

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

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 in Washington, DC. 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-99-33 and should be submitted by December 3, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the Amex's proposed rule change and believes, for the reasons set forth below, that the proposal is consistent with the requirements of Section 6 of the Act¹⁰ and in particular, with the requirements of Section 6(b)(5) of the Act.¹¹ Specifically, the Commission finds that providing for a minimum one-year term for all ELNs is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.¹²

The Commission notes that since the Exchange has traded ELNs, the Exchange has not discovered any adverse effects of this instrument. In addition, the Exchange has verified that

it has surveillance procedures in place for identifying and deterring manipulative trading activity of ELNs as well as the related equity securities. The Exchange has also agreed to notify the Commission in advance if the Exchange intends to list ELNs of a non-U.S. company issuer and the issue has a term of more than three years.¹³ The Exchange believes that this rule change will provide issuers with more flexibility in developing ELNs and thus provide greater investment choices in the market. The Commission believes that this added flexibility will encourage innovation without having an adverse effect on investor protection.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the Amex is proposing the same rule change recently approved by the Commission for the NYSE.¹⁴ The NYSE submitted a proposed rule change that provided for a one-year minimum term for all equity-linked debt securities. Prior to the NYSE's proposed rule change, the NYSE required that equity-linked debt securities have a term of two to seven years (three year maximum for non-U.S. securities). Because Amex's proposal is consistent with the proposal recently approved by the Commission for the NYSE and because the Commission did not receive any comments on the NYSE's proposal, the Commission finds that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.¹⁵

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-Amex-99-33), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-29600 Filed 11-10-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42108; File No. SR-NASD-99-40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Revising Its Fees for Additional Shares

November 4, 1999.

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 August 20, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned 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 the NASD. 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 NASD proposes to revise the fees it charges Nasdaq National Market and Nasdaq SmallCap Market issuers for listing Additional Shares. Set forth below is the text affected by the proposed rule change. Proposed new language is in italic; proposed deletions are in brackets.

* * * * *

4510. The Nasdaq National Market

(a) Entry Fee

No change

(b) Additional Shares

(1) The issuer of each class of security [other than the American Depositary Receipts,] *that is a domestic issue* which is listed in the Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security [set forth in subparagraph (3) below].

(2) The fee in connection with additional shares shall be \$2,000 or [\$.02] *\$.01* per additional share, whichever is higher, up to a maximum of \$17,500 per [issuance] *notification and an annual maximum of \$35,000 per issuer.*

(3) [The fee in connection with additional shares is applicable to the following issuances of securities:

(A) Acquisitions, mergers or consolidations;

(B) Public offerings;

(C) Rights and subscription offerings;

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

¹² In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ See Amendment No. 2, *supra* note 4.

¹⁴ See Securities Exchange Act Release No. 41992 (October 7, 1999), 64 FR 56007 (October 15, 1999).

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

(D) Exchange offers; and

(E) Private placements.

(4) Payment of the fee to The Nasdaq Stock Market, Inc. shall be included with]

Calculation of the fee will be based on the issuer notification to Nasdaq of the issuance of additional shares of securities as required under provisions of Rule 4310(c)(17) [and Rule 4320(e)(15)].

(c)-(d) No change

4520. The Nasdaq SmallCap Market

(a) Entry Fee

No change

(b) Additional Shares

(1) The issuer of each class of security [other than American Depositary Receipts] that is a domestic issue which is listed in The Nasdaq SmallCap Market shall pay to The Nasdaq Stock Market, Inc. the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security [set forth in subparagraph (3) below].

(2) The fee in connection with additional shares shall be [\$1,000] \$2,000 or \$0.01 per additional share, whichever is higher, up to a maximum of [\$7,500] \$17,500 per [issuance] notification and an annual maximum of \$35,000 per issuer.

(3) [The fee in connection with additional shares is applicable to the following issuances of securities:

(A) Acquisitions, mergers or consolidations;

(B) Public offerings;

(C) Rights and subscription offerings;

(D) Exchange offers; and

(E) Private placements.

(4) Payment of the fee to The Nasdaq Stock Market, Inc. shall be included with]

Calculation of the fee will be based on issuer notification to the Association of the issuance of additional shares of securities as required under provisions of Rule 4310(c)(17) [and Rule 4320(e)(16)].

(c)-(d) No change

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 NASD 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 NASD 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 NASD proposes to revise the current fee schedule for "Additional Shares." Under the revised fee schedule,

issuers would pay a flat fee of \$0.01 per share for all issuances of Additional Share, subject to a cap of \$17,500 per notification and \$35,000 per year. Currently, Nasdaq National Market issuers pay a fee of \$0.02 per share for all issuances, subject to a cap of \$17,500 per issuance, and Nasdaq SmallCap Market issuers pay a fee of \$0.01 per share for all issuances, subject to a cap of \$7,500 per issuance. The current fees are charged only for the issuance of shares in certain transactions and are not subject to annual maximum caps. Under the proposal, the minimum fee per notification will be \$2,000; Nasdaq SmallCap Market Issuers are currently subject to a minimum fee of \$1,000 per issuance and Nasdaq National Market issuers to a minimum fee of \$2,000 per issuance.

The NASD believes that this revision of the fee schedule will better spread the costs of issuer-related initiatives across the base of issuers benefiting from such initiatives. Specifically, the revised fee structure recognizes that Nasdaq does not distinguish between National Market issuers and SmallCap Market issuers in providing educational initiatives, issuer service initiatives, or surveillance measures. Accordingly, the per-share fee for National market issuers has been reduced to that of SmallCap Market issuers and the minimum and maximum fees payable by Small Cap Market issuers have been increased to the levels paid by National Market issuers. Furthermore, the revised fee structure eliminate the old fee structure's artificial distinction between transactions eligible to be assessed fees. This distinction caused confusion for issuers and created difficulty for the NASD in its administration of the program for listing Additional Shares.

The proposed fee structure also will allow issuers to file notifications of several issuances with the NASD on a single form and aggregate the fees assessed on those issuances toward the \$17,500 maximum fee per notification.³ Previously, issuers were required to file a separate notification with respect to every transaction that qualified as a fee-assessable listing of Additional Shares and each such transaction was subject to the maximum fee per issuance. Finally, the \$35,000 annual cap limits the maximum fee an issuer would be subject to and ensures that no individual issuer would pay, as a result of frequent stock splits or capital raising transactions, a disproportionate share of the costs of initiatives provided by the

Nasdaq to all National Market and SmallCap Market issuers.

2. Statutory Basis

The Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5) and (6)⁴ of the Act. The proposed rule change is consistent with Section 15A(b)(5) as it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers using the Nasdaq system. Fees for listing Additional Shares were first put in place at the Nasdaq in 1993.⁵ At the time, the NASD indicated that the fees would be used to fund issuer-related operations, including educational initiatives, issuer service initiatives, and NASD surveillance measures to enhance the quality of the Nasdaq Stock Market.⁶ Since 1993, expenditures for these initiatives have increased substantially, but funding recouped through the assessment of fees for listing Additional Shares has not increased proportionately. The proposed rule change is consistent with Section 15A(b)(6) as it is designed to promote just and equitable principles of trade and does not permit unfair discrimination between customers, issuers, brokers, or dealers. As noted above, the fee revision reflects the increased costs incurred by Nasdaq with respect to issuer-related initiatives.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The 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

⁴ 15 U.S.C. 78o-3(b) (5) and (6).

⁵ See Securities Exchange Act Release No. 31586 (December 11, 1992), 57 FR 60247 (December 18, 1992).

⁶ *Id.*

³ Each issuance must still be filed no later than 15 days prior to issuance of the underlying shares, as required by NASD Rule 4310(c)(17).

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. 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 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 the file number in the caption above and should be submitted by December 3, 1999.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-29601 Filed 11-10-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42095; File No. SR-NASD-99-59]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Transaction Credits

November 3, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on October 13, 1999, the National Association of

Securities, Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one constituting the establishment or change of a due, fee or other charge imposed by the Association under Section 19(b)(3)(A)(ii)³ of the Act which renders the rule effective upon the Commission's receipt of this filing. 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 is filing a proposed rule change to amend Rule 7010 of the NASD. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7010 System Services

(a)-(b) No Change.

(c).

(1) Consolidated Quotation Service, Existing Paragraph remains the same.

(2) Listed Securities Transaction Credit. For a pilot period, qualified NASD members that trade securities listed on the NYSE and Amex in over-the-counter transactions reported by the NASD to the Consolidated Tape Association may receive from the NASD transaction credits based on the number of trades so reported. [To qualify for the credit with respect to either Tape A reports or Tape B reports, An NASD member must have accounted for 500 or more average daily Tape A or Tape B reports of over-the-counter transactions (but not in combination) as reported to the Consolidated Tape by the NASD over the period of July 1, 1998 to December 31, 1998, and must continue to average either 500 or more daily Tape A or 500 or more daily Tape B reports (but not in the combination) of over-the-counter transactions reported to the Consolidated Tape by the NASD during the term of the pilot.] *To qualify for the credit with respect to Tape A reports, an NASD member must account for 500 or more average daily Tape A reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. To qualify for the credit with respect to*

Tape B reports, an NASD must account for 500 or more average daily Tape B reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. If an NASD member is so qualified to earn credits based either on its Tape A activity, or its Tape B activity, or both, that member may earn credits from one or both pools maintained by the NASD, each pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. A qualified NASD member may earn credits from such pools according to the member's pro rata share of the NASD's over-the-counter trade reports in each of Tape A and Tape B for each calendar quarter starting with [October 1, 1998, and ending with the calendar quarter starting on April 1, 1999.] *July 1, 1999, and ending with the calendar quarter starting on October 1, 1999.*⁴

* * * * *

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

Nasdaq is proposing to extend, for an additional six months (from July 1, 1999 through December 31, 1999), its pilot program to provide a transaction credit⁵ to NASD members who exceed certain levels of trading activity in exchange-listed securities. The NASD established its transaction credit pilot to assist in finding ways to lower investor costs associated with trading listed securities, and to respond to steps taken by other

⁴ Pursuant to a telephone conversation between Thomas P. Moran, Assistant General Counsel, Office of General Counsel, The Nasdaq Stock Market, Inc. and Jennifer L. Colihan, Staff Attorney, Division of Market Regulation, SEC on November 4, 1999, NASD Rule 7010(c)(2) as written in the original filing was deleted. NASD Rule 7010(c)(3) as identified in the original filing was renumbered as NASD Rule 7010(c)(2).

⁵ The transaction credit can be applied to any and all charges imposed by NASD or its non-SRO affiliates. Any remaining balance may be paid directly to the member.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 USC 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 USC 78S(B)(3)(A)(ii).