

submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File No. SR-CBOE-2004-61 and should be submitted on or before October 26, 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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50403A; File No. SR-NASD-2004-110]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Divestiture of American Stock Exchange; Correction

September 29, 2004.

In FR Doc. E4-2354, issued on September 23, 2004,<sup>1</sup> the Commission notes that the proposed rule text in subsection (cc) on page 57120, column 3 should state as follows below.

Proposed new language is in italics; proposed deletions are in brackets.

“(cc) “Non-Industry Governor” or “Non-Industry committee member” means a Governor (excluding the Chief Executive Officer and any other officer of the NASD, the President of NASD Regulation), any Floor Governor, and the Chief Executive Officer of Amex)] or committee member who is: (1) A Public Governor or committee member; (2) an officer or employee of an issuer of securities listed on [Nasdaq or Amex, or] *a market for which NASD provides regulation*; (3) *an officer or employee of an issuer of unlisted securities that are traded in the over-the-counter market*; or ([3]4) any other individual who would not be an Industry Governor or committee member;”

In the corresponding paragraph describing the proposed rule text, appearing on page 57124, beginning in column 1, the first, second and third complete sentences in column 2 should read as follows:

“Under the proposed amendments, the “Industry Governor” definition will include persons with a consulting or employment relationship with “a market for which NASD provides regulation,” a term that embraces both

markets with which NASD has entered a contract to provide regulatory services, and those in which NASD has an ownership interest. Because NASD has entered into a regulatory services agreement with Amex, and continues both to maintain an ownership interest in and to provide regulatory services to Nasdaq, the amended definition of “Industry Governor” will continue to encompass individuals who have a consulting or employment relationship with Amex or Nasdaq. NASD believes that, given the difficulty and expense involved in amending the NASD By-Laws when regulatory clients are added or deleted, substituting “a market for which NASD provides regulation” is preferable to identifying such clients by name in the By-Laws.”

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>2</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50468; File No. SR-NASD-2004-144]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Listing and Trading of Theravance, Inc., Common Stock

September 29, 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 September 24, 2004, 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”) the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the common stock (“Common Stock”) of Theravance, Inc. (“Theravance”). The Common Stock includes call and put rights.

### 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 III 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

Nasdaq proposes to list and trade the Common Stock under the NASD rules that generally apply to the listing, designation for the Nasdaq National Market, and trading of the first class of common stock.<sup>3</sup> As described more fully below, the Common Stock currently includes an unusual feature, call and put rights. Nasdaq believes that the call and put rights make it desirable to apply certain additional requirements in connection with the listing of the Common Stock. Pursuant to its authority under NASD Rule 4300, “Qualification Requirements for Nasdaq Stock Market Securities,” to apply additional or more stringent criteria for the initial or continued inclusion of particular securities, Nasdaq proposes to apply to the Common Stock certain requirements of NASD Rule 4420(f), “Other Securities,” in addition to all of the other requirements normally applicable to common stock. Under NASD Rule 4420(f), Nasdaq may approve for listing and trading innovative securities that cannot be readily categorized under traditional listing guidelines.<sup>4</sup>

Theravance has entered into an agreement with GlaxoSmithKline

<sup>3</sup> See the 4300 and 4400 series of the NASD’s rules.

<sup>4</sup> See Securities Exchange Act Release No. 32988 (September 29, 1993); 58 FR 52124 (October 6, 1993) (File No. SR-NASD-93-15) (order approving listing standards for hybrid securities products) (“1993 Order”).

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

<sup>1</sup> See Exchange Act Release No. 50403 (September 16, 2004), 69 FR 57119.

<sup>2</sup> 17 CFR 200.30-3(a)(12).

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

<sup>27</sup> 17 CFR 240.19b-4.