical Change to the Rule Pertaining to Recordkeeping Fees for Issuers Listed on The Nasdaq SmallCap Market

December 5, 2003.

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> notice is hereby given that on December 3, 2003, 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 has filed with the Commission a proposed rule change to modify certain listing fees for foreign issuers and to make a technical change to the rule pertaining to recordkeeping fees for issuers listed on The Nasdaq SmallCap Market.

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

\* \* \* \* \*

#### 4500. ISSUER LISTING FEES

##### 4510. The Nasdaq National Market

(a) Entry Fee.

(1) An [domestic] issuer[, or foreign issuer raising capital in conjunction with its Nasdaq listing,] that submits an application for inclusion of any class of its securities (not otherwise identified in this Rule 4500 series) in The Nasdaq National Market, shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, according to the following schedule. This fee will be assessed on the date of entry in The Nasdaq National Market, except for \$5,000, which represents a

non-refundable, application fee, and which must be submitted with the issuer's application.

Up to 30 million shares—\$100,000  
30+ to 50 million shares—\$125,000  
Over 50 million shares—\$150,000

[(2) A foreign issuer not raising capital in conjunction with its Nasdaq listing, including American Depositary Receipts (ADRs), that submits an application for inclusion of any class of its securities (not otherwise identified in this Rule 4500 series) in The Nasdaq National Market, shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, according to the following schedule. This fee will be assessed on the date of entry in The Nasdaq National Market, except for \$5,000, which represents a non-refundable, application fee, and which must be submitted with the issuer's application.

Up to 3 million shares—\$50,000  
3+ to 5 million shares—\$75,000  
5+ to 30 million shares—\$100,000  
30+ to 50 million shares—\$125,000  
Over 50 million shares—\$150,000]

Current (3)–(6) Renumbered as (2)–(5).  
(b)–(c) No change.

(d) Annual Fee—American Depositary Receipts (ADRs).

(1) The issuer of each class of securities that is an ADR listed in The Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on ADRs outstanding according to the following schedule not to exceed \$30,000 per issuer:

Up to 10 million ADRs—\$21,225  
[ \$10,000]  
10+ to 25 million ADRs—\$26,500  
[ \$15,000]  
25+ to 50 million ADRs—\$29,820  
[ \$20,000]  
[50+ to 75 million ADRs—\$22,500  
75+ to 100 million ADRs—\$25,000]  
Over 50 [100] million ADRs—\$30,000

(2)–(4) No change.

##### 4520. The Nasdaq SmallCap Market

(a)–(c) No change.

[(e)](d) Recordkeeping Fee.

An issuer that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of \$2,500 to The Nasdaq Stock Market, Inc.

\* \* \* \* \*

#### 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

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

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

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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**

Nasdaq states that the purpose of the proposed rule change is to revise certain fees for foreign issuers listed on The Nasdaq National Market in order to eliminate or reduce the disparity in the amount of fees paid by issuers.<sup>3</sup> Specifically, Nasdaq proposes to revise the entry fees for foreign issuers not raising capital in conjunction with their listing on Nasdaq and the annual fees applicable to American Depositary Receipts (ADRs), beginning on January 1, 2004. Nasdaq also proposes to make a technical change to the rule pertaining to recordkeeping fees for issuers listed on The Nasdaq SmallCap Market.

Nasdaq proposes to revise the entry fees for foreign National Market issuers not raising capital in conjunction with their listing. Nasdaq rules currently provide two separate entry fee schedules for foreign issuers. The fee schedule set forth in Rule 4510(a)(1) applies to foreign issuers that raise capital in conjunction with their listing on Nasdaq (as well as to all domestic issuers), and the fee schedule in Rule 4510(a)(2) applies to those issuers that do not raise capital in conjunction with listing on Nasdaq. These two fee schedules are the same except for foreign issuers that do not raise capital in conjunction with their listing and that list less than 5 million shares. These issuers pay a lower fee than they would if they were raising capital in conjunction with their listing, in recognition of the fact that these listings are non-capital raising and generally represent secondary market listings. Nasdaq proposes to eliminate the reduced fees for these issuers and to adopt a single entry fee schedule for all domestic and foreign issuers.

Nasdaq also proposes to revise the annual fee schedule for ADRs listed on the National Market. The current fee schedule for ADRs, which is set forth in Rule 4510(d), provides for lower fees

than those applicable to U.S. issuers and foreign issuers that list ordinary shares. In order to more closely align the fees paid by issuers that list ADRs with those paid by other issuers, Nasdaq proposes to raise the fees for ADRs while maintaining the current annual cap of \$30,000 per issuer. Under this proposal, issuers that list up to 50 million ADRs will pay the same annual fee as U.S. issuers and foreign issuers that list ordinary shares. Those issuers that list more than 50 million ADRs will pay the maximum annual fee of \$30,000.

Lastly, Nasdaq proposes to make a technical change to the rule pertaining to recordkeeping fees for issuers listed on The Nasdaq SmallCap Market. Specifically, Nasdaq proposes to renumber Rule 4520(e) as Rule 4520(d) in order to avoid any potential confusion regarding the fees for SmallCap issuers.<sup>4</sup>

**2. Statutory Basis**

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>5</sup> in general, and with Section 15A(b)(5) of the Act,<sup>6</sup> in particular, in that the proposal provides 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 NASD operates or controls. Specifically, the revised fee schedules will eliminate or reduce the disparity in the entry and annual fees paid by Nasdaq issuers.

*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**

Because non-member issuers affected by the proposed rule change should be afforded the notice and comment

periods under Section 19(b)(2) of the Act,<sup>7</sup> the Commission does not find good cause to accelerate approval of this proposal, as Nasdaq requested to "minimize potential uncertainty or administrative difficulties." 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 Exchange 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments should be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NASD-2003-174. 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, comments should be sent in hard copy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-178 and should be submitted by January 5, 2004.

<sup>3</sup> The Commission notes that the net effect of Nasdaq's proposal is to raise entry fees for foreign issuers not raising capital and raise annual fees for issuers of ADRs.

<sup>4</sup> The recordkeeping fee for SmallCap issuers was established pursuant to SR-NASD-2003-127. This fee, however, was erroneously numbered as Rule 4520(e) in the rule filing and should have been numbered as Rule 4520(d) in order to maintain continuity in Rule 4520.

<sup>5</sup> 15 U.S.C. 78o-3.

<sup>6</sup> 15 U.S.C. 78o-3(b)(5).

<sup>7</sup> 15 U.S.C. 78s(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 03-30984 Filed 12-12-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48891; File No. SR-CSE-2003-14]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Stock Exchange To Extend Its Liquidity Provider Fee and Rebate Pilot Program

December 8, 2003

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> notice is hereby given that on December 3, 2003, National Stock Exchange ("Exchange")<sup>3</sup> filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed this proposal pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6)<sup>5</sup> thereunder, which renders the proposal effective upon filing with the Commission.<sup>6</sup> 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 has a Liquidity Provider Fee and Rebate Program ("Program"), which was originally proposed in SR-CSE-2002-16,<sup>7</sup> that is currently in effect and is set to expire on December 31, 2003.<sup>8</sup> Through this

proposed rule change the Exchange seeks to extend the Program through June 30, 2004. The Exchange proposes no other substantive changes to the Program at this time. The text of the proposed rule change is available at the Exchange 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 aspects of such statements.

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

###### 1. Purpose

On October 22, 2002, the Exchange filed SR-CSE-2002-16,<sup>9</sup> which proposed to establish a pilot transaction credit for liquidity providers that is paid by liquidity takers on each intra-Exchange execution<sup>10</sup> in Nasdaq securities. Under the Program, the Exchange amended its Rule 11.10A(g)(1) by adding subparagraph (B) to charge the liquidity taker, *i.e.*, the party executing against a previously displayed quote/order, \$0.004 per share. The Exchange then passes on to the liquidity provider, *i.e.*, the party providing the displayed quote/order, \$0.003 per share with the exchange retaining \$0.001 per share. With this proposed rule change, the Exchange is extending the Program through June 30, 2004.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>11</sup> in general, and Section 6(b)(5) of

the Act,<sup>12</sup> in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The Exchange believes that the proposed rule change is also consistent with Section 6(b)(4) of the Act,<sup>13</sup> in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting members on a pro rata basis.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were solicited or received in connection with the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder. 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.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest, for it will allow the Program to continue without interruption. For these reasons, the Commission designates the

<sup>8</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> The Exchange was formerly known as The Cincinnati Stock Exchange. See Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003)(SR-CSE-2003-12).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> The Exchange gave the Commission written notice of its intention to file the proposed rule change on November 21, 2003. The Exchange asked the Commission to waive the 30-day operative delay. 17 CFR 240.19b-4(f)(6).

<sup>7</sup> Securities Exchange Act Release No. 46848 (November 19, 2002, 67 FR 70793 (November 26, 2002)("Original Pilot").

<sup>8</sup> The Program, which was originally set to expire on March 31, 2003, was subsequently extended until September 30, 2003, and extended again until

December 31, 2003. Securities Exchange Act Release Nos. 47596 (March 28, 2003), 68 FR 16594 (April 4, 2003)(SR-CSE-2003-03)(extending the Program until September 30, 2003) and 48584 (October 2, 2003), 68 FR 58368 (October 9, 2003)(SR-CSE-2003-13)(extending the Program until December 31, 2003).

<sup>9</sup> See Original Pilot, *supra* note 7.

<sup>10</sup> An "intra-Exchange execution" (referred to in the Original Pilot as an "intra-CSE execution") is any transaction that is executed on the Exchange for which the executing member on the buy-side of the transaction differs from the executing member on the sell-side of the transaction. *Id.* at 70793.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).