

## V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-NASD-2002-99), as amended by Amendment No. 1, be, and it hereby is, approved, and that Amendment No. 2 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47111; File No. SR-NASD-2002-183]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Amending Nasdaq's Rules Pertaining to Certain Issuer Entry Fees

December 31, 2002.

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 26, 2002, 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. On December 30, 2002, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On December 31, 2002 Nasdaq filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is

publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change, as amended, on an accelerated basis.

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

Nasdaq is proposing to amend its rules regarding non-refundable application fees, listing fees for rights, and SmallCap entry and annual listing fees. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

\* \* \* \* \*

4510. The Nasdaq National Market

(a) Entry Fee

(1) [When a] A 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, [it] shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, [which includes a one-time company listing fee of \$5,000 (\$1,000 of which is a non-refundable processing fee),] 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) [When a] 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, [it] shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, [which includes a one-time company listing fee of \$5,000 (\$1,000 of which is a non-refundable processing fee),] 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.

(3) No change

(4) *An issuer that submits an application for inclusion of any class of rights in The Nasdaq National Market, shall pay, at the time of its application, a non-refundable application fee of \$1,000 to The Nasdaq Stock Market, Inc.*

[(4)5] The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the entry fee prescribed herein.

[(5)6] If the application is withdrawn or is not approved, the entry fee (less the non-refundable *application* [processing] fee) shall be refunded.

(b)-(d) No change

4520. The Nasdaq SmallCap Market

(a) Entry Fee

(1) [When a] An issuer *that* submits an application for inclusion of any class of its securities (*not otherwise identified in this Rule 4500 series*) [, other than convertible debentures,] in The Nasdaq SmallCap Market, [it] shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, [which includes a one-time company listing fee of \$5,000 (\$1,000 of which is a non-refundable processing fee),] according to the following schedule[:]. *This fee will be assessed on the date of entry in The Nasdaq SmallCap Market, except for a non-refundable, application fee of \$5,000, which must be submitted with the issuer's application.*

Up to [1 million shares—\$9,500.

1+ to] 5 million shares—\$[19,000] 25,000.

5+ to 10 million shares—\$[30,875] 35,000.

10+ to 15 million shares—\$[40,375] 45,000.

Over 15 million shares—\$[47,500] 50,000.

(2) [When a] An issuer *that* submits an application for inclusion of any class of convertible debentures in The Nasdaq SmallCap Market, [it] shall pay to The Nasdaq Stock Market, Inc. a [one-time, company] *non-refundable application* [listing] fee of \$5,000 [(which shall include a \$1,000 non-refundable processing fee)] and a fee of \$1,000 or \$50 per million dollars face amount of debentures outstanding, whichever is higher.

(3) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the entry fee prescribed herein.

(4) Total shares outstanding means the aggregate of all classes of equity securities to be included in The Nasdaq SmallCap Market as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</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> See letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq requests that the Commission finds good cause to approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2).

<sup>4</sup> See letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated December 30, 2002 ("Amendment No. 2"). Amendment No. 2 makes technical changes to the proposed rule text.