

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 NASD Rule 4800 Series provides procedures for the independent review of determinations that prohibit or limit the listing of an issuer's securities on the Nasdaq. Securities of issuers that do not meet the quantitative or qualitative listing standards set forth in the Rule 4000 Series are subject to delisting from, or denial of initial inclusion on, the Nasdaq. Currently, pursuant to Rule 4840, the Nasdaq Office of General Counsel receives and acknowledges requests for review of Listing Qualifications Panel Decisions. Additionally, pursuant to Rules 4840 and 4850, the Nasdaq Office of General Counsel maintains the record on review for the Nasdaq Listing and Hearing Review Council and the NASD Board. This proposed rule change gives effect to a decision by the NASD to transfer these responsibilities to a new unit with Nasdaq's Listing Qualifications Department, the Office of Appeals and Review. Accordingly, the proposed rule change modifies NASD Rules 4840(b), 4840(d), and 4850(b) to indicate that requests for review should be addressed to, and will be acknowledged by, the Nasdaq Office of Appeals and Review, and that the record on review will be maintained by the Nasdaq Office of Appeals and Review.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. This proposal enhances Nasdaq's ability to provide for an independent review of determinations of the Association that prohibit or limit the listing of an issuer's securities on the Nasdaq, thus protecting issuers, investors and the public interest.

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

The NASD 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*

Written comments were neither solicited nor received.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and subparagraph (f)(3) of Rule 19b-4 thereunder<sup>7</sup> because it is concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of 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.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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. 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 NASD. All submissions should refer to file number SR-NASD-01-02 and should be submitted by May 2, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Jonathan G. Katz,**

*Secretary.*

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

<sup>7</sup> 17 CFR 240.19b-4(f)(3).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44153; File No. SR-NASD-01-17]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Revise the Fees Associated With Appeals of Nasdaq Listing Determinations**

April 5, 2001.

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 March 13, 2001, 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. 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 filed a proposed rule change to revise the fees associated with appeals of Nasdaq listing determinations. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in *brackets*.

\* \* \* \* \*

**Rule 4820. Request for Hearing**

(a) No change

(b) No change

(c) Within 15 calendar days of the date of the Staff Determination, but in no event after the time of the hearing, the issuer must submit a hearing fee to The Nasdaq Stock Market, Inc., to cover the cost of holding the hearing, as follows:

(1) where consideration is on the basis of an written submission from the issuer, \$[1,400] 4,000; or

(2) where consideration is on the basis of an oral hearing, whether in person or by telephone, \$[2,300] 5,000.

**Rule 4840. Review by the Nasdaq Listing and Hearing Review Council**

(a) No change

(b) The issuer may initiate the Listing Council's review of any Panel Decision by making a written request within 15 calendar days of the date of the decision. Requests for review should be addressed to the Listing Council in care of the Nasdaq Office of General Counsel. The request will not operate as a stay of the Panel Decision. Also

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

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

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

within 15 calendar days of the date of the Panel Decision, the issuer must submit a fee of \$[1,400]4,000 to The Nasdaq Stock Market, Inc., to cover the cost of the review. Upon receipt of the request for review and the applicable fee, the Nasdaq Office of General Counsel will make an acknowledgment of the issuer's request stating the deadline for the issuer to provide any written submissions.

(c)–(e) No change

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In his 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

#### I. Purpose

Determinations by the Listing Qualifications Department or the Listing Investigations Department to limit or prohibit the initial or continued listing of an issuer's securities may be appealed by the issuer to the Listing Qualification Panel (the "Panel") and thereafter to the Nasdaq Listing and Hearing Review Council (the "Listing Council"). The proposed rule change revises the current fee schedules for issuer requests for the review of listing determinations to both the Panel and the Listing Council to cover the costs associated with such review.

Currently, the fee for an appeal to the Panel based on a written submission from the issuer is \$1,400, and the fee for an oral hearing before the Panel is \$2,300. In addition, the fee for an appeal to the Listing Council is \$1,400.<sup>3</sup> Nasdaq proposes to change the fee for an appeal to the Panel based on a written submission from the issuer to \$4,000 and the fee for an oral hearing before the Panel to \$5,000. In addition, Nasdaq proposes to change the fee for an appeal to the Listing Council to \$4,000.

<sup>3</sup> Pursuant to Marketplace Rule 4840(d), appeals to the Listing Council are based only on the written record unless the Listing Council exercises its discretion to hold an oral hearing. There is no additional fee for an oral hearing before the Listing Council.

The fees associated with appeals to the Panel were last revised in 1996.<sup>4</sup> Since that time, there has been an increase in the various costs associated with the review process. In particular, in 1999, Nasdaq expanded the review process, in part in response to the Commission's findings, which required changes in the process of reviews and an increase in the amount of time spent by Nasdaq staff members dedicated to the review process.<sup>5</sup> Further, Nasdaq has identified other expenses related to the review process that are not covered by the current hearing fees.<sup>6</sup>

The proposed fee for an appeal to the Panel includes all costs of the Office of Listing Qualifications hearings attributable to the processing of hearing requests and the associated expenses of the Panel.<sup>7</sup> In addition, the proposed fee for an appeal to the Panel includes a large portion of the expenses associated with the Office of Appeals and Review,<sup>8</sup> and the Listing Council. The proposed fee for an appeal to the Listing Council under Marketplace Rule 4840(b) will cover the remainder of the expenses of the Office of Appeals and Review and the Listing Council, as well as the Office of General Counsel's time directly related to the appeals process.<sup>9</sup>

<sup>4</sup> See Securities Exchange Act Release No. 37088 (April 9, 1996), 61 FR 16662 (April 16, 1996). In 1999, a \$1,400 fee for appeals to the Listing Council was established, which matched the fee for appeals to the Panel based only on the written record. See Securities Exchange Act Release No. 41367 (May 4, 1999), 64 FR 25942 (May 13, 1999).

<sup>5</sup> See Securities Exchange Act Release No. 41367 (May 4, 1999), 64 FR 25942 (May 13, 1999).

<sup>6</sup> Nasdaq represents that the other expenses relating to the review process that are not covered by the current hearing fees include: overhead, including telephones, supplies, depreciation and occupancy, computer system support, listing qualifications retention analyst and manager review, and a stipend for Panel and Listing Council members. Telephone conversation between John D. Nachmann, Senior Attorney, Office of General Counsel, Nasdaq, and Lisa Jones, Attorney, Division of Market Regulation, Commission (March 30, 2001).

<sup>7</sup> The additional variable fee allocated to issuers who request oral hearings before the Panel is designed to recover the additional costs associated with such hearings; specifically, travel expenses for members of the Panel and court reporter time to maintain a transcript of these hearings.

<sup>8</sup> Nasdaq has filed a proposed rule change, SR-NASD-01-02, with the Commission pursuant to Section 19(b)(3), subparagraph (f) of the Act, and Rule 19b-4 thereunder that transfers certain responsibilities of the Nasdaq Office of General Counsel regarding the review process to the Office of Appeals and Review, a new unit in the Nasdaq's Listing Qualifications Department. The Office of Appeals and Review will receive requests for review from issuers and will keep records of proceedings.

<sup>9</sup> The fees proposed in this proposed rule change are designed to recover only the direct costs associated with the review process and do not include various indirect overhead costs that have been identified by Nasdaq as Senior Management, Finance, Human Resources, Administrative

Nasdaq believes that the allocation of a large portion of the proposed fees associated with the Office of Appeals and Review and the Listing Council is appropriate because all decisions of the Panel are subject to call for review, and the Office of Appeals and Review supports the Listing Council in connection with its call for review function. Furthermore, the Listing Council sets policy applicable to all Panel decisions. For these reasons and in order to ensure that the cost for review by the Listing Council will not be so high as to effectively foreclose the opportunity for review by the Listing Council, Nasdaq believes it is appropriate to allocate a large portion of the expenses associated with the Office of Appeals and Review and the Listing Council to all issuers who request an appeal to the Panel.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)<sup>10</sup> and section 15A(b)(6)<sup>11</sup> of the Act. The proposed rule change is consistent with section 15A(b)(5) in that it provides for the equitable allocation of reasonable dues, fees, and other charges among issuers using the Nasdaq system. Furthermore, the proposed fees are designed to ensure that the review process is revenue neutral and reflects the costs incurred by Nasdaq to process issuer requests for review. The proposed rule change is consistent with section 15A(b)(6) in that it is designed to prevent fraudulent and manipulative acts and practices as well as to protect investors and the public interest by covering the costs associated with ensuring that only qualified issuers are allowed to list or remain listed on Nasdaq.

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

Services, Legal (excluding unrelated litigation and international expenses), Economic Research, NasTech and Strategic Development.

<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

### 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 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. 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 NASD. All submissions should refer to the File No. SR-NASD-01-17 and should be submitted by May 2, 2001.

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

**Jonathan G. Katz,**  
Secretary.

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## SOCIAL SECURITY ADMINISTRATION

### Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority

that covers the Social Security Administration (SSA). Chapter S4 covers the Deputy Commissioner for Systems. Notice is given that Chapter S4 is being amended to reflect the establishment of a new subchapter S4N, the Office of Information Technology Architecture with four subordinate staff offices. The new material and changes are as follows:

**Section S4.10** The Office of the Deputy Commissioner, Systems—(Organization)

*Establish:* J. The Office of Information Technology Architecture (S4N).

**Section S4.20** The Office of the Deputy Commissioner, Systems—(Functions)

*Establish:* J. The Office of Information Technology Architecture (OITA) (S4N) directs the design, development and maintenance of SSA's information technology architecture program and directs SSA's data base integration activities to improve the administration of SSA's Programmatic and MI/Administrative data bases and to implement modern data base management systems (DBMS) technology. The Office provides design and development support for all data base management systems used in Programmatic and MI/Administrative systems. OITA directs an on-going, comprehensive information technology architecture program to modernize the Agency's infrastructure by proposing, establishing, and implementing standards for common hardware, software and processes to ensure interoperability, minimize cost, and comply with government regulations such as the GPRA. The OITA establishes enterprise policies for the management of all hardware and software. It develops and oversees the implementation of standards, methods and procedures for software design and development. It integrates the business process and goals of the agency with information technology acquisitions as part of the overall budget planning process.

**Section S4G.00** The Office of Systems Design and Development—(Mission)

*Replace as follows:* OSDD directs the design, development and maintenance of all programmatic software to support SSA's social insurance and income maintenance programs. It is responsible for a comprehensive software-engineering program and oversees the implementation of standards, methods and procedures in connection with this program. OSDD directs and coordinates a comprehensive software-configuration management program and manages a detailed project control system for

OSDD software development projects. It develops policies and procedures, prepares procurement documents for and oversees acquisition of software packages and tools and software support services. OSDD plans and directs a software development facility to support applications development personnel. It services as liaison with other SSA components and external monitoring authorities including the Deputy Commissioner for Human Resources, General Services Administration, General Accounting Office and Congress on SSA applications systems planning and software and data base development.

**Section S4G.10** The Office of Systems Design and Development—(Organization)

*Delete:* L. The Division of Data base Systems (S4GP).

**Section S4G.20** The Office of Systems Design and Development—(Functions)

*Delete in its entirety:* L. The Division of Data base Systems (S4GP).

*Establish Subchapter:*

### Subchapter S4N

#### Office of Information Technology Architecture

S4N.00 Mission

S4N.10 Organization

S4N.20 Functions

**Section S4N.00** The Office of Information Technology Architecture—(Mission)

The Office of Information Technology Architecture (OITA) directs the design, development and maintenance of SSA's information technology architecture program and directs SSA's data base integration activities to improve the administration of SSA's Programmatic and MI/Administrative data bases and to implement modern data base management systems (DBMS) technology. The Office provides design and development support for all data base management systems used in Programmatic and MI/Administrative systems. OITA directs an on-going, comprehensive information technology architecture program to modernize the Agency's infrastructure by proposing, establishing, and implementing standards for common hardware, software and processes to ensure interoperability, minimize cost, and comply with government regulations such as the GPRA. The OITA establishes enterprise policies for the management of all hardware and software. It develops and oversees the implementation of standards, methods

<sup>12</sup> 17 CFR 200.30-2(a)(12).