

Since the date of the Merger Order, FirstEnergy's investments in EWGs and FUCOs have contributed positively to its level of earnings, other than for the negative impact on earnings due to FirstEnergy's writedowns of its investments in Avon Energy Partners Holdings and GPU Empresa Distribuidora Electrica Regional S.A. Finally, since the date of the Merger Order, and, after taking into account the effects of FirstEnergy's acquisition of GPU, there has been no material change in FirstEnergy's level of earnings from EWG's and FUCOs. On February 2, 2004 FirstEnergy announced that it had completed the sale of all of its remaining operating FUCO assets.

#### IV. Conclusion

FirstEnergy states that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions. FirstEnergy estimates that the total amount of all fees, commissions and expenses to be incurred in connection with the proposed transactions will not exceed \$35,000. FirstEnergy has engaged the services of Innisfree M&A Incorporated to assist in the Solicitation and has agreed to pay Innisfree M&A Incorporated a fee for its services which is not expected to exceed \$12,500, plus reimbursement of expenses. Solicitation will also be made in person or by telephone, mail or other electronic means, and may be made by officers and employees of FirstEnergy.

*It is ordered*, under rule 62 of the Act, that the Declaration regarding the proposed solicitation of proxies from the holders of outstanding shares of FirstEnergy common stock become

effective immediately, subject to the terms and conditions of rule 24 under the Act.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-49486; File No. SR-NASD-2004-036]**

#### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify NASD Rule 7010(p)(3) To Revise and Update the Fee Schedule for OTC Bulletin Board Historical Trading Activity Reports

March 26, 2004.

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 March 1, 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 and II 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 revise and update the fee schedule for OTC Bulletin Board ("OTCBB") historical trading activity reports. Nasdaq has stated that it would implement the revised and updated fee schedule on March 15, 2004, if the Commission approves the proposed rule change by that date, or as soon as practicable following Commission approval of the proposed rule change, if such approval occurs after March 15, 2004.

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

#### 7010. System Services

(a)-(o) (No change).

(p) Historical Research and Administrative Reports

(1) (No change).

(2) (No change).

(3) The charge to be paid by the purchaser of an Historical Research Report regarding OTC Bulletin Board security or other OTC security through the OTCBB.com website shall be [as follows] *determined in accordance with the following schedule:*

[(A) Daily Detailed Reports—\$7 per day, per security and/or market participant for reports containing 15 fields or less. \$15 per day, per security and/or market participant for reports exceeding 15 fields.]

[(B) Summary Level Activity Reports—\$25 per report.]

	Number of fields of information in the report		
	1-10	11-15	16 or more
<b>A. Issues Summary Statistics.</b>			
For a security for a day .....	\$10	\$15	\$20
For a security for a month, quarter, or year .....	20	30	40
For all issues for a day .....	50	75	100
For all issues for a month, quarter, or year .....	100	150	200
<b>B. Intra-Day Quote and Intra-Day Time and Sales Data.</b>			
For a security and/or a market participant for a day .....	15	25	35
For all market participants for a day or for all securities for a day (For purposes of this report, market participants are those entities qualified to participate in the OTCBB service pursuant to NASD Rule 6540(a) and (b)). .....	30	40	50
<b>C. Nasdaq may, in its discretion, choose to make a report that purchasers wish to obtain every trading day available on a subscription discount basis. In such cases, the price for a subscription to receive a report every trading day in a month shall be the applicable rate to receive the report for a day times 20; the price for a subscription to receive the report for every trading day in a quarter shall be the applicable rate to receive the report every day times 60; and the price for a subscription to receive a report every trading day in a year shall be the applicable rate to receive the report for a day times 240.</b>			
<b>D. ALL OTCBB Issuers Directory .....</b>		250	

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

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

#### 1. Purpose

The proposed rule change seeks to revise and update the fee schedule for the OTCBB historical trading activity reports to bring the fees and types of reports in line with those charged for similar reports available for Nasdaq listed securities on NasdaqTrader.com. The proposed revised fee schedule seeks to ensure that the costs of providing such reports are allocated equitably among the users of such reports. Nasdaq believes that the proposed fee schedule is reasonable and that the per-field pricing structure for OTCBB.com reports is similar to the per-field pricing structure for NasdaqTrader.com reports.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>3</sup> in general, and with section 15A(b)(5) of the Act,<sup>4</sup> in particular, in that the revised proposed fee schedule would provide for the equitable allocation of reasonable charges among the persons ordering historical trading activity reports from NasdaqTrader.com and OTCBB.com.

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

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is 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 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 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-2004-036. The 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 Nasdaq. All submissions should refer to the File No. SR-NASD-2004-036 and should be submitted by April 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49476; File No. SR-NYSE-2004-09]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the New York Stock Exchange, Inc. to Amend NYSE Rule 123C Relating to Market-on-Close Policy and Expiration Procedures

March 25, 2004.

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 February 19, 2004, the New York Stock Exchange, Inc. ("NYSE" 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 amend NYSE Rule 123C to change the procedures for entry and publication of imbalances in market-on-close and limit-on-close orders. The text of the proposed rule change is available at the NYSE 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 NYSE 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 NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

<sup>4</sup> 15 U.S.C. 78o-3(b)(5).