

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

No written comments were either solicited or received with respect to the proposed rule change.

### III. 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 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-CBOE-2004-06. 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 Exchange. All submissions should be submitted by March 1, 2004.

### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,<sup>7</sup> and, in particular, with the requirements of Section 6(b) of the Act<sup>8</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section

6(b)(4) of the Act,<sup>9</sup> which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the extension of the CBOE's Linkage fee pilot until July 31, 2004 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the CBOE and the Commission further consider the appropriateness of Linkage fees.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-CBOE-2004-06) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49169; File No. SR-NASD-2003-178]

### Self-Regulatory Organizations; Order Granting Approval 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 Record-Keeping Fees for Issuers Listed on the Nasdaq SmallCap Market

February 2, 2004.

On December 3, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to modify certain listing fees for foreign issuers and to make a technical change to the rule that pertains to record-keeping fees for issuers listed on The Nasdaq SmallCap Market.

The proposed rule change was published for comment in the **Federal Register** on December 15, 2003.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>4</sup> In particular, the Commission believes that the proposed rule change is consistent with section 15A(b)(5) of the Act,<sup>5</sup> 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 Commission believes that the revised fee schedules should reduce the current disparity in the entry and annual fees that are paid by Nasdaq issuers.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-NASD-2003-178) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>7</sup> In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> *Id.*

<sup>12</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 Securities Exchange Act Release No. 48889 (December 5, 2003), 68 FR 69736.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).