

(ii) as to which 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-2003-145. 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, 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 NASD.

All submissions should refer to File No. NASD-2003-145 and should be submitted by January 5, 2004.

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

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 03-30841 Filed 12-12-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48889; File No. SR-NASD-2003-178]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Certain Listing Fees for Foreign Issuers and To Make a Technical Change to the Rule Pertaining to Recordkeeping Fees for Issuers Listed on The Nasdaq SmallCap Market

December 5, 2003.

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 December 3, 2003, 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, II, and III 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 has filed with the Commission a proposed rule change to modify certain listing fees for foreign issuers and to make a technical change to the rule pertaining to recordkeeping fees for issuers listed on The Nasdaq SmallCap Market.

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

\* \* \* \* \*

#### 4500. ISSUER LISTING FEES

##### 4510. The Nasdaq National Market

(a) Entry Fee.

(1) An [domestic] issuer[, or foreign issuer raising capital in conjunction with its Nasdaq listing,] that submits an application for inclusion of any class of its securities (not otherwise identified in this Rule 4500 series) in The Nasdaq National Market, shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, according to the following schedule. This fee will be assessed on the date of entry in The Nasdaq National Market, except for \$5,000, which represents a

non-refundable, application fee, and which must be submitted with the issuer's application.

Up to 30 million shares—\$100,000  
30+ to 50 million shares—\$125,000  
Over 50 million shares—\$150,000

[(2) A foreign issuer not raising capital in conjunction with its Nasdaq listing, including American Depositary Receipts (ADRs), that submits an application for inclusion of any class of its securities (not otherwise identified in this Rule 4500 series) in The Nasdaq National Market, shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, according to the following schedule. This fee will be assessed on the date of entry in The Nasdaq National Market, except for \$5,000, which represents a non-refundable, application fee, and which must be submitted with the issuer's application.

Up to 3 million shares—\$50,000  
3+ to 5 million shares—\$75,000  
5+ to 30 million shares—\$100,000  
30+ to 50 million shares—\$125,000  
Over 50 million shares—\$150,000]

Current (3)–(6) Renumbered as (2)–(5).  
(b)–(c) No change.

(d) Annual Fee—American Depositary Receipts (ADRs).

(1) The issuer of each class of securities that is an ADR listed in The Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on ADRs outstanding according to the following schedule not to exceed \$30,000 per issuer:

Up to 10 million ADRs—\$21,225  
[ \$10,000]  
10+ to 25 million ADRs—\$26,500  
[ \$15,000]  
25+ to 50 million ADRs—\$29,820  
[ \$20,000]  
[50+ to 75 million ADRs—\$22,500  
75+ to 100 million ADRs—\$25,000]  
Over 50 [100] million ADRs—\$30,000

(2)–(4) No change.

##### 4520. The Nasdaq SmallCap Market

(a)–(c) No change.

[(e)](d) Recordkeeping Fee.

An issuer that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of \$2,500 to The Nasdaq Stock Market, Inc.

\* \* \* \* \*

#### 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

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

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

<sup>13</sup> 17 CFR 200.30-3(a)(12).