

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49147; File No. SR-ISE-2003-32]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc. Relating to a Fee Reduction and Fee Cap

January 29, 2004.

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 20, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") 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 ISE. On January 2, 2004, the ISE 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

ISE is proposing, on a pilot basis from December 1, 2003 through May 31, 2004, a reduction in and a cap on execution fees, and a cap on comparison fees for options on the Nasdaq 100 Index Tracking Stock<sup>sm</sup> ("QQQ").

#### 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 ISE 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. ISE 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 ISE is proposing to amend its Schedule of Fees to impose, on a pilot basis through May 31, 2004, both a reduction in and a cap on execution fees, and a cap on comparison fees for QQQ options. Specifically, any member with monthly average daily trading volume ("ADV") of 8,000 contracts in QQQ options would receive a \$.10 discount from the standard execution fees (excluding surcharge fees) for contracts traded above that amount, up to ADV of 10,000 contracts. For contracts in QQQ options traded in excess of 10,000 ADV for a month, the Exchange will waive all execution fees (excluding surcharge fees) and comparison fees. Current ISE execution fees (excluding surcharge fees) range from \$.21 to \$.12 a contract, depending on the exchange's trading volume; the comparison fee is \$.03 a contract. The proposed fee changes are intended to increase the Exchange's competitiveness in trading the QQQ options.

##### 2. Basis

The ISE believes that the proposal is consistent with section 6(b) of the Act,<sup>4</sup> and in particular, with the requirements of section 6(b)(4) of the Act,<sup>5</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The ISE does not believe that the proposed rule change will impose any inappropriate burden on competition.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has neither solicited nor received written comments on the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to section

19(b)(3)(A)(ii) of the Act<sup>6</sup> and Rule 19b-4(f)(2)<sup>7</sup> thereunder, in that it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing. At any time within 60 days of the filing of Amendment No. 1 to 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>8</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, 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-ISE-2003-32. 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 ISE. All submissions should refer to file number SR-ISE-2003-32 and should be submitted by February 26, 2004.

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

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

<sup>3</sup> See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 2, 2004 ("Amendment No. 1"). Amendment No. 1 replaces the original proposal in its entirety.

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 19b-4(f)(2).

<sup>8</sup> For purposes of calculating the sixty-day abrogation period, the Commission considers the abrogation period to have begun on January 2, 2004, the date on which the Commission received Amendment No. 1.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Jill M. Peterson,

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49133; File No. SR-NASD-2003-198]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Waiver of Certain Listing Fees

January 28, 2004.

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 29, 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. Nasdaq filed this proposal pursuant to section 19(b)(3)(A) of the Exchange Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal 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

Nasdaq proposes to waive certain listing fees. Below is the text of the proposed rule change. Proposed new language is underlined.

\* \* \* \* \*

#### 4500 Issuer Listing Fees

##### IM-4500-1 Waiver of Fees Upon Application in Certain Merger Situations

*Rules 4510(c)(2), 4510(d)(3), and 4520(c)(3) provide Nasdaq with the discretion to waive all or part of the annual listing fees prescribed in this Rule 4500 series. Pursuant to that authority, Nasdaq has determined to*

*permit a Nasdaq issuer that completes a merger with another Nasdaq issuer during the first 90 days of a calendar year to apply for and receive a waiver for 75% of the annual fees assessed to the acquired Nasdaq issuer. Issuers must apply for the credit no later than June 30 of the year in which the merger occurred. Applications should be addressed to: Finance Department CCG Billing Operations, The Nasdaq Stock Market Inc., 9513 Key West Avenue, 4th Floor, Rockville, Maryland 20850.*

\* \* \* \* \*

#### 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 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

NASD Rules 4510(c)(2), 4510(d)(3), and 4520(c)(3) provide Nasdaq with the discretion to waive all or part of the annual listing fees prescribed in this NASD Rule 4500 series. Pursuant to that authority, Nasdaq has determined to permit a Nasdaq issuer that completes a merger with another Nasdaq issuer during the first 90 days of a calendar year to apply for and receive a waiver for 75% of the annual fees assessed to the acquired Nasdaq issuer. Issuers must apply for the credit no later than June 30 of the year in which the merger occurred. Nasdaq has determined to take this action because it believes that it is equitable to provide a partial credit for annual listing fees in order to avoid the assessment of two fees where a merger between two currently listed Nasdaq issuers has occurred within the first 90 days of a billing year.

###### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)<sup>5</sup> and 15A(b)(6)<sup>6</sup> of the Act. Section 15A(b)(5) of the Act<sup>7</sup> requires that the rules of the

NASD provide 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. Nasdaq believes that this proposal, which provides for a partial waiver of annual fees in certain merger situations, is an equitable allocation of fees.

##### 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.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act<sup>8</sup> and Rule 19b-4(f)(1) thereunder,<sup>9</sup> because it constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule, and therefore the proposed rule change is effective immediately upon filing.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act,<sup>10</sup> the Commission may summarily abrogate the 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.

#### 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](mailto:rule-comments@sec.gov).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</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).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

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

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

<sup>7</sup> 15 U.S.C. 78o-3(b)(5).