

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57445; File No. SR-NASDAQ-2007-090)

March 6, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, to Accept Financial Statements Prepared in Accordance with International Financial Reporting Standards, as Issued by the International Accounting Standards Board, for Certain Foreign Private Issuers, Consistent with Commission Rules

On November 16, 2007, The NASDAQ Stock Market LLC (“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 allow Nasdaq to accept financial statements prepared in accordance with International Financial Reporting Standards (“IFRS”), as issued by the International Accounting Standards Board (“IASB”), for certain foreign private issuers. Nasdaq filed Amendment No. 1 to the proposed rule change on February 6, 2008. The proposed rule change was published for comment in the Federal Register on February 12, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

The Commission recently amended Form 20-F under the Act and other rules under the Securities Act of 1933 that eliminate the requirement for U.S. GAAP reconciliation for foreign private issuers that file financial statements prepared in accordance with IFRS, as issued by the IASB, if certain conditions are met.⁴ These changes apply only to foreign private issuers that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57290 (February 7, 2008), 73 FR 8084.

⁴ See Securities Exchange Act Release No. 57026 (December 21, 2007), 73 FR 986 (January 4, 2008) (the “IFRS/IASB Adopting Release”). See also Securities Exchange

file on Form 20-F, regardless of whether the issuer complies with IFRS as issued by the IASB voluntarily or in accordance with the requirements of the issuer's home country regulator or the exchange on which its securities are listed.⁵ A foreign private issuer will continue to be required to provide a reconciliation to U.S. GAAP if its financial statements include deviations from IFRS as issued by the IASB, if it does not state unreservedly and explicitly that its financial statements are in compliance with IFRS as issued by the IASB, if the auditor does not opine on compliance with IFRS as issued by the IASB, or if the auditor's report contains any qualification relating to compliance with IFRS as issued by the IASB.⁶ The Commission's rules are applicable to annual financial statements for financial years ending after November 15, 2007, and to interim periods within those years, that are contained in filings made after March 4, 2008.⁷

To allow foreign private issuers to take full advantage of this development, Nasdaq has proposed to allow such issuers to evidence compliance with Nasdaq's listing requirements on the same basis as permitted by the Commission. In its filing, Nasdaq states that to require foreign private issuers to provide U.S. GAAP reconciliations to list on Nasdaq, when they no longer are

Act Release No. 55998 (July 2, 2007), 72 FR 37962 (July 11, 2007) (the "IFRS/IASB Proposing Release"). The Commission is also considering whether to allow U.S. issuers to satisfy their reporting requirements through the provision of financial statements prepared in accordance with IFRS instead of U.S. GAAP. See Securities Exchange Act Release No. 56217 (August 7, 2007), 72 FR 45600 (August 14, 2007). This proposed Nasdaq rule change would be applicable only to foreign private issuers and would not apply to domestic U.S. companies.

⁵ IFRS/IASB Adopting Release at 992.

⁶ Id. at 993. A foreign private issuer using a jurisdictional or other variation of IFRS will be able to rely on the amendments if that issuer also is able to state compliance with both IFRS as issued by the IASB and a jurisdictional variation of IFRS (and does so state), and its auditor opines that the financial statements comply with both IFRS as issued by the IASB and the jurisdictional variation, as long as the statement relating to the former is unreserved and explicit. Id.

⁷ Id. at 994.

required to under Commission rules, may cause such issuers not to list in the U.S., thereby denying U.S. investors the ability to easily invest in such issuers.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that an exchange have rules designed, among other things, 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. The Commission believes that modifying Nasdaq's listing requirements, that currently require U.S. GAAP reconciliation, to reflect the changes made under Commission rules will ease the burden of compliance on foreign private issuers desiring to list on Nasdaq. In this regard, the Commission notes that the changes being made simply allow foreign private issuers listing on Nasdaq to be able to prepare their financial statements under the same exact terms and conditions as required under Commission rules. The Commission further notes that these changes should provide benefits to both foreign issuers and investors in the U.S. market, consistent with investor protection and the public interest.⁹

Finally, the Commission finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing. The Commission notes that approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing will allow Nasdaq to immediately accept financial statements prepared in accordance with IFRS, as issued by the IASB, in accordance with changes recently made by the

⁸ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ See IFRA/IASB Adopting Release at 1006 (noting that moving towards a single set of globally accepted accounting standards will have positive effects on investors).

Commission that became effective March 4, 2008.¹⁰ Further, as noted above, no comments were received on the proposed rule change.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-NASDAQ-2007-090), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹⁰ See IFRS/IASB Adopting Release.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).