

also proposing to eliminate the liquidity provider credit under NASD Rule 7010(d), since there will be no transaction charges for ITS securities. Under the proposed rule change the current transaction charges for Amex-listed ETFs will remain the same. Nasdaq expects that the proposal will make the Nasdaq market center more economically feasible for members and encourage greater use of these systems for the trading of ITS securities.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,<sup>6</sup> in general and with Section 15A(b)(5) of the Act,<sup>7</sup> in particular, which requires that the rules of the NASD 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 NASD operates or controls. Nasdaq believes that the market for trading listed securities, other than Amex-listed ETFs, has favored the elimination of transaction fees to remain competitive with other markets with similar fee structures.<sup>8</sup> Nasdaq seeks to eliminate transaction fees for ITS securities to increase competition in this market segment, and to encourage its members to use Nasdaq's systems to trade exchange listed securities, thereby increasing liquidity. According to Nasdaq, the trading of Amex-listed ETFs in electronic venues, such as Nasdaq, is more prevalent than the trading of other exchange-listed securities. Nasdaq believes that its current fee schedule is already competitive with other markets that trade Amex-listed ETFs. Therefore, Nasdaq is retaining the current fee schedule for Amex-listed ETFs. In addition, Nasdaq believes that the proposed pricing structure is equitable and reasonable because it offers to all market participants a competitive pricing option in the trading of ITS securities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that

is not necessary or appropriate in furtherance of the purposes of the Act.

### 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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2) thereunder,<sup>10</sup> because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.<sup>11</sup>

### 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. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment for (<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-2004-077 on the subject line.

#### 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 SR-NASD-2004-077. 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 the filing also will be available for inspection and copying at the principal office of 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-2004-077 and should be submitted on or before July 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-14813 Filed 6-29-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49910; File No. SR-NASD-2004-087]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Technical Amendments to Section 4 of Schedule A to the NASD By-Laws and to Rule 10308(d) of the NASD Code of Arbitration Procedure

June 24, 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 June 8, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD filed the proposed rule change pursuant to

<sup>12</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>6</sup> 15 U.S.C. 78o-3.

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

<sup>8</sup> For example, according to Nasdaq, Inet ATS, Inc.'s pricing structure does not assess any execution fees for the trading of New York Stock Exchange, Inc. and Amex-listed securities, other than Amex-listed ETFs. See Inet ATS, Inc. Fee Schedule available at <http://www.inetats.com/prod/serv/bd/fee/fee1504.asp> (visited on June 16, 2004).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on June 18, 2004, the date Nasdaq submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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. 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

NASD is filing with the Commission a proposed rule change to: (1) amend Section 4 of Schedule A to the NASD By-Laws to re-label a subparagraph that inadvertently was not correctly re-labeled as part of a recent rule filing, and (2) amend Rule 10308(d) of the NASD Code of Arbitration Procedure to provide a title for recently approved rule language and to replace and re-label rule language that inadvertently was omitted in a recent rule filing. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are [bracketed].<sup>5</sup>

\* \* \* \* \*

#### Schedule A to NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

Section 1 through 3—No Change.

Section 4—Fees

(a) through (l) No Change.

(m) There shall be a session fee of \$65.00 assessed as to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to the provisions of Rule 1120.

(n) No Change.

[(m)] (o) NASD shall assess each member a fee of \$10 per day, up to a maximum of \$300, for each day that a new disclosure event or a change in the status of a previously reported disclosure event is not timely filed as required by NASD on an initial Form U5, an amendment to a Form U5, or an amendment to a Form U4, with such fee to be assessed starting on the day following the last date on which the event was required to be reported.

\* \* \* \* \*

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

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

<sup>5</sup> The language between paragraph marks (¶) in Rule 10308(d)(4) (Vacancies Created by Disqualification or Resignation) is already existing language. The language previously was approved by the Commission, but inadvertently was not reflected in the publication of a recent rule filing, as discussed below. The language is designated in this manner in order to reflect its omission from the previous rule filing.

### 10300. UNIFORM CODE OF ARBITRATION

\* \* \* \* \*

#### 10308. Selection of Arbitrators

(a) through (c) No change.

(d) Disqualification and Removal of Arbitrator Due to Conflict of Interest or Bias

(1)–(2) No change.

(3) *Standards for Deciding Challenges for Cause*

The Director will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

[(3)] (4) ¶ Vacancies Created by Disqualification or Resignation ¶

¶ Prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if an arbitrator appointed to an arbitration panel is disqualified or is otherwise unable or unwilling to serve, the Director shall appoint from the consolidated list of arbitrators the arbitrator who is the most highly ranked available arbitrator of the proper classification remaining on the list. If there are no available arbitrators of the proper classification on the consolidated list, the Director shall appoint an arbitrator of the proper classification subject to the limitation set forth in paragraph (c)(4)(B). The Director shall provide the parties information about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1).¶

\* \* \* \* \*

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

In its filing with the Commission, NASD 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 NASD 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

Technical Amendment to the NASD By-Laws

On December 22, 2003, NASD filed with the Commission for immediate effectiveness a proposed rule change to amend Section 4 of Schedule A to the NASD By-Laws to establish a late fee to be assessed against NASD members that fail timely to pay their yearly renewal fees to the Central Registration Depository. On January 29, 2004, NASD submitted Amendment No. 1 to the proposed rule change. The Commission published notice of the proposed rule change and Amendment No. 1 in the **Federal Register** on February 19, 2004.<sup>6</sup> The proposed rule change added paragraph (m) to Section 4.

On March 19, 2004, NASD filed with the Commission for immediate effectiveness a proposed rule change to amend Section 4 of Schedule A to the NASD By-Laws to establish an examination fee for the new Research Analyst Qualification Examination program.<sup>7</sup> Among other changes, NASD re-labeled the existing paragraph (k) in Section 4 as paragraph (m), but it inadvertently did not correctly re-label the existing paragraph (m). As a result, Section 4 has two provisions identified as paragraph (m). NASD is filing this proposed rule change to re-label the paragraph (m) that was added pursuant to SR-NASD-2003-192 as paragraph (o).

Technical Amendment to the NASD Code of Arbitration Procedure

On June 12, 2003, NASD filed a notice of proposed rule change with the Commission to amend Rules 10308 and 10312 of the NASD Code of Arbitration Procedure ("Code") to modify arbitrator classification. The Commission published the notice in the **Federal Register** on August 21, 2003.<sup>8</sup> The Commission approved the proposed rule change on April 16, 2004.<sup>9</sup>

The proposed rule change added, among other things, a provision to Rule

<sup>6</sup> See Securities Exchange Act Release No. 49224 (February 11, 2004), 69 FR 7833 (notice of filing and immediate effectiveness of File No. SR-NASD-2003-192).

<sup>7</sup> See Securities Exchange Act Release No. 49527 (April 2, 2004), 69 FR 19255 (April 12, 2004) (notice of filing and immediate effectiveness of File No. SR-NASD-2004-049).

<sup>8</sup> See Securities Exchange Act Release No. 48347 (August 14, 2003), 68 FR 50563 (notice of filing of File No. SR-NASD-2003-95).

<sup>9</sup> See Securities Exchange Act Release No. 49573, 69 FR 21871 (April 22, 2004).

10308(d) of the Code concerning a party's request to disqualify an arbitrator. When this provision was inserted as new subparagraph (3) of the rule, the existing subparagraph (3) was inadvertently omitted from the notice that was published in the **Federal Register**. NASD is filing this proposed rule change to reflect the omitted subparagraph, and to provide a title for the new subparagraph (to maintain uniformity within the rule). Thus, the title for the new language in subparagraph (3) will be "Standards for Deciding Challenges for Cause," and the omitted subparagraph will be re-labeled as subparagraph (4).

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>10</sup> which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the technical changes are consistent with the protection of investors and the public interest in that they will avoid any confusion when reading the provisions of Section 4 of Schedule A to the NASD By-Laws and Rule 10308(d) of the Code.

### B. Self-Regulatory Organization's Statement on Burden on Competition

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

NASD has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section

19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> 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.

Pursuant to Rule 19b-4(f)(6)(iii) under the Act,<sup>13</sup> the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. NASD has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>14</sup> Waiving the pre-filing requirement and accelerating the operative date will merely permit the immediate implementation of changes that are technical in nature. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

## 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. 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-2004-087 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary,

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-087. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. 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-2004-087 and should be submitted on or before July 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3590]

### Commonwealth of Kentucky (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 21, 2004, the above numbered declaration is hereby amended to include Bath, Daviess, Fleming, Hancock, Lewis, Mason, Nicholas, and Robertson Counties as disaster areas due to damages caused by severe storms, tornadoes, flooding, and mudslides

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).