

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

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder<sup>13</sup> because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

Nasdaq provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change. Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the filing promotes market participants' understanding of Nasdaq's application of Nasdaq Rule 11890, thereby promoting greater certainty with regard to the administration of the rule. For these reasons, the Commission designates the proposal to be effective upon filing with the Commission.<sup>14</sup>

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.<sup>15</sup>

### 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.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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-NASDAQ-2006-046 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-NASDAQ-2006-046. 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 office of the Nasdaq. 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-NASDAQ-2006-046 and should be submitted on or before December 29, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54857; File No. SR-NASD-2006-101]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Provide for the Payment of a \$200 Honorarium Per Case for Each Arbitrator Who Considers Contested Motions for the Issuance of Subpoenas

December 1, 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 August 23, 2006, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. On November 13, 2006, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</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

NASD is proposing to provide for the payment of a \$200 honorarium per case for each arbitrator who considers contested motions for the issuance of subpoenas. Below is the text of the proposed rule change.<sup>4</sup> Proposed new language is in italics.

\* \* \* \* \*

#### IM-10104. Arbitrators' Honorarium

(a)-(e) No change

(f) *Payment for Deciding Contested Subpoena Requests Without a Hearing Session*

*(1) The honorarium for deciding one or more contested motions requesting the issuance of a subpoena without a hearing session shall be \$200. The*

<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, NASD clarified provisions to the proposed rule change.

<sup>4</sup> If the Commission approves the pending revisions to the NASD Code of Arbitration Procedure for Customer Disputes, the rules proposed in this filing will be renumbered as appropriate; see Securities Exchange Act Release No. 51856 (June 15, 2005) (SR-NASD-2003-158), 70 FR 36442 (June 23, 2005); and the NASD Code of Arbitration Procedure for Industry Disputes; see Securities Exchange Act Release No. 51857 (June 15, 2005) (SR-NASD-2004-011), 70 FR 36430 (June 23, 2005).

*honorarium shall be paid on a per case basis to each arbitrator who decides the contested motion(s). The parties shall not be assessed more than \$600 in fees under this paragraph in any arbitration proceeding. The honorarium shall not be paid for cases administered under Rules 10203 or 10302.*

*(2) For purposes of paragraph (f)(1), a contested motion requesting the issuance of a subpoena shall include a motion requesting the issuance of a subpoena, the draft subpoena, a written objection from the party opposing the issuance of the subpoena, and any other documents supporting a party's position.*

*(3) The panel will allocate the cost of the honorarium under paragraph (f)(1) to the parties pursuant to Rules 10205(c) and 10332(c).*

\* \* \* \* \*

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

In its filing with the Commission, 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. 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 purpose of the proposed rule change is to provide for the payment of a \$200 honorarium per case for each arbitrator who considers contested motions for the issuance of subpoenas. Last year, NASD amended IM-10104 of the NASD Code of Arbitration Procedure ("Code"), to provide arbitrators with an honorarium of \$200 to decide discovery-related motions without a hearing session.<sup>5</sup> The revised rule, however, does not address whether a contested motion concerning a subpoena constitutes a discovery-related motion. As a result, NASD has received questions regarding the appropriate payment, if any, for arbitrators who decide subpoena issues. These questions have focused on whether, under the rule, arbitrators should be

paid to decide contested motions requesting the issuance of a subpoena.

The issue of whether arbitrators should receive an honorarium for deciding contested subpoena motions will become even more significant if the Commission approves amendments to Rule 10322 as proposed by NASD.<sup>6</sup> The proposed changes to Rule 10322 would permit only arbitrators to issue subpoenas in arbitration disputes.<sup>7</sup> If the proposed changes to Rule 10322 are approved by the Commission, attorneys would no longer have the authority to issue subpoenas. NASD anticipates that this would result in a significant increase in the number of subpoena requests considered by arbitrators.

NASD recognizes that arbitrators may spend a considerable amount of time and effort deciding contested subpoena motions and believes that arbitrators should be compensated for this work. Therefore, NASD proposes to provide a \$200 honorarium to each arbitrator who decides contested motions for subpoenas.<sup>8</sup> NASD anticipates that if its proposed changes to Rule 10322 are approved, under most circumstances, the chairperson will be the only arbitrator considering subpoena requests based on the documents supplied by the parties. If the entire panel decides a contested motion, each arbitrator who participates in the subpoena ruling will receive an honorarium of \$200. The \$200 honorarium paid to an arbitrator would provide payment for all contested subpoena motions in a case (*i.e.*, the honorarium would be paid on a per case basis, regardless of the number of contested subpoena motions considered by an arbitrator or panel during the case).<sup>9</sup> Furthermore, the maximum amount that would be paid by the parties, collectively, for any one case would be \$600, irrespective of any

<sup>6</sup> See Securities Exchange Act Release No. 54134 (July 12, 2006) (File No. SR-NASD-2005-079), 71 FR 40762 (July 18, 2006).

<sup>7</sup> Currently, Rule 10322 allows arbitrators and any counsel of record to the proceedings to issue subpoenas as provided by law.

<sup>8</sup> For purposes of this rule, a contested motion is defined as a motion to issue a subpoena, the draft subpoena, a written objection from the party opposing the issuance of the subpoena, and any other documents supporting a party's position. Arbitrators will not be entitled to receive the honorarium if a motion for a subpoena is uncontested.

<sup>9</sup> This differs from other discovery-related motions, for which an arbitrator receives an honorarium for each motion considered. See IM-10104(e). If the panel has received the honorarium for considering a contested subpoena request and subsequently receives a number of new contested subpoena requests, however, the chairperson may call a prehearing conference to hear and decide these matters, for which the participating arbitrator(s) would receive the normal prehearing honorarium. See IM-10104(a) and (b).

changes to the composition of the panel.<sup>10</sup> NASD believes that structuring the honorarium in this manner will limit the arbitration costs for parties while at the same time compensating arbitrators for the time that they spend considering contested subpoena requests.

#### **2. Statutory Basis**

NASD believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5)<sup>11</sup> and 15A(b)(6)<sup>12</sup> of the Act, which require, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls, and that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is consistent with the provisions of the Act noted above because the panel will allocate the honorarium for deciding a discovery-related motion equitably among the parties. Moreover, NASD believes the proposed rule change will encourage arbitrators to decide contested subpoena requests without scheduling a prehearing conference, thereby expediting the arbitration process for parties.

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

NASD 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.

### *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.

<sup>10</sup> In situations where more than three different arbitrators consider contested subpoena requests, NASD will pay the additional honorarium. For example, if all three members of a panel have decided a contested subpoena request and the chairperson is thereafter replaced by another arbitrator, NASD would pay the \$200 honorarium to the replacement chairperson for deciding any later contested subpoena requests, because the parties already would have incurred \$600 in costs relating to the requests. Likewise, if there have been three different chairpersons in the same proceeding, each of whom has considered a contested subpoena request, NASD would pay the \$200 honorarium should a fourth chairperson consider a contested subpoena request. NASD does not anticipate that either of these situations will occur frequently.

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

<sup>5</sup> See Securities Exchange Act Release No. 51931 (June 28, 2005) (File No. SR-NASD-2005-052), 70 FR 38989 (July 6, 2005).

### 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-NASD-2006-101 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-NASD-2006-101. 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 office of NASD.

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-NASD-2006-101 and should be submitted on or before December 29, 2006.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54856; File No. SR-NYSE-2006-106]

#### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fees Charged to Member Organizations for Transactions in Equity Securities**

December 1, 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 November 30, 2006, the New York Stock Exchange LLC ("Exchange" or "NYSE") 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. NYSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by NYSE under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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 revise the fees it charges to its member organizations for transactions in equity securities by eliminating the \$750,000

monthly fee cap and establishing a flat fee of \$0.000275 per share. The Exchange will also begin charging the standard Exchange Traded Fund ("ETF") fee of \$0.0030 per share on transactions in ETFs traded on an unlisted trading privilege basis. The Exchange also is eliminating the specialist trading privilege fee and the specialist allocation fee. In addition, simultaneously with the implementation of the revised trading fees, the Exchange intends, by means of a separate filing (the "Commission Elimination Filing"), to eliminate specialist commissions.<sup>5</sup> The proposed rule changes will take effect as of December 1, 2006.

#### **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.

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

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

###### **1. Purpose**

The Exchange proposes to revise the fees it charges to its member organizations for transactions in equity securities by eliminating the \$750,000 monthly fee cap and establishing a flat fee of \$0.000275 per share. The Exchange will also begin charging the standard ETF fee of \$0.0030 per share on transactions in ETFs traded on an unlisted trading privileges basis. In addition, simultaneously with the implementation of the revised trading fees, the Exchange proposes in the Commission Elimination Filing to eliminate specialist commissions. The proposed fee changes will take effect as of December 1, 2006. The Exchange has requested that the Commission make the

<sup>13</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. 78s(b)(3)(A)(ii).

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

<sup>5</sup> See Securities Exchange Act Release No. 54850 (November 30, 2006) (notice of filing and immediate effectiveness of SR-NYSE-2006-105).