

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55642; File No. SR-NASDAQ-2006-032)

April 18, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments No. 1, 2, and 3 Thereto, to Revise The Nasdaq Capital Market Listing Requirements

I. Introduction

On August 23, 2006, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) 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 certain listing requirements applicable to the Nasdaq Capital Market (“NCM”).

On August 28, 2006, Nasdaq filed Amendment No. 1 (“Amendment No. 1”) to the proposed rule change.³ The proposed rule change, as amended by Amendment No. 1, was published for comment in the Federal Register on September 5, 2006.⁴ The Commission received no comments on the proposal, as amended by Amendment No. 1. On December 4, 2006, Nasdaq filed Amendment No. 2 (“Amendment No. 2”) to the proposed rule change.⁵ On February 15,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Nasdaq made clarifying changes to the rule text in the NCM convertible debt listing standards. Nasdaq also made clarifying changes to the purpose section regarding convertible debt, rights and warrants, and non-Canadian foreign securities and American Depository Receipts.

⁴ See Securities Exchange Act Release No. 54378 (August 28, 2006), 71 FR 52351 (September 5, 2006) (“Notice”).

⁵ In Amendment No. 2, Nasdaq made minor clarifying changes to the purpose section to explain the application of the new NCM listing standards as they relate to the grace period for non-compliance with the bid requirement pursuant to Nasdaq Rules 4310(c)(8)(D), 4320(e)(2)(E)(ii), and 4450(i). This is a technical amendment and is not subject to notice and comment.

2007, Nasdaq filed Amendment No. 3 (“Amendment No. 3”) to the proposed rule change.⁶ This order provides notice of Amendment No. 3 and approves the proposed rule change on an accelerated basis, as amended.

II. Discussion

Nasdaq proposes to increase the initial and continued listing requirements for companies seeking to list, or that are already listed, on the NCM, as set forth in Nasdaq Rule 4310 (for domestic and Canadian securities) and Nasdaq Rule 4320 (for non-Canadian foreign securities and American Depositary Receipts).⁷

The Commission finds that these proposed changes are consistent with Section 6(b) of the Act,⁸ and the rules and regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission finds that these proposed rule changes are consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the Exchange’s rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

⁶ In Amendment No. 3, Nasdaq amended its initial and continuing listing standards for convertible debt to require that current last sale information be available in the United States for the underlying security into which a convertible debt issue is convertible.

⁷ For a full description of the proposed rule change, see Notice, supra note 4 and Amendments No. 2 and 3, supra notes 5 and 6.

⁸ 15 U.S.C. 78f(b).

⁹ In approving this proposal, as amended, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(5).

The development and enforcement of adequate standards governing the initial listing and maintenance of listing of securities is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for a marketplace to screen issuers and to provide listed status only to bona fide companies with sufficient float, investor base, and trading interest to maintain fair and orderly markets. Once an issuer has been approved for initial listing, the maintenance criteria allow a marketplace to monitor the status and trading characteristics of that issuer to ensure that it continues to meet standards for market depth and liquidity.

The changes to the continued listing requirements will be effective 30 days after the proposed rule change is approved by the Commission. Nasdaq represents that as of February 9, 2006, it is not aware of any issuer currently listing on NCM that would fail to meet the new continued listing requirements.¹¹ In the case of companies applying for initial listing, the new requirements will be effective immediately upon Commission approval of this proposed rule change for companies that applied after August 23, 2006, the date this proposed rule change was filed with the Commission. Companies that applied for listing prior to August 23, 2006 would be allowed to qualify under the prior standards, provided that they complete the listing process not later than 30 days after the proposed rule change is approved by the Commission. The Commission believes this implementation schedule is reasonable, and provided adequate notice to prospective applicants for listing.

¹¹ See letter from Arnold Golub, Associate General Counsel, Nasdaq, to Elizabeth K. King, Associate Director, Division (“Division”), Commission on February 12, 2007; see also letter from Arnold Golub, Associate General Counsel, Nasdaq, to Elizabeth K. King, Associate Director, Division, Commission on November 7, 2006.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 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. Please include File No. SR-NASDAQ-2006-032 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2006-032. 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 Nasdaq. 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-NASDAQ-2006-032 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

IV. Accelerated Approval

Pursuant to Section 19(b)(2) of the Act,¹² the Commission finds good cause to approve the proposal, as amended, prior to the thirtieth day after the amended proposal is published for comment in the Federal Register. Amendment No. 3 requires that convertible debt securities listed on the NCM have current last sale information available in the United States for the underlying security into which a convertible debt issue is convertible. Accelerating approval of the proposal, as modified by Amendment No. 3, would avoid delay in strengthening the initial and continued listing standards of the NCM, thereby benefiting investors and the public. Accordingly, the Commission finds good cause to accelerate approval of the amended proposal prior to the thirtieth day after publication in the Federal Register.

¹² 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-NASDAQ-2006-032), as modified by Amendments No. 1, 2, and 3, is approved on an accelerated basis.

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

Florence E. Harmon
Deputy Secretary

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).