

of the Act¹¹ in particular, 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 Exchange does not believe that the proposed rule change will impose 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties with respect to this proposed rule change.

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

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act¹² and Rule 19b-4(f)(2)¹³ thereunder. Accordingly, the proposed rule change is effective upon filing with the Commission. At any time within 60 days of the filing of the amended 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.¹⁴

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-ISE-2005-06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2005-06. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2005-06 and should be submitted on or before July 20, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5-3384 Filed 6-28-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51905; File No. SR-NASD-2005-006]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto to Require Semi-Annual Financial Reporting by Foreign Private Issuers

June 22, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 18, 2005, 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" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq submitted Amendment No. 1 to its proposed rule change on February 4, 2005³ and submitted Amendment No. 2 to its proposed rule change on June 6, 2005⁴. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to require that foreign private issuers listed on Nasdaq provide semi-annual financial information. Nasdaq will implement the proposed rule change for interim periods ending after January 1, 2006.

The text of the proposed rule change is below. Proposed additions are italicized.⁵

4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issuers Except for Limited Partnerships

Nasdaq shall review the issuer's past corporate governance activities. This review may include activities taking place while the issuer is listed on Nasdaq or an exchange that imposes corporate governance requirements, as well as activities taking place after a formerly listed issuer is no longer listed on Nasdaq or an exchange that imposes corporate governance requirements. Based on such review, Nasdaq may take any appropriate action, including placing of restrictions on or additional requirements for listing, or the denial of listing of a security if Nasdaq determines that there have been violations or evasions of such corporate

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 modified the proposed rule language to require that interim financial information be published on a press release that would also be submitted on a Form 6-K. As originally proposed, the rule language required that interim financial information be submitted on a press release or on a Form 6-K.

⁴ Amendment No. 2 made technical corrections to the filing and replaced and superceded the original filing and Amendment No. 1 in its entirety.

⁵ The proposed rule change is marked to show changes to the rule text appearing in the electronic NASD Manual available at <http://www.nasdaq.com>. No pending rule filings would affect the text of this rule.

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 19b-4(f)(2).

¹⁴ See *supra* note 3.

¹⁵ 17 CFR 200.30-3(a)(12).

governance standards. Such determinations shall be made on a case-by-case basis as necessary to protect investors and the public interest.

(a) No change
(b) Distribution of Annual and Interim Reports

(1) No change
(2) No change
(3) No change

(4) *Each foreign private issuer shall publish, in a press release, which would also be submitted on a Form 6-K, an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English but does not have to be reconciled to U.S. GAAP, must be provided not later than six months following the end of the issuer's second quarter.*

(c)-(n) No change

4360. Qualitative Listing Requirements for Nasdaq Issuers That Are Limited Partnerships

(a) No change
(b) Distribution of Annual and Interim Reports

(1) No change
(2)(A)-(B) No change

(C) *Each foreign private issuer that is a limited partnership shall publish, in a press release, which would also be submitted on a Form 6-K, an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English but does not have to be reconciled to U.S. GAAP, must be provided not later than six months following the end of the issuer's second quarter. Such information shall be distributed to limited partners if required by statute or regulation in the jurisdiction in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.*

(c)-(i) No change

* * * * *

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

Pursuant to Nasdaq and SEC rules, domestic issuers are required to file quarterly financial reports. While non-U.S. issuers are not subject to this requirement and are only required to file financial reports annually,⁶ most non-U.S. issuers listed on Nasdaq do in fact provide more frequent disclosure to investors. Nasdaq believes that it would be beneficial to create a uniform standard, applicable to all Nasdaq-listed foreign private issuers, to assure that investors have access to more recent financial information. As such, Nasdaq proposes to require that non-U.S. issuers provide, in a press release that would also be submitted on a Form 6-K, an interim balance sheet and semi-annual income statement, not later than six months following the end of the issuer's second quarter. Under the proposed rule, the information provided would be required to be translated into English, but would not have to be reconciled to U.S. Generally Accepted Accounting Principles ("GAAP").

In order to allow sufficient time for non-U.S. issuers to modify any necessary practices regarding the preparation of interim financial reports, Nasdaq proposes that this new rule not be immediately effective. Instead, the proposed rule will be effective for interim periods ending after January 1, 2006.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁷ in general and with section 15A(b)(6) of the Act,⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. As noted above, Nasdaq believes that the proposed rule will provide enhanced disclosure to investors regarding foreign private issuers that trade on Nasdaq.

⁶ This information is required to be filed six months after the company's fiscal year-end. Accordingly, the only financial information presently available could be as much as 18-months old.

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(6).

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

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 self-regulatory organization 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2005-006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-006. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2005-006 and should be submitted on or before July 20, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51907; File No. SR-NYSE-2004-13]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and No. 3 Thereto To Adopt Rule 405A ("Non-Managed Fee-Based Account Programs—Disclosure and Monitoring")

June 22, 2005.

I. Introduction

On February 25, 2004, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "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 prescribe certain requirements for members and member organizations that offer programs that charge customers a fixed-fee or percentage of account value in lieu of commissions. On October 22, 2004, the NYSE filed Amendment No. 1 to the proposed rule change.³ Notice of the proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on November 1, 2004.⁴ The Commission received four comment letters in response to the proposed rule change.⁵ On June 21, 2005, the NYSE filed Amendment No. 2 and Amendment No. 3 to the proposed rule.⁶ This order approves the proposed rule change, as amended. The Commission is granting accelerated approval of Amendment No. 2 and Amendment No. 3, and is soliciting comments from interested persons on those amendments.

II. Background and Description of Proposed Rule Change

According to the NYSE, members and member organizations of the NYSE are increasingly offering Non-Managed Fee Based Account Programs ("NFBA Programs") to their customers. NFBA Programs are agreements between a broker-dealer and a customer in which the customer is charged a fixed fee and/or a percentage of account value rather than transaction-based commissions.⁷ Because of their fee structure, such arrangements may not be appropriate for customers who trade infrequently. To address the particular regulatory challenges presented by NFBA Programs, the NYSE proposed new Rule 405A.

⁵ See letters to Jonathan G. Katz, Secretary, Commission, from: Ira D. Hammerman, General Counsel, Securities Industry Association, dated November 22, 2004 ("SIA Letter"); Rosemary J. Shockman, President, Public Investors Arbitration Bar Association, dated November 19, 2004 ("PIABA Letter"); Barbara Black, Co-Director, Jill I. Gross, Co-Director, and Bob Kim, Student Intern, Pace Investor Rights Project, dated November 22, 2004 ("PIRP Letter"); and Curt Bradbury, Chief Operating Officer, Stephens Inc., dated November 22, 2004 ("Stevens Letter").

⁶ See Form 19b-4 dated June 21, 2005 ("Amendment No. 2") and Form 19b-4 dated June 21, 2005 ("Amendment No. 3"). As discussed below, in response to commenters, in Amendment No. 2, the NYSE proposed to eliminate a requirement that its members provide customers with an annual disclosure document and that its members attempt to determine "projected customer costs." Amendment No. 2 also proposed to make several minor changes to clarify the rule as originally proposed. Amendment No. 3 corrected a non-substantive typographical rule text error included in Exhibit 5 of the Amendment No. 2 filing.

⁷ See proposed NYSE Rule 405A(6).

A. General Disclosure Required

Proposed Rule 405A would require NYSE members to provide to each customer, prior to the opening of an NFBA Program account, a disclosure document describing the types of NFBA Programs available to the customer.⁸ For each type of Program, the document must include sufficient information to enable a customer to make a reasonably informed determination as to whether the Program is appropriate for him or her. This information should include, at minimum, a description of the services provided, eligible assets, fees charged, an explanation of how costs will be computed and/or the provision of cost estimates based on hypothetical portfolios, any conditions or restrictions imposed, and a summary of the Program's advantages and disadvantages.

B. Opening of Accounts

Proposed Rule 405A would require NYSE members to make a determination, prior to opening an account in an NFBA Program, that such Program is appropriate for each customer taking into account the services provided, anticipated costs, and customer objectives.⁹ In making such determination, cost would be an important factor, but not the only one, that a member should consider. NYSE members would be required to consider the overall needs and objectives of the customer when determining the appropriateness of an NFBA Program for that customer, including the anticipated level of trading activity in the account and non-price factors, such as the importance that a customer places on aligning his or her interests with those of the broker.

C. Monitoring of Accounts

Proposed Rule 405A would require NYSE members to establish and maintain systems and procedures to enable them to monitor, on an ongoing basis, transactional activity by customers in NFBA Programs.¹⁰ These systems and procedures would need to include specific written criteria for identifying customers whose level of account activity may be inappropriate in the context of the customer's Program. The determination of appropriateness would take into consideration not only costs incurred, but also Program services, customer investment objectives, and customer preferences.

⁸ See proposed NYSE Rule 405A(1).

⁹ See proposed NYSE Rule 405A(2).

¹⁰ See proposed NYSE Rule 405A(3).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mary Yeager, Assistant Corporate Secretary, NYSE, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 22, 2004.

⁴ See Securities Exchange Act Release No. 50586 (Oct. 25, 2004), 69 FR 63424 ("Notice").