

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

Nasdaq states that the purpose of the proposed rule change is to revise certain fees for foreign issuers listed on The Nasdaq National Market in order to eliminate or reduce the disparity in the amount of fees paid by issuers.³ Specifically, Nasdaq proposes to revise the entry fees for foreign issuers not raising capital in conjunction with their listing on Nasdaq and the annual fees applicable to American Depositary Receipts (ADRs), beginning on January 1, 2004. Nasdaq also proposes to make a technical change to the rule pertaining to recordkeeping fees for issuers listed on The Nasdaq SmallCap Market.

Nasdaq proposes to revise the entry fees for foreign National Market issuers not raising capital in conjunction with their listing. Nasdaq rules currently provide two separate entry fee schedules for foreign issuers. The fee schedule set forth in Rule 4510(a)(1) applies to foreign issuers that raise capital in conjunction with their listing on Nasdaq (as well as to all domestic issuers), and the fee schedule in Rule 4510(a)(2) applies to those issuers that do not raise capital in conjunction with listing on Nasdaq. These two fee schedules are the same except for foreign issuers that do not raise capital in conjunction with their listing and that list less than 5 million shares. These issuers pay a lower fee than they would if they were raising capital in conjunction with their listing, in recognition of the fact that these listings are non-capital raising and generally represent secondary market listings. Nasdaq proposes to eliminate the reduced fees for these issuers and to adopt a single entry fee schedule for all domestic and foreign issuers.

Nasdaq also proposes to revise the annual fee schedule for ADRs listed on the National Market. The current fee schedule for ADRs, which is set forth in Rule 4510(d), provides for lower fees

than those applicable to U.S. issuers and foreign issuers that list ordinary shares. In order to more closely align the fees paid by issuers that list ADRs with those paid by other issuers, Nasdaq proposes to raise the fees for ADRs while maintaining the current annual cap of \$30,000 per issuer. Under this proposal, issuers that list up to 50 million ADRs will pay the same annual fee as U.S. issuers and foreign issuers that list ordinary shares. Those issuers that list more than 50 million ADRs will pay the maximum annual fee of \$30,000.

Lastly, Nasdaq proposes to make a technical change to the rule pertaining to recordkeeping fees for issuers listed on The Nasdaq SmallCap Market. Specifically, Nasdaq proposes to renumber Rule 4520(e) as Rule 4520(d) in order to avoid any potential confusion regarding the fees for SmallCap issuers.⁴

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁵ in general, and with Section 15A(b)(5) of the Act,⁶ in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Specifically, the revised fee schedules will eliminate or reduce the disparity in the entry and annual fees paid by Nasdaq issuers.

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

Nasdaq 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, as amended.

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

Because non-member issuers affected by the proposed rule change should be afforded the notice and comment

periods under Section 19(b)(2) of the Act,⁷ the Commission does not find good cause to accelerate approval of this proposal, as Nasdaq requested to "minimize potential uncertainty or administrative difficulties." 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 Exchange 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 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 should be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2003-174. 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 hard copy 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 number SR-NASD-2003-178 and should be submitted by January 5, 2004.

³ The Commission notes that the net effect of Nasdaq's proposal is to raise entry fees for foreign issuers not raising capital and raise annual fees for issuers of ADRs.

⁴ The recordkeeping fee for SmallCap issuers was established pursuant to SR-NASD-2003-127. This fee, however, was erroneously numbered as Rule 4520(e) in the rule filing and should have been numbered as Rule 4520(d) in order to maintain continuity in Rule 4520.

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(5).

⁷ 15 U.S.C. 78s(2).