

The Exchange does not currently have a rule that defines a stop order or a rule that sets out the required treatment of elected stop orders and believes that it is appropriate to provide certainty to its members and the investors that they serve by putting such a rule in place.<sup>5</sup> Under the Exchange's proposal, stop orders would no longer be executed in accordance with the Exchange's "next, no better" policy. Rather, a stop order would be defined as an order that becomes a market order once the price of the stop order is equaled or penetrated on a national securities exchange or association.<sup>6</sup> The Exchange represents that this proposed handling of a stop order is in line with the rules of other markets, including the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the Pacific Exchange, Inc. and provides an appropriate fill for stop orders sent to the Exchange for execution.<sup>7</sup>

<sup>5</sup> Although the Exchange does not currently have a rule defining stop orders, the Exchange has operated under a long-standing policy relating to stop orders; the standing policy provides that a stop order in a listed security that is routed to the CHX (and then elected by a primary market print at the stop price) is given a "next, no better" execution, meaning that the order must be executed at the next execution price on the primary market. If the next primary market execution is at a price better than the election price, the order may be executed at the election price. Otherwise stated, if the next primary market execution is at a better price than the election price, the CHX specialist has the discretion to provide either the election price or the better price.

<sup>6</sup> On the CHX, market orders are executed in accordance with CHX Article XX, Rule 37, which requires that (a) market orders executed automatically be executed at the national best bid or offer in effect at the time the order was received; and (b) market orders executed manually be executed by the specialist in his principal capacity at the national best bid or offer in effect at the time the order was received, or, if the specialist elects to act as agent for the order, at the best available price in the national marketplace, using order routing systems where appropriate. If the Commission approves this proposed rule change, elected stop orders would be executed in accordance with the provisions of CHX Article XX, Rule 37. An elected stop order would be eligible for automatic execution if it were within the auto ex size threshold designated by the specialist in accordance with CHX Article XX, Rule 37(b)(1).

<sup>7</sup> See, e.g., NYSE Rule 13 ("A stop order to buy becomes a market order when a transaction in the security occurs at or above the stop price after the order is represented in the Trading Crowd. A stop order to sell becomes a market order when a transaction in the security occurs at or below the stop price after the order is represented in the Trading Crowd"); Amex Rule 131 (same text as NYSE Rule 13); and Archipelago Exchange Facility Rule 7.31 ("A stop order to buy becomes a market order when a transaction in the security occurs on the Corporation or on another national securities exchange or association at or above the stop price. A Stop Order to sell becomes a market order when a transaction in the security occurs on the Corporation or on another national securities exchange or association at or below the stop price").

## 2. Statutory Basis

The CHX believes that the proposed rule change, as amended, is consistent with section 6(b)<sup>8</sup> of the Act, in general, and furthers the objectives of section 6(b)(5)<sup>9</sup> of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

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

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

## 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 its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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. 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-CHX-2003-25. 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 at 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 refer to the File No. SR-CHX-2003-25 and should be submitted by March 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49286; File No. SR-NASD-2004-004]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Regarding Listing Fee Waivers Under the NASD Rule 4500 Series With Regard to Certain Dual Listing and Transfer Situations

February 19, 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 January 12, 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") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. Nasdaq

<sup>10</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>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

amended the proposed rule change on February 13, 2004.<sup>3</sup> Nasdaq filed the proposed rule change pursuant to section 19(b)(3)(A)(i) of the Act,<sup>4</sup> and Rule 19b-4(f)(1) thereunder,<sup>5</sup> as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective upon filing with the Commission. 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

Nasdaq proposes to provide interpretive guidance with respect to NASD Rules 4510(a)(5), 4510(b)(4), 4510(c)(2), 4510(d)(3), 4520(a)(3), 4520(b)(4), and 4520(c)(3) regarding the waiver of listing fees in situations involving the dual listing or transfer of New York Stock Exchange ("NYSE") listed securities occurring from January 12, 2004, to December 31, 2004.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### 4500 ISSUER LISTING FEES

IM-4500-1 No change.

IM-4500-2 No change.

IM-4500-3 *Waiver of Fees in*

*Situations Involving the Dual Listing or Transfer of New York Stock Exchange ("NYSE") Listed Securities*

*Rules 4510(a)(5), 4510(b)(4), 4510(c)(2), 4510(d)(3), 4520(a)(3), 4520(b)(4), and 4520(c)(3) provide Nasdaq with the discretion to waive all or part of its listing fees prescribed in this Rule 4500 series. Nasdaq shall not charge entry fees, annual fees, or listing*

<sup>3</sup> See February 12, 2004, letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq (1) changed date references from January 9, 2004, to January 12, 2004, to reflect the date on which the proposed rule change was filed with the Commission; (2) amended the "Purpose" section of the filing to reflect that Nasdaq will assess the entry fee or a portion thereof if a dually listed issuer determines, following the expiration of the initial one-year period, to transfer listing to Nasdaq; and (3) confirmed that the proposed interpretation will not impact Nasdaq's resource commitment to regulatory oversight of the listing process or Nasdaq's other regulatory programs. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on February 13, 2004, the date Nasdaq filed Amendment No. 1.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>5</sup> 17 CFR 240.19b-4(f)(1).

*of additional shares fees under Rules 4510(a)-(d) and Rules 4520(a)-(c) for a one year period from the date of listing on Nasdaq for any NYSE listed security that dually lists on Nasdaq between January 12, 2004, and December 31, 2004. Nasdaq shall not charge entry fees under Rules 4510(a) and 4520(a) for any NYSE listed security that transfers its listing from the NYSE to Nasdaq between January 12, 2004, and December 31, 2004.*

\* \* \* \* \*

### 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. 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(a)(5), 4510(b)(4), 4510(c)(2), 4510(d)(3), 4520(a)(3), 4520(b)(4), and 4520(c)(3) provide Nasdaq with the discretion to waive all or part of its listing fees prescribed in this Rule 4500 series. NYSE Rule 500 has recently been repealed, and this has removed a significant barrier to NYSE companies that may have wanted to list on other markets.<sup>6</sup> Given the recent repeal of NYSE Rule 500, and pursuant to the authority under Nasdaq rules, Nasdaq has determined to permit dual listing of any NYSE listed security on Nasdaq without charging Nasdaq entry fees, annual fees, or listing of additional shares fees for a period of one year from the effective date of the dual listing on Nasdaq (provided that, if a dually listed issuer determines following the expiration of this period to transfer listing to Nasdaq, the entry fee or a portion thereof will be assessed upon such transfer). Nasdaq also has determined to permit transfer of any NYSE listed security from the NYSE to Nasdaq without charging Nasdaq entry fees. Waivers would be available for dual listing or transfers occurring from

<sup>6</sup> See Securities Exchange Act Release No. 48720 (October 30, 2003), 68 FR 62645 (November 5, 2003)(SR-NYSE-2003-23) (approval order).

January 12, 2004, the date of this filing, through the end of 2004.

Nasdaq has determined to take this action because it believes that is equitable and reasonable to provide a window, following the repeal of NYSE Rule 500, for NYSE issuers to dual list on Nasdaq or transfer to Nasdaq without subjecting them to fees in addition to those fees that they have paid to the NYSE. In addition, consistent with section 11A(a)(1)(C)(ii) under the Act,<sup>7</sup> Nasdaq believes this action will promote fair competition between exchange markets and markets other than exchange markets, which benefits the investing public. Specifically, Nasdaq believes this interpretation should facilitate dual listing and transfer of NYSE listed securities under an equitable and reasonable fee schedule for a limited period of time. Consequently, NYSE listed companies can more easily determine the benefits of a listing on Nasdaq—a proposition that was not practically available until NYSE Rule 500 was recently repealed. Nasdaq believes these benefits will include increased liquidity, faster executions, and narrower spreads due to Nasdaq's competitive market maker system. In addition, these companies can demonstrate to investors that they meet Nasdaq's governance requirements. Nasdaq confirms that this interpretation will not impact its resource commitment to regulatory oversight of the listing process, or its other regulatory programs.

##### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)<sup>8</sup> and 15A(b)(6)<sup>9</sup> of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Nasdaq believes that this proposal is an equitable allocation of reasonable fees because NYSE listed companies are now able to list on other markets without having to contend with the significant restrictions previously imposed by the NYSE, and the proposed rule provides for listing fee waivers to address the financial burdens that would otherwise be placed upon these companies that have already paid fees to the NYSE and would otherwise be required to pay duplicative fees. Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the

<sup>7</sup> 15 U.S.C. 78k-1(a)(1)(C)(ii).

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

Act because it is designed to prevent fraudulent acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest because it will facilitate dual listing and transfer of NYSE listed securities for a limited period of time, so that NYSE listed companies can more easily determine the benefits of listing on Nasdaq. Nasdaq also believes the proposal will promote fair competition between markets, which benefits the investing public.

#### *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*

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 proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,<sup>10</sup> and Rule 19b-4(f)(1)<sup>11</sup> thereunder, in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of the proposed rule change,<sup>12</sup> 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 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*. All comment letters should refer to File No.

SR-NASD-2004-004. This file number should be included on the subject line if e-mail is used. To help the Commission process and review 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 NASD. All submissions should refer to file number SR-NASD-2004-004 and should be submitted by March 18, 2004.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **DEPARTMENT OF STATE**

### **[Public Notice 4632]**

#### **Bureau of Democracy, Human Rights and Labor Call for Statements of Interest: Democracy, Human Rights, and the Rule of Law in the People's Republic of China**

**SUMMARY:** The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor (DRL) announces a call for statements of interest from organizations interested in being invited to submit proposals for projects on promoting democracy, human rights and the rule of law in China. This is an initial solicitation to ascertain organizations that may be interested in doing projects in China and does not constitute a request for proposals. Organizations invited to submit proposals will have an opportunity to expand on their statements at a later date.

*Statements of Interest:* The Bureau of Democracy, Human Rights and Labor (DRL) invites organizations to submit statements of interest of no more than two pages outlining program concepts and capacity to manage projects that

will foster democracy, human rights, freedom of information, judicial independence, criminal and civil rule of law, civil society, freedom of the press, and media reform in the People's Republic of China. Statements should include the following information:

(1) Brief description of the organization;

(2) Project objectives, activities and the desired outcomes.

Recipients should not submit a budget at this time, but responses should indicate approximate project totals.

*Additional Information:* The Bureau's Human Rights and Democracy Fund (HRDF) supports innovative, cutting-edge programs that uphold democratic principles, support and strengthen democratic institutions, promote human rights, and build civil society in countries and regions of the world that are geo-strategically important to the U.S. HRDF funds projects that have an immediate impact but that have potential for continued funding beyond HRDF resources. HRDF projects must not duplicate or simply add to efforts by other entities.

DRL is interested in funding projects to begin no earlier than September 30, 2004 and not to exceed two years in duration. Twelve- to eighteen-month programs will be the preferred award period. The bulk of project activities must take place in-country; U.S.-based activities or exchange projects are not encouraged. Projects that draw on resources from greater China will be considered, but the majority of activities should address the PRC and Hong Kong directly. Projects that have a strong academic or research focus will not be highly considered. DRL will not fund health, technology, environmental, or scientific projects unless they have an explicit democracy, human rights, or rule of law component. Projects that focus on commercial law or economic development will not be highly considered.

Pending availability of funds, approximately \$10,500,000 is expected to be available under the Economic Support Funds through the HRDF for projects that address DRL objectives in China. The Bureau anticipates making awards in amounts of \$250,000-\$850,000 to support program and administrative costs required to implement these programs.

*Applicant/Organization Criteria:* Organizations submitting statements should meet the following criteria:

- Be a U.S. non-profit organization meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

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

<sup>11</sup> 17 CFR 240.19b-4(f)(1).

<sup>12</sup> See note 3 *supra*.

<sup>13</sup> 17 CFR 200.30-3(a)(12).