

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50860; File No. SR-NASD-2004-166]

Self Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Modifying the Other Securities Fee Schedule

December 15, 2004.

On October 29, 2004, 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"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change modifying the Other Securities fee schedule in NASD Rule 4530 by establishing a new, separate, non-refundable application fee for "other securities" and SEEDS and raising the applicable annual fee levels. The proposed rule change was published for comment in the **Federal Register** on November 10, 2004.³ The Commission received no comments on the proposal.

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 association⁴ and, in particular, the requirements of section 15A of the Act⁵ and the rules and regulations thereunder. The Division finds specifically that the proposed rule change is consistent with section 15A(b)(5) of the Act,⁶ which requires that the rules of an association 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 association operates or controls.

Specifically, the increase is intended to reflect the costs that Nasdaq has represented it incurs for the services provided to issuers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change (File NO. SR-NASD-2004-166) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50926; File No. SR-NASD-2004-110]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change, and Amendment Nos. 1, 2 and 3 Thereto, by National Association of Securities Dealers, Inc. Relating to Divestiture of Its Interest in the American Stock Exchange LLC

December 23, 2004.

I. Introduction

On July 16, 2004 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to reflect NASD's pending divestiture of its ownership interest in the American Stock Exchange LLC ("Amex") pursuant to a Transaction Agreement between Amex and NASD wherein the the Amex Membership Corporation will become the sole owner of Amex (the "Transaction").³ NASD amended the proposal on August 10, 2004,⁴ August

25, 2004,⁵ and September 3, 2004.⁶ The proposed rule change was published for comment in the **Federal Register** on September 23, 2004.⁷ A correction to the proposed rule change was published in the **Federal Register** on October 5, 2004.⁸ No comments were received on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The proposed rule change amends provisions of NASD's By-Laws to reflect NASD's pending divestiture of its ownership of Amex as a result of the Transaction; make parallel amendments to the definitional and conflict-of-interest provisions of the By-Laws of NASD Regulation, Inc. ("NASD Regulation") and NASD Dispute Resolution, Inc. ("Dispute Resolution"); terminate certain undertakings NASD assumed when it acquired Amex in 1998 (the "1998 Undertakings"); and make certain other clarifying amendments. A brief description of the proposed changes is set forth below.

NASD By-Law Article I (Definitions)

The proposed amendments eliminate references to Amex and/or Nasdaq from the definitions of "Industry Director" and "Industry Governor," "Non-Industry Director" and "Non-Industry Governor," and "Public Director" and "Public Governor." NASD proposes to replace references to Amex and/or Nasdaq in each of those definitions with the phrase "a market for which NASD provides regulation." Other references to Amex's "Floor Governor," "Amex," "Amex Board" and "Chief Executive Officer of Amex" also have been eliminated. NASD also proposes further clarifying amendments to the definition of "Non-Industry Director" and "Non-Industry Governor" to include an officer or employee of an issuer of unlisted securities that are traded in the over-the-counter market. NASD represents that this particular change reflects NASD's historical interpretation of the "Non-Industry Director" and "Non-Industry

⁵ See letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated August 25, 2004 ("Amendment No. 2"). Amendment No. 2 replaced NASD's earlier amended filing in its entirety.

⁶ See letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated September 2, 2004 ("Amendment No. 3"). Amendment No. 3 modified Exhibit 1 and made certain technical corrections to the proposal. Amendment No. 3 replaced NASD's earlier amended filing in its entirety.

⁷ See Securities Exchange Act Release No. 50403 (September 16, 2004), 69 FR 57119.

⁸ See Securities Exchange Act Release No. 50403A (September 29, 2004), 69 FR 59630.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50629 (November 3, 2004), 69 FR 65237.

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

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 50057 (July 22, 2004); 69 FR 45091, July 28, 2004 (SR-AMEX-2004-50) for a detailed description of the Transaction.

⁴ See letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 10, 2004 ("Amendment No. 1"). Amendment No. 1 replaced NASD's original filing in its entirety.