

## 2. Statutory Basis

The proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate by virtue of any authority matters not related to the administration of the Exchange.

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

The Exchange believes that the proposed rule change, as amended, will impose no 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

The Exchange has neither solicited nor received comments on this proposal, as amended.

## 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 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-112 on the subject line.

### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2005-112. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal offices of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2005-112 and should be submitted on or before May 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Nancy M. Morris,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53606; File No. SR-NASD-2006-028]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Allow Nasdaq To Take Certain Actions on Behalf of Its Issuers in Connection With Nasdaq's Transition to a National Securities Exchange

April 6, 2006.

On February 23, 2006, 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 NASD Rule 4130 to allow Nasdaq and its subsidiary, The Nasdaq Stock Market LLC ("Nasdaq Exchange"), to file an application with the Commission or another appropriate regulator on behalf of its issuers to register their listed securities under Section 12(b) of the Act,<sup>3</sup> or seek a temporary exemption from Section 12 of the Act, in connection with Nasdaq Exchange's operation as a national securities exchange. The Commission published the proposed rule change for comment in the **Federal Register** on March 2, 2006.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

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 national securities association.<sup>5</sup> The Commission believes the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>6</sup> which requires, among other things, that the rules of a national securities association be designed to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission

<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. 781(b).

<sup>4</sup> Securities Exchange Act Release No. 53362 (February 24, 2006), 71 FR 10734.

<sup>5</sup> In approving this rule proposal, the Commission notes that it 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(b)(6).

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

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

<sup>6</sup> 17 CFR 200.30-3(a)(12).

approved the Nasdaq Exchange's registration as a national securities exchange on January 13, 2006.<sup>7</sup> As noted in the Nasdaq Exchange Order, once the Nasdaq Exchange begins operations as a national securities exchange, a security will be considered for listing on the Nasdaq Exchange only if it is registered pursuant to Section 12(b) of the Act or is subject to an exemption. Further, in the Nasdaq Exchange Order, the Commission noted that Nasdaq had notified Commission staff that it intended to request appropriate regulatory relief to facilitate the efficient registration of its issuers' securities under Section 12(b) of the Act. Nasdaq also represented that it would seek an exemption for certain issuers that are currently not required to be registered under Section 12(g) of the Act.<sup>8</sup> The Commission noted in the Nasdaq Exchange Order that it expected Nasdaq to provide notice to the public and its issuers of any request and provide issuers with an opportunity to opt-out of the process. Nasdaq filed this proposed rule change to give it the authority to act on behalf of its issuers and to provide notice of its plans.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NASD-2006-028) be, and hereby is, approved.

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

**Nancy M. Morris,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53602; File No. SR-NYSE-2005-40]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Amendments to the Exchange's Allocation Policy and Procedures (NYSE Rules 103A, 103B, 123E and 476A)

April 5, 2006.

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 June 6, 2005, 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 NYSE. NYSE filed Amendment No. 1 to the proposed rule change on October 28, 2005.<sup>3</sup> NYSE filed Amendment No. 2 to the proposed rule change on February 9, 2006.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend NYSE Rules 103A, 103B, 123E and 476A with respect to the manner in which securities are allocated to specialist organizations.

The text of the proposed rule change is available on the Exchange's Web site

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

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

<sup>3</sup> In Amendment No. 1, the Exchange clarified certain aspects of the purpose section and rule text of the proposed rule change. Amendment No. 1 clarified that certain of the proposed amendments to NYSE Rules 103A, 103B and 123E are organizational changes that are intended to provide clarity with respect to the operation of the allocation policy and procedures. Amendment No. 1 also further explained the Exchange's decision to move from a subjective standard in the allocation process to an objective standard. Amendment No. 1 supersedes the original filing in its entirety.

<sup>4</sup> In Amendment No. 2, the Exchange further clarified certain aspects of the purpose section and rule text of the proposed rule change. Amendment No. 2 clarified that the proposed amendments to NYSE Rule 103B includes a requirement that specialist firms describe in their blanket allocation applications any contacts they, or any individual acting on their behalf, have had with any employee of the listing company, or any individual acting on behalf of that company, with regard to its prospective listing on the Exchange. In addition, Amendment No. 2 further explained the data that will be provided to the Allocation Committee ("Committee"). Amendment No. 2 supersedes Amendment No. 1 in its entirety.

<sup>7</sup> See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (Findings, Opinion, and Order of the Commission approving the application of the Nasdaq Stock Market LLC for registration as a national securities exchange) ("Nasdaq Exchange Order"). The Nasdaq Exchange may not operate as a national securities exchange until certain conditions have been satisfied. See *id.*

<sup>8</sup> 15 U.S.C. 78I(g).

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

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

(<http://www.nyse.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room. The text of the proposed rule change is also available on the Commission's Web site (<http://www.sec.gov/rules/sro.shtml>).

#### 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, as amended, and discussed any comments it received on the proposed rule change, as amended. 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

The Exchange proposes to amend NYSE Rules 103A, 103B, 123E and 476A with respect to the manner in which securities are allocated to specialist organizations on the Exchange.

The Exchange proposes to amend its allocation policy and procedures by placing greater emphasis on performance measures that objectively assess specialist market-making in order to provide more meaningful information for the Committee's consideration. The Exchange represents that this would be accomplished by eliminating the Specialist Performance Evaluation Questionnaire ("SPEQ"), a subjective tool that has become less meaningful as a result of the sharp reduction in the number of specialist firms, and replacing it with a series of objective measures that compare specialist performance against defined standards based on actual trading data. Unlike the SPEQ, which provided tier rankings for firms only, the objective performance measures will permit comparisons by stock, panel, and post, as well as by firm, and thus, will more clearly distinguish between strong and weak performance. In addition, the objective performance measures will evaluate individual specialist performance as well as performance of the entire firm. The SPEQ is limited to an evaluation of firm-wide performance. The use of these measures will also enable specialist