

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-BSE-2005-49 and should be submitted on or before January 19, 2006.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of national securities exchange be designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that, on account of enhancements to BOX's technology, BSE is proposing to allow BOX to open trading in an options series promptly following the opening of the underlying security and to complete the opening of all the classes in that series without the existing mandated one-minute opening increments for each class. The Exchange represents that the absence of such specified intervals for opening each class of options in a series would allow the opening to be completed within seconds, rather than minutes. The Commission believes that a faster opening should benefit investors because it would allow them to begin trading closer to the time of the opening of the underlying security, thus allowing investors to manage their risks better as well as enhancing competition among the options markets.

The Commission notes that the proposal would also modify the requirement regarding when BOX Market Makers must begin quoting in accordance with BOX minimum standards. Specifically, the proposal would require BOX Market Makers to start quoting at the actual opening of the market for the underlying security,

<sup>5</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(1).

rather than one minute preceding the scheduled opening of the market for the underlying security. The Exchange represents that BOX Market Maker quotes are not needed until the actual opening of the underlying security, and that requiring Market Makers to quote at the opening, rather than earlier, should encourage BOX Market Makers to provide tighter quotes.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> for approving the proposed rule change, as amended, prior to the 30th day of the date of publication of the notice thereof in the **Federal Register**. The Commission notes that the proposed rule change seeks to provide a faster opening on BOX. The Commission believes that granting accelerated approval to this proposal would allow BOX to more quickly begin to conduct faster openings, thus affording investors the benefits that should flow from the proposal sooner.<sup>8</sup>

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-BSE-2005-49), as amended, is hereby approved on an accelerated basis.

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

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. E5-8045 Filed 12-28-05; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53006; File No. SR-NASD-2005-148]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Fees for Non-NASD Members Using Nasdaq's INET Facility

December 22, 2005.

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

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> The Commission notes that Chapter V, Section 9 of the BOX Rules, which govern BOX's opening process, was approved as a pilot program scheduled to expire on August 6, 2006. The proposed changes to this rule in the instant filing, while modifying the opening process, would not extend or otherwise affect the duration of the pilot, which is scheduled to end on August 6, 2006.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 9, 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") 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 to solicit comments on the proposed rule change from interested persons, and at the same time is granting accelerated approval of the proposed rule change.

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

Nasdaq proposes to modify the pricing for non-members using Nasdaq's INET Facility. Nasdaq requests approval to implement the proposed rule change retroactively to December 9, 2005. The text of the proposed rule change is below. Proposed new language is in *italics*.

\* \* \* \* \*

#### 7010. System Services

(a)-(v) No Change.

#### (w) INET System Order Execution

(1) No Change.

(2) *The fees applicable to non-members using Nasdaq's INET Facility shall be the fees established for members under Rule 7010(w), as established by SR-NASD-2005-128 and amended by SR-NASD-2005-147, and as applied to non-members by SR-NASD-2005-128 and SR-NASD-2005-148.*

\* \* \* \* \*

#### 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.

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

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

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

1. Purpose

In SR-NASD-2005-147,<sup>3</sup> which applies to NASD members, Nasdaq modified the fee schedule for its INET Facility. In this filing, Nasdaq is proposing to apply the same modification to non-NASD members that use Nasdaq's INET Facility. In summary, SR-NASD-2005-147: (1) Corrected the credit and fee schedule for American Stock Exchange ("Amex") and New York Stock Exchange ("NYSE") order executions that were incorrectly inverted in the original fee schedule; (2) codified current INET fees for orders executed as part of the Nasdaq Opening or Closing Cross Process; (3) codified current INET fee practices of revenue sharing for Tape B securities; (4) codified the current INET fee structure governing connectivity and terminal charges for its facilities; and (5) established a new uniform, tiered fee-structure for orders routed to the NYSE through DOT. Nasdaq states that an important objective of this proposal is to ensure uniform treatment under NASD's rules of members and non-members alike. Nasdaq requests that the Commission approve this filing retroactively as of December 9, 2005, and that the approval be granted on an accelerated basis.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>4</sup> in general, and with Section 15A(b)(5) of the Act,<sup>5</sup> in particular, in that the proposed rule change provides 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 NASD operates or controls. Nasdaq states that an important objective of this proposal is to ensure uniform treatment under the NASD's rules of members and non-members alike.

*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.

<sup>3</sup> SR-NASD-2005-147, which Nasdaq filed with the Commission on December 9, 2005, was effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and Rule 19b-4(f)(2) thereunder.

<sup>4</sup> 15 U.S.C. 78o-3.

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

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

Nasdaq states that written comments were neither solicited nor received.

**III. 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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-148 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-NASD-2005-148. 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-2005-148 and should be submitted on or before January 19, 2006.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

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 self-regulatory organization.<sup>6</sup> Specifically, the Commission believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act,<sup>7</sup> which requires that the rules of the self-regulatory organization provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

The Commission notes that this proposal would retroactively modify pricing for non-NASD members using Nasdaq's INET Facility to December 9, 2005. This proposal would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective December 9, 2005, pursuant to SR-NASD-2005-147.

The Commission finds good cause for approving the proposed rule change prior to the 30th day of the date of publication of the notice thereof in the **Federal Register**. The Commission notes that the proposed fees for non-NASD members are identical to those in SR-NASD-2005-147, which implemented those fees for NASD members and which became effective as of December 9, 2005. The Commission notes that this change will promote consistency in Nasdaq's fee schedule by applying the same pricing schedule with the same date of effectiveness for both NASD members and non-NASD members. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,<sup>8</sup> to approve the proposed change on an accelerated basis.

**V. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-NASD-2005-148), is approved on an accelerated basis.

<sup>6</sup> The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78o-3(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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

**Jonathan G. Katz,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52997; File No. SR-NASD-2005-143]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow Nasdaq Capital Market Issuers That Transfer Their Listing to the Nasdaq National Market To Apply the Amount of the Capital Market Entry Fee Toward the Entry Fee Payable for Listing on the National Market, and To Make Other Clarifying Changes

December 22, 2005.

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 December 1, 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") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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 proposes to add new language to NASD Rules 4510(a) and 4520(a) to allow Nasdaq Capital Market issuers that transfer their listing to the Nasdaq

National Market to apply the amount of the Capital Market entry fee previously paid to the entry fee payable for listing on the National Market, and to make other clarifying changes. The text of the proposed rule change is below. Proposed additions are in *italics*.

#### 4510. The Nasdaq National Market

##### (a) Entry Fee

(1)-(8) No change.

(9) *An issuer that transfers its listing from The Nasdaq Capital Market to The Nasdaq National Market shall pay the entry fee described in this Rule 4510(a) less the entry fee that was previously paid by the issuer to Nasdaq in connection with listing on The Nasdaq Capital Market. Such issuer is not required to pay the application fee described in Rule 4510(a) in connection with the application to transfer listing.*

(10) *An issuer that submits an application for listing on The Nasdaq Capital Market, but prior to listing revises its application to seek listing on The Nasdaq National Market, is not required to pay the application fee described in Rule 4510(a) in connection with the revised application.*

(b)-(e) No change.

#### 4520. The Nasdaq Capital Market

##### (a) Entry Fee

(1)-(7) No change.

(8) *An issuer that submits an application for listing on The Nasdaq National Market, but prior to listing revises its application to seek listing on The Nasdaq Capital Market, is not required to pay the application fee described in Rule 4520(a) in connection with the revised application.*

(b)-(d) 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 proposal. 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

The purpose of the proposed rule change is to permit existing Nasdaq

issuers that seek to transfer their listing from the Nasdaq Capital Market to the Nasdaq National Market to apply the amount of the Capital Market entry fee previously paid to the entry fee payable for listing on the National Market. Currently, issuers listing a class of securities on the Nasdaq Capital Market pay an entry fee based on total shares outstanding that ranges from \$25,000 to \$50,000.<sup>6</sup> Under the existing rules, an issuer that later applies to "phase up" its listing from the Capital Market to the National Market is required to pay the applicable entry fee for new issuers listing on the National Market, which currently ranges from \$100,000 to \$150,000.<sup>7</sup>

Under the proposed rule change, a Capital Market issuer that applies to "phase up" its listing would pay the applicable National Market entry fee less the amount of the entry fee that it paid to list on the Capital Market. Because the issuer previously paid a non-refundable application fee when applying to list on the Capital Market, the issuer would not be required to pay an additional application fee in connection with the transfer to the National Market. For example, an issuer that paid an entry fee of \$50,000 (of which \$5,000 was a non-refundable application fee) upon inclusion of a class of securities in the Capital Market would receive a \$45,000 credit toward the applicable National Market entry fee upon phase up and the application fee would be waived.

Nasdaq believes that the reduction in fees resulting from the entry fee credit is justified by the corresponding reduction in time and effort needed to review a phase up application. Nasdaq's experience has shown that the review process for phase up applications generally is less time-consuming for the staff than the review required for issuers that list on the National Market after an initial public offering or through other means. Furthermore, the proposed rule change creates an incentive for issuers that list on the Capital Market to transfer to the National Market rather than seek a listing elsewhere, thereby promoting competition between Nasdaq and exchange markets.

<sup>6</sup> NASD Rule 4520(a)(1). This fee includes a \$5,000 non-refundable application fee that is submitted with the issuer's initial listing application. The remainder of the entry fee is assessed on the date of entry on the Capital Market.

<sup>7</sup> NASD Rule 4510(a)(1). This fee includes a \$5,000 non-refundable application fee that is submitted with the issuer's initial listing application. The remainder of the entry fee is assessed on the date of entry on the National Market. Under Rule 4510(a)(3), Closed-End Funds pay an entry fee of \$5,000 per class of securities (of which \$1,000 is a non-refundable application fee).

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> As required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii), the Nasdaq submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.