

8310-2 to include the phrase "electronic inquiry," the NASD has made it easier and more convenient for interested persons to inquire about the employment and disciplinary history of its members and their associated persons. The Commission commends any effort made to improve investor access to information that could help investors determine whether to conduct or continue to conduct business with a particular broker-dealer or associated person. The Commission understands, however, that the NASD intends to disseminate responses to some inquiries electronically. As with developing and instituting information systems technology, the Commission expects the NASD, consistent with its statutory duties, to assure itself that security concerns (*i.e.*, the security of its systems and the immutability of the records after transmittal) have been addressed. Thus, in granting this partial accelerated approval, the Commission notes that it is approving only the NASD's ability to respond to electronic inquiries as if they were either written or telephonic inquiries.

Based on the foregoing, the Commission deems it appropriate to partially approve the proposed rule change on an accelerated basis, pursuant to Section 19(b) of the Act and the rules and regulations thereunder.¹²

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹³ that the aforementioned portion of proposed rule change SR-NASD-97-78 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-33128 Filed 12-18-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39441; File No. SR-NASD-97-83]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Listing Fees for Nasdaq National Market Issuers

December 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 13,

1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.¹ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The NASD is proposing to amend NASD Rule 4510 to revise the annual fees for Nasdaq National Market issuers and to make conforming changes to Rule 4520. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

Rule 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) for each class of security listed, a fee calculated on a graduated rate of \$.005 per share for the first 5 million shares, \$.0025 per share for each share between 5,000,001 and 15 million, inclusive, and \$.001 per share for each share over 15 million, based on the total number of shares outstanding. Entry fees paid by a company for all classes of securities listed on the Nasdaq National Market, regardless of the date those securities are listed, shall not exceed \$50,000 (inclusive of the \$5,000 company listing fee).²]

(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*

¹ On December 3, 1997, the NASD, through Nasdaq, submitted Amendment No. 1 to the filing. See letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 3, 1997.

² [For purposes of the Rule 4500 Series, the term "shares" shall include common and preferred stock, American Depositary Receipts (ADRs), warrants, partnership interests, or any other security listed on the Nasdaq National Market.]

*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 12 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 to 16 million shares—\$90,000*

[The entry fee shall be based on the total number of] *Total shares* outstanding means the aggregate of all classes of equity securities [of the class] to be included in 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. [and received by The Nasdaq Stock Market, Inc.]

(3) no change

(4) no change

(b) Additional Shares

(1) The issuer of each class of security, other than the American Depositary Receipts, which is listed in the Nasdaq National Market shall pay to The Nasdaq [National] Stock Market, Inc. the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security set forth in subparagraph (3) below.

(2) no change

(3) no change

(4) Payment of the fee to The Nasdaq Stock Market, Inc. shall be included with the issuer notification to [the Association] *Nasdaq* of the issuance of additional shares of securities as required under provisions of Rule 4310(c)(17) and Rule [4320(e)(16)] *4320(e)(15)*.

(c) Annual Fee—Domestic and Foreign Issues

(1) As of January 1, [1993] *1998*, the issuer of each class of securities that is a domestic or foreign issue listed in the Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. an annual fee [(comprised of a base annual fee and a variable annual fee) to be computed as follows:] *calculated on total shares outstanding according to the following schedule:*

[(A) The base annual fee shall be calculated on total shares outstanding³ according to the following schedule:
Up to 1 million shares—\$5,250

³ Total shares outstanding shall be the aggregate of all classes of securities listed on the NNM calculated at year end.

¹² 15 U.S.C. 78s.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

1+ to 2 million shares—\$5,750
2+ to 3 million shares—\$6,250
3+ to 4 million shares—\$6,750
4+ to 5 million shares—\$7,250
5+ to 6 million shares—\$7,750
6+ to 7 million shares—\$8,250
7+ to 8 million shares—\$8,750
8+ to 9 million shares—\$9,250
9+ to 10 million shares—\$9,750
10+ to 11 million shares—\$10,250
11+ to 12 million shares—\$10,750
12+ to 13 million shares—\$11,250
13+ to 14 million shares—\$11,750
14+ to 15 million shares—\$12,250
15+ to 16 million shares—\$12,750
Over 16 million shares—\$13,250]
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

(B) The variable annual fee shall be calculated at the rate of \$.025 per \$1,000 of market capitalization,⁴ but only for market capitalization above \$100 million.

(C) The annual fee (comprised of the base and variable fee) shall be capped as follows:

For companies with 10 million shares or less—\$10,000

For companies with 10+ to 20 million shares—\$15,000

For companies with more than 20 million shares—\$20,000

(2) no change

(3) no change.

(d) Annual Fee—American Depositary Receipts (ADRs)

(1) no change

(A) no change

(B) the sum of \$500 or \$.0005 per share outstanding, whichever is higher, up to a maximum of \$6,000 of each class of securities listed in the Nasdaq National Market.

⁴Market capitalization is calculated by multiplying total shares outstanding at year end (except that convertible bonds, rights and warrants are not included) times the price at year end.

(2) The annual fee shall be based on the total [amount of] *shares* outstanding [securities] of the class included in the Nasdaq National Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq. [and received by the Nasdaq Stock Market, Inc.]

(3) no change

(4) no change

Rule 5420. The Nasdaq SmallCap Market

(a) Entry Fee

(1) no change

(A) no change

(B) no change

(i) Equity Securities

\$1,000 or \$.001 per share outstanding, whichever is higher. For purposes of this subparagraph, the term "equity securities" includes all securities eligible for inclusion in the Nasdaq SmallCap Market not covered by subparagraph (ii) hereof⁵

(2) no change

(3) The entry fee shall be based on the total *shares* [number of] outstanding [securities] of the class to be included in the Nasdaq SmallCap Market as shown in the issuer's most recent period 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 [and received by The Nasdaq Stock Market, Inc.]

(b) no change

(c) no change

(d) no change

(1) no change

(A) Equity Securities

\$500 or \$.0005 per share outstanding, whichever is higher. For purposes of this subparagraph, the term "equity securities" includes all securities eligible for inclusion in the Nasdaq SmallCap Market not covered by paragraph [(ii)] (B) of this section.⁶

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 NASD included statements concerning

⁵ [See footnote to Rule 4510(a)(1)(B) defining "shares."] The term "shares" shall include common and preferred stock, American Depositary Receipts (ADRs), warrants, partnership interests, or any other security listed on the Nasdaq SmallCap Market. In the case of units, each component, but not the unit itself, shall be considered separately as an "equity security" for fee purposes.

⁶ See notes to Rule [4510(a)(1)(B) and] 4520(a)(1)(B)(i), above.

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 NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

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

The proposed rule change will adjust both the Entry Fee and the Annual Fee for Nasdaq National Market issuers, effective January 1, 1998. Nasdaq has determined that an increase in the Entry Fee and the Annual Fee for issuers included on the Nasdaq National Market is necessary. Nasdaq has not filed an adjustment to its fee rates since the fall of 1991. Since that time, Nasdaq has committed increased resources in efforts to strengthen market qualifications, to communicate with investors, and to prepare for closer integration of the world's equity markets. In particular, during the last eighteen months, substantial incremental annual expenses have been incurred in the development and operation of new information services for issuers and investors. These new information services include nasdaq.com and Nasdaq Online. Such additional services, while adding considerable value to a Nasdaq listing, were not envisioned when the 1991 fee filing was put in effect.

Through nasdaq.com, the market provides valuable information for investors and prospective investors at all levels. The Nasdaq website provides internet access to pricing from all markets. It also includes news, analyst information, tear sheets, hot links to EDGAR and other information which is important to all investors. With Nasdaq Online, companies now have access to the information they need to better serve their shareholders. Nasdaq Online provides companies with market and transaction data, analyst estimates, institutional ownership data, and fundamental financial information in an integrated system accessible through the internet. This service is important in helping issuers fulfill their responsibilities to shareholders.

The proposed fee increase will also be used to support the continued expansion and technological enhancements of Nasdaq's qualification and market surveillance systems and programs. Initiatives include the development of an automated issuer risk assessment system and an automated

Internet surveillance system. Additional resources will be committed to additional listing qualifications staff to insure compliance with the recently approved increase in Nasdaq's listing requirements.⁷ These initiatives, in concert with the additional services provided to companies and investors, will enhance the overall quality of companies listed on Nasdaq, foster the protection of investors and promote the integrity of The Nasdaq Stock Market.

The Nasdaq Stock Market expects to witness the continuing rapid growth and integration of the world's equity capital markets in the next few years. Nasdaq plans to be in the position to meet the growing demand of global investors for ownership of U.S. securities. This will require refinements to the market and further development of the global positioning of U.S. companies. The proposed fee increase will be used to cover costs that Nasdaq is incurring by providing these extra services to Nasdaq issuers, their shareholders and potential investors.

The proposed rule change also deletes references to filings received by Nasdaq because the receipt by Nasdaq is not the determinative test for which periodic report is most recent. Furthermore, it makes other conforming changes to clarify the text of the applicable rules.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) and (6) of the Act. The proposed rule change is consistent with Section 15A(b)(5) as it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers using the Nasdaq system. The proposed rule change is consistent with section 15A(b)(6) as it is designed to promote just and equitable principles of trade and does not permit unfair discrimination between customers, issuers, brokers or dealers. As noted above, the fee increase reflects additional costs that Nasdaq incurs for services provided to issuers.

(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, as amended.

(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

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. 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 File No. SR-NASD-97-83 and should be submitted by January 9, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-33193 Filed 12-18-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Release No. 34-39445; File No. SR-PHLX-97-59

Self-Regulatory Organizations; Philadelphia Stock Exchange, Incorporated, Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Decision to Limit its Clearance and Settlement Business and to Withdraw From the Securities Depository Business

December 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 14, 1997, the Philadelphia Stock Exchange, Incorporated, ("PHLX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-PHLX-97-59) as described in Items I and II below, which items have been primarily prepared by PHLX. The Commission is publishing this notice and order to solicit comments from interested parties and to grant accelerated approval of the proposal.

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

The proposed rule change will allow PHLX to limit its clearing services and to stop providing depository services that it currently operates through its wholly owned subsidiaries, Stock Clearing Corporation of Philadelphia ("SCCP") and Philadelphia Depository Trust Company ("Philadep"), respectively, in order to focus its resources on the operation of the exchange. PHLX has entered into an agreement with SCCP, Philadep, The Depository Trust Company ("DTC"), and the National Securities Clearing Corporation ("NSCC"), dated June 18, 1997, that set forth the arrangements relating to PHLX's decision ("Agreement").²

¹ 15 U.S.C. 78s(b)(1).

² SCCP, Philadep, DTC, and NSCC have submitted rule filings relating to the Agreement which are being addressed in a separate order. Securities Exchange Act Release Nos. 39220 (October 8, 1997, 62 FR 53848 (October 16, 1997)) [File No. SR-NSCC-97-08]; 39221 (October 8, 1997), 62 FR 53680 (October 15, 1997), [File No. SR-Philadep-97-04]; 39222 (October 8, 1997), 62 FR 53847 (October 16, 1997) [File No. SR-DTC-97-16]; and 39223 (October 8, 1997), 62 FR 53681 (October 15, 1997) [File No. SR-SCCP-97-04].

⁷ See Securities Exchange Act Release No. 38961 (Aug. 22, 1997), 62 FR 45895 (Aug. 29, 1997).

⁸ 17 CFR 200.30-3(a)(12).