

the Security's admission in accordance with applicable law; and (6) in the event of a delisting of the Securities from the Frankfurt Stock Exchange, the Bidder must offer the Issuer's minority shareholders fair cash compensation in exchange for their Security calculated in accordance with applicable law.

The Issuer stated in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act³ and shall not affect its obligation to be registered under section 12(g) of the Act.⁴

Any interested person may, on or before May 28, 2004 comment on the facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic comments:

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1-15419 or;

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number 1-15419. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,

Secretary.

[FR Doc. 04-10758 Filed 5-11-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: [69 FR 25448, May 6, 2004]

Status: Closed meeting.

Place: 450 Fifth Street, NW., Washington, DC.

Date and Time of Previously Announced Meeting: Tuesday, May 11, 2004 at 2:30 p.m.

Change in the Meeting: Cancellation of meeting.

The Closed Meeting scheduled for Tuesday, May 11, 2004 has been cancelled. For further information please contact the Office of the Secretary at (202) 942-7070.

Dated: May 10, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04-10871 Filed 5-10-04; 10:59 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49663; File No. SR-NASD-2004-036]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Revise and Update the Fee Schedule for OTC Bulletin Board Historical Trading Activity Reports

May 6, 2004.

I. Introduction

On March 1, 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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to revise and update the fee schedule for the OTC Bulletin Board ("OTCBB") historical trading activity

reports. The proposal was published for comment in the **Federal Register** on April 1, 2004.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of Proposed Rule Change

The proposed rule change would revise the fee schedule for the OTCBB historical trading activity reports that are available through the OTCBB website ("OTCBB.com"). The proposal would establish that the fees that Nasdaq would charge for the Issues Summary Statistics reports and the Intra-Day Quote and Intra-Day Time and Sales Data reports of OTCBB securities are identical to the fees assessed for similar reports for Nasdaq securities that are available through the website for Nasdaq traders ("NasdaqTrader.com"). In addition, the proposed rule change would establish a new fee for an up-to-date directory listing the contact information of all OTCBB issuers.

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.⁴ Specifically, the Commission finds that the proposal is consistent with the requirements of Section 15A(b)(5) and (b)(6) of the Act.⁵ Section 15A(b)(5) requires that the rules of a registered national securities association provide 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 association operates or controls. Section 15A(b)(6) requires, among other things, that the rules of national securities association not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that the pricing structure for the historical trading activity reports available through OTCBB.com for OTCBB securities is identical to the pricing structure for similar reports available through NasdaqTrader.com for Nasdaq securities. The Commission has previously determined that the fee structure for these NasdaqTrader.com

³ See Securities Exchange Act Release No. 49486 (March 26, 2004), 69 FR 17254.

⁴ In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78o(b)(5) and (b)(6).

³ 15 U.S.C. 78j(b).

⁴ 15 U.S.C. 78j(g).

⁵ 17 CFR 200.30-3(a)(1).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

reports is consistent with the Act.⁶ The Commission believes that a similar fee structure applied to historical data for OTCBB securities is also consistent with the Act. Finally, the Commission believes that the fee that Nasdaq proposes to charge for the All OTCBB Issuer Directory is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-NASD-2004-036) be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-10759 Filed 5-11-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49660; File No. SR-NASD-2004-070]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Permit Shareholder Action by Written Consent

May 6, 2004.

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 April 23, 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. Pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ Nasdaq has designated this proposal as non-controversial, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁶ See Securities Exchange Act Release No. 45102 (November 26, 2001), 67 FR 59830 (November 30, 2001) (Order approving SR-NASD-2001-59).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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

Nasdaq proposes to clarify that listed companies may solicit written consents from shareholders in lieu of a special shareholder meeting.

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.⁵

* * * * *

4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq Small Cap Market Issuers Except for Limited Partnerships

(a)-(h) No Change.

(i) Shareholder Approval

(1)-(5) No Change.

(6) Where shareholder approval is required, the minimum vote which will constitute shareholder approval shall be a majority of the total votes cast on the proposal. *These votes may be cast in person, [or] by proxy at a meeting of shareholders or by written consent in lieu of a special meeting to the extent permitted by applicable state and federal law and rules (including interpretations thereof), including, without limitation, SEC Regulations 14A and 14C. Nothing contained in this Rule 4350(i)(6) shall affect an issuer's obligation to hold an annual meeting of shareholders as required by Rule 4350(e).*

(j)-(n) 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 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

Nasdaq represents that the proposed rule change is designed to clarify that listed companies may solicit written consents from shareholders in lieu of a shareholder meeting.

In general, state law provides two ways in which matters may be brought before the shareholders of a corporation for their consideration. Shareholders either can take action via a meeting of shareholders (voting in person or by proxy) or by written consent of shareholders in lieu of a meeting. NASD Rule 4350 contains a number of provisions related to shareholder meetings,⁶ proxy solicitations⁷ and specific actions and transactions that require shareholder approval.⁸ State law and a company's charter and bylaws often require shareholder approval of other corporate actions. To the extent an issuer seeks shareholder approval by convening a special meeting of shareholders, NASD Rule 4350 requires that the issuer provide shareholders with a proxy solicitation that conforms to SEC requirements, primarily Rule 14a-1 *et seq.* and Regulation 14A under the Act. Many states permit corporate action without a shareholder meeting upon the written consent of specified percentage of shareholders. In certain circumstances, federal securities laws do not require that the corporation solicit the consent of all shareholders. Instead, Section 14(c) of the Act and Regulation 14C under the Act require that the corporation furnish all shareholders with an information statement that contains substantially the same disclosure as a proxy prior to the date the corporate action is taken.⁹

Nasdaq believes that it is appropriate that its listing standards under NASD Rule 4350(i) permit action by written consent in lieu of a special meeting when such action is permitted by state and federal law. While in the past Nasdaq has interpreted NASD Rule 4350(i) to permit action by written

⁶ NASD Rule 4350(e) requires that each issuer must hold an annual meeting of shareholders and provide written notice to Nasdaq.

⁷ NASD Rule 4350(g) requires that each issuer solicit proxies and provide proxy statements for all meetings of shareholders and provide copies of such proxy solicitations to Nasdaq.

⁸ NASD Rule 4350(i) requires shareholder approval of a variety of transactions including equity compensation plans and arrangements, transactions involving a change in control and sales of discounted stock and other potentially dilutive transactions.

⁹ 15 U.S.C. 78n(c) and 17 CFR 240.14C.

⁵ Nasdaq represents that the proposed rule change is marked to show changes to NASD Rule 4350(i)(6) as currently reflected in the electronic NASD manual available at www.nasdaq.com. No other pending or approved rule filings would affect the text of the Rule.