

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51005; File No. SR-NASD-2004-142]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Establish Fees for Companies With a Dual Listing on the New York Stock Exchange and Nasdaq

January 10, 2005.

On September 28, 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"), 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 adopt a fee schedule for issuers that are dually listed on the New York Stock Exchange ("NYSE") and Nasdaq. The proposed rule change was published for comment in the **Federal Register** on December 3, 2004.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The filing establishes a fee schedule for NYSE issuers that chose to dually list on Nasdaq during Nasdaq's initial pilot, January 12, 2004, to December 31, 2004. The annual listing fee for dually listed issuers will be \$15,000. It will apply to NYSE issuers that are currently dually listed, as well as issuers who choose to do so in the future. Nasdaq will use the fee to support the cost of issuer services, including regulatory oversight and to fund future product and service investments.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered securities association<sup>4</sup> and, in particular the requirements of Section 15A of the Act.<sup>5</sup> The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(5)<sup>6</sup> and 15A(b)(6)<sup>7</sup> of the Act, in that Nasdaq's dual listing program with the lower listing fee has the potential to bring new issuers that

would not otherwise dually list, to the Nasdaq market. Without this program, it is unlikely that an issuer would choose to dually list its securities. Nasdaq believes that issuers that dually list may eventually determine to transfer their listings to Nasdaq.<sup>8</sup> The Commission believes that competition among listing markets has the potential to benefit the public, issuers, and the listing markets.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NASD-2004-142) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51004; File No. SR-NASD-2004-140]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Eliminate Entry and Application Fees for Exchange-Listed Issuers Transferring Listings to Nasdaq

January 10, 2005.

On September 20, 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"), 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 eliminate the entry and application fees imposed upon issuers listed on a national securities exchange that transfer their listings to Nasdaq. The proposed rule change was published for comment in the **Federal Register** on December 3, 2004.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

Pursuant to this proposed rule change, Nasdaq will eliminate entry and application fees for exchange issuers that transfer their listing to Nasdaq on

or after September 17, 2004. For issuers that have paid these fees, Nasdaq will refund the money. These issuers will be subject to the same level of annual fees and listing of additional shares fees as other Nasdaq issuers. Nasdaq states that it does not anticipate that a large number of issuers will change their listing market,<sup>4</sup> thus Nasdaq expects that the proposed rule change will not have a material financial impact on Nasdaq. Nasdaq states that the proposed rule change will not affect Nasdaq's commitment of resources to its regulatory oversight of the listing process or its regulatory programs. More specifically, Nasdaq represents that companies that switch their listing will be reviewed for compliance with Nasdaq listing standards in the same manner as any other company that applies to be listed on Nasdaq. Nasdaq will conduct a full and independent review of each issuer's compliance with Nasdaq's listing standards.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered securities association<sup>5</sup> and, in particular the requirements of Section 15A of the Act.<sup>6</sup> The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(5)<sup>7</sup> and 15A(b)(6)<sup>8</sup> of the Act, because while Nasdaq is eliminating certain fees for this group of issuers based on Nasdaq's belief that review of their applications will not require the same amount of resources as is required to review applications of other issuers, Nasdaq will continue to review for and enforce compliance with its listing requirements by these issuers. The Commission believes that Nasdaq's program may ultimately benefit issuers and investors because competition among listing markets has the potential to enhance the quality of services that listing markets provide.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NASD-2004-140) be, and it hereby is, approved.

<sup>4</sup> Nasdaq stated that, as of November 12, 2004, seven issuers had become dually listed on Nasdaq. Nasdaq's goal is for these issuers to eventually transfer their listings to Nasdaq. *See also* Securities Exchange Act Release No. 51005, January 10, 2005, re fees for dually listed issuers.

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78o-3.

<sup>7</sup> 15 U.S.C. 78o-3(b)(5).

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>3</sup> *See* Securities Exchange Act Release No. 50741 (November 29, 2004), 69 FR 70296.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<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. 78o-3(b)(6).

<sup>8</sup> *See also* Securities Exchange Act Release No. 51004, January 10, 2005, re fees for exchange listed issuers that transfer to Nasdaq.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 17 CFR 240.19b-4.

<sup>13</sup> *See* Securities Exchange Act Release No. 50740 (November 29, 2004), 69 FR 70299.