

consider the long-term importance of the benefit, stating, "A decision by a federal, state, or local entity to make an activity compulsory, such as elementary and secondary school attendance or medical inoculations, serves as strong evidence of the program's importance."

4. *Resources Available:* The DOJ guidance further acknowledges that, "[t]he resources available to a recipient of federal assistance may have an impact on the nature of the steps that recipients must take." DOJ recognizes that a small recipient with limited resources may be unable to take the same steps as a larger recipient to provide LEP assistance without "unduly" burdening its fundamental mission, particularly when programs serve a limited number of eligible LEP individuals, contact with the program is infrequent, the total cost of providing translation services is relatively high, or the program is not critical to an individual's daily existence.

Continuing, the DOJ guidance asks agencies to address "the appropriate mix of written and oral language assistance," and explains that agencies must decide, "* * * which documents must be translated, when oral translation is necessary.* * *" The DOJ guidance states, "It is the responsibility of the federal assistance-granting agencies, in conducting their Title VI compliance activities, to make more specific judgments by applying their program expertise to concrete cases."

On October 26, 2001, DOJ issued a memorandum to all agencies that states, "* * * agencies that have issued Limited English Proficiency ("LEP") guidance for their recipients pursuant to Executive Order 13166 and Title VI of the Civil Rights Act should, after notifying the Department of Justice ("DOJ"), publish a notice asking for public comment on the guidance documents they have issued. Based on the public comment it receives and this Memorandum, an agency may need to clarify or modify its existing guidance. Agencies that have not yet published guidance documents should submit agency-specific guidance to the Department of Justice. Following approval by the Department of Justice and before finalizing its guidance each agency should obtain public comment on their proposed guidance documents."

The purpose of issuing the Memorandum was to ensure that the public had an adequate opportunity to review agency guidance prior to its implementation, consistent with the notice and comment provisions of the APA, and to state DOJ's position on a recent Supreme Court case addressing

the scope of the Title VI provisions regarding disparate impact regulations. Although the Court held in *Alexander v. Sandoval*, 121 S.Ct. 1511 (2001) that there is no private right of action under such regulations, the decision did not invalidate such regulations, and therefore, DOJ explains that Executive Order 13166 "remains in force."

Request for Comments

In order to assess the total costs and benefits of implementing Executive Order 13166, it will be necessary to obtain a significant amount of data. While estimating the costs and benefits associated with any policy is difficult, this case will be particularly challenging given the breadth and depth of activities covered by the Executive Order. In a "Q&A" document released by DOJ, the scope of Executive Order 13166 is defined as, "* * * anything a federal agency does"* * * to include, "the provision of federal benefits or services, the imposition of a burden on a member of the public, and any other activities a federal agency conducts." This would include anything from the receipt of benefits such as Social Security to law enforcement activities or the imposition of taxes. Specifically, OMB is seeking information that will provide assistance in:

- Determining how best to quantify the numbers of LEP individuals and which languages they speak.
- Understanding the number of different languages spoken by LEP individuals, and their geographic distribution.
- Characterizing the interactions of LEP individuals with both federal and federally funded entities. For example, how frequently do LEP individuals interact with government at all levels? What types of government services do LEP individuals typically access? Are there types of services that LEP individuals access more or less frequently than non-LEP individuals?
- Determining the costs and benefits of improving English language proficiency among LEP individuals.
- Understanding and quantifying the level of services provided by the government or government funded organizations to address the special needs of LEP individuals prior to Executive Order 13166 and to what extent changes will be necessary to achieve full compliance with Executive Order 13166 and related agency guidance.

- Quantifying and describing the costs to the Federal Government or recipients of federal funds of providing oral and written translation services.

- Quantifying and describing the benefits to LEP individuals and society as a result of having oral and written translation services available, in accordance with Executive Order 13166.

- Identifying any existing studies of the costs and benefits of improving the quality of communications and interactions between LEP individuals and the federal government or federally funded services. We are also interested in studies of similar language or translation issues internationally, (e.g. Canada, European Union, United Nations and OEDC).

- Identifying "real-world" case studies that illustrate the costs and benefits of providing translation services to LEP individuals, as envisioned by Executive Order 13166, and related agency guidance. We are seeking examples from multiple perspectives, including LEP individuals, federal agencies/recipients of federal funds, and the international context.

- Identifying existing academic research and "real-world" case studies from the following sectors: health, social services/income maintenance, education, transportation, law enforcement and trade, as well as recommendations of additional sectors or perspectives from which to address this issue.

- Identifying any other information or resources that the public believes will assist us in our efforts to assess the benefits and costs of Executive Order 13166.

OMB appreciates any information that persons may have on these and other subjects related to the implementation of Executive Order 13166. After considering the information received, OMB will develop and issue a report to Congress by March 12, 2001.

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-45089; File No. SR-ISE-2001-30)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC Relating to Fees for Providing "Bisync Controllers" to Members

November 21, 2001.

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

(“Act”),¹ and rule 19b-4² thereunder, notice is hereby given that on November 16, 2001, the International Securities Exchange LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.

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

The Exchange proposes to amend its fee schedule to impose a monthly fee of

\$350 for each “bisync controller” the Exchange leases to a member.

The text of the proposed rule change appears below. New text is in italics.

ISE Schedule of Fees

* * * * *

	Amount	Billable unit	Frequency
<i>Access Services</i>			
<i>Gateway</i>			
• Cabinet Installation	\$5,000.00	Gateway	One Time.
• Cabinet Move/Add/Change	2,000.00	Gateway	One Time.
• Cabinet Lease/Maint.	1,400.00	Gateway	Monthly.
• Additional Servers	250.00	Server	Monthly.
• Router Installation/Removal	500.00	Router	One Time.
• Router Lease/Maint.	200.00	Router	Monthly.
• Bisync Controller	350.00	Controller	Monthly if leased; member can purchase own equipment.

* * * * *

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

In its filing with the Commission, the Exchange 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. The Exchange 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 institute a fee to recover the Exchange’s cost of providing “bisync controllers” to members. The controller allows the ISE to communicate with older protocols that are still in use by certain Electronic Access Members. The rule makes clear that members can purchase their own equipment and thus avoid leasing the controllers from the ISE and incurring this fee.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 (b) of the Act,³ in general, and furthers the objectives of section 6

(b)(4),⁴ 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 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.

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

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19 (b)(3)(A)(ii) of the Act⁵ and Rule 19b-4 (f)(2) thereunder.⁶ At any time within 60 days of the filing of such 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 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. 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-ISE-2001-30 and should be submitted by December 21, 2001.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f (b).

⁴ 15 U.S.C. 78f (b)(4).

⁵ 15 U.S.C. 78 (s)(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4 (f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45101; File No. SR-NASD-2001-76]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Amending NASD Rules 4510, 4520 and 4530 Relating to Issuer Entry and Annual Fee Schedules

November 23, 2001.

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 October 31, 2001, 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, II, and III below, which Items have been prepared by the NASD. Amendment No. 1 was filed on November 21, 2001.³ 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

The NASD has filed with the Commission a proposed rule change to amend Association Rules 4510, 4520 and 4530 pertaining to Issuer Entry and Annual Fee Schedules for the National and SmallCap Markets for both domestic and non-U.S. listings and make conforming changes.

The text of the proposed rule change appears below. New text is in italics. Deletions are in brackets.

* * * * *

4510. The Nasdaq National Market

(a) Entry Fee

[(1) When an Issuer submits an application for inclusion of any class of its securities in the Nasdaq National Market, it shall pay to The Nasdaq Stock Market, Inc.:

(A) a one-time company listing fee of \$5,000 (which shall include a \$1,000 non-refundable processing fee); and (B) a fee calculated on total shares outstanding according to the following schedule:

Up to 1 million shares	\$29,525
1+ to 2 million shares	\$33,750
2+ to 3 million shares	\$43,750
3+ to 4 million shares	\$48,750
4+ to 5 million shares	\$55,000
5+ to 6 million shares	\$58,725
6+ to 7 million shares	\$61,875
7+ to 8 million shares	\$64,375
8+ to 9 million shares	\$67,875
9+ to 10 million shares	\$70,625
10+ to 11 million shares	\$73,875
11+ to 13 million shares	\$76,625
12+ to 13 million shares	\$79,875
13+ to 14 million shares	\$82,000
14+ to 15 million shares	\$83,500
15+ to 16 million shares	\$85,500
Over 16 million shares	\$90,000]

(1) When a domestic Issuer, or foreign Issuer raising capital in conjunction with its Nasdaq listing, submits an application for inclusion of any class of its securities in The Nasdaq National Market, it shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, which includes a one-time company listing fee of \$5,000 (\$1,000 of which is a non-refundable processing fee), according to the following schedule:

Up to 30 million shares	\$100,000
30+ to 50 million shares	\$125,000
Over 50 million shares	\$150,000

(2) When a foreign Issuer not raising capital in conjunction with its Nasdaq listing, including American Depository Receipts (ADRs), submits an application for inclusion of any class of its securities in The Nasdaq National market, it shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, which includes a one-time company listing fee of \$5,000 (\$1,000 of which is a non-refundable processing fee), according to the following schedule:

Up to 3 million shares	\$50,000
3+ to 5 million shares	\$75,000
5+ to 30 million shares	\$100,000
30+ to 50 million shares	\$125,000
Over 50 million shares	\$150,000

[(2)](3) Total shares outstanding means the aggregate of all classes of equity securities to be included in [t]The Nasdaq National Market as shown in the Issuer's most recent

periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the Issuer's appropriate regulatory authority. In the case of foreign Issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.

[(3)] (4) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the Entry fee prescribed herein.

[(4)] (5) If the application is withdrawn or is not approved, the Entry fee (less the non-refundable processing fee) shall be refunded.

(b) Additional Shares

(1)-(4) No Change

(c) Annual Fee—Domestic and Foreign Issues

(1) [As of January 1, 1998, t]The Issuer of each class of securities, *other than an ADR*, that is a domestic or foreign issue listed in [t]The Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. an Annual fee calculated on total shares outstanding according to the following schedule:

[Up to 1 million shares	\$10,710
1+ to 2 million shares	\$10,960
2+ to 3 million shares	\$11,210
3+ to 4 million shares	\$11,460
4+ to 5 million shares	\$11,710
5+ to 6 million shares	\$11,960
6+ to 7 million shares	\$12,210
7+ to 8 million shares	\$12,460
8+ to 9 million shares	\$12,710
9+ to 10 million shares	\$12,960
10+ to 11 million shares	\$17,255
11+ to 12 million shares	\$17,505
12+ to 13 million shares	\$17,755
13+ to 14 million shares	\$18,005
14+ to 15 million shares	\$18,255
15+ to 16 million shares	\$18,505
16+ to 20 million shares	\$18,755
20+ to 25 million shares	\$22,795
25+ to 50 million shares	\$26,625
50+ to 75 million shares	\$32,625
75+ to 100 million shares	\$43,125
Over 100 million shares	\$50,000]
Up to 10 million shares	\$21,225
10+ to 25 million shares	\$26,500
25+ to 50 million shares	\$29,820
50+ to 75 million shares	\$39,150
75+ to 100 million shares	\$51,750
Over 100 million shares	\$60,000

(2)-(3) No Change

(4) [The Annual fee shall be based on the total shares outstanding of the class] *Total shares outstanding means the aggregate of all classes of equity securities included in [t]The Nasdaq National Market as shown in the Issuer's most recent periodic report required to be filed with the Issuer's appropriate*

⁷ 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 Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 21, 2001 ("Amendment No. 1"). In Amendment No. 1, the NASD made clarifying changes to the rule text, provided greater detail as to the basis for the proposed rule change, deleted all references to its request for accelerated approval, and requested that the proposed fees apply as of January 1, 2002.