

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59087; File No. SR-NASDAQ-2008-093)

December 11, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Bid Price Required for Initial Listing on the Nasdaq Global and Global Select Markets from \$5 to \$4

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 December 1, 2008, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and III below, which Items have been prepared by Nasdaq. Nasdaq has filed this proposal pursuant to Exchange Act Rule 19b-4(f)(6)<sup>3</sup> and requests that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>4</sup> 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

Nasdaq proposes to modify the bid price required for initial listing on the Nasdaq Global and Global Select Markets from \$5 to \$4.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.<sup>5</sup>

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>5</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

#### 4420. Quantitative Listing Criteria

In order to be listed on the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n) or (o) below. Nasdaq may extend unlisted trading privileges to any security for which Nasdaq has in effect rules providing for transactions in such class or type of security. Provisions of Rule 4420 that govern trading hours and surveillance procedures, and that relate to information circulars and prospectus delivery, shall apply to securities traded on an unlisted trading privileges basis.

(a) Entry Standard 1 — First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts

(1) – (3) No change.

(4) The bid price per share is [\$5] \$4 or more.

(5) – (7) No change.

(b) Entry Standard 2 — First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts

(1) – (3) No change.

(4) The bid price per share is [\$5] \$4 or more.

(5) – (7) No change.

(c) Entry Standard 3 — First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts

An issuer listed under this paragraph does not also need to be in compliance with the quantitative criteria for initial listing in the Rule 4300 series.

(1) – (2) No change.

(3) The bid price per share is [~~\$5~~] \$4 or more.

(4) – (6) No change.

(d) – (j) No change.

(k) Quantitative Listing Criteria — Preferred Stock and Secondary Classes of Common Stock

For initial listing, if the common stock or common stock equivalent security of the issuer is listed on Nasdaq or another national securities exchange, the issue shall have:

(1) – (2) No change.

(3) A minimum bid price per share of [~~\$5~~] \$4;

(4) – (5) No change.

Alternatively, in the event the issuer's common stock or common stock equivalent security is not listed on either Nasdaq or another national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.

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#### 4426. Nasdaq Global Select Market Listing Requirements

(a) – (c) No change.

(d) Price. For inclusion in the Nasdaq Global Select Market, an issuer not listed on the Nasdaq Global Market shall have a minimum bid price of [~~\$5~~] \$4 per share.

(e) – (f) No change.

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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 proposes to change the minimum bid price required for initial listing on the Nasdaq Global and Global Select Markets from \$5 to \$4. Nasdaq believes that this change will permit the listing of more companies on Nasdaq, thereby enhancing investor protection by allowing these companies, and their investors, to benefit from Nasdaq's liquid and transparent marketplace, supported by strong regulation including Nasdaq's listing and market surveillance and FINRA's independent regulation.

Nasdaq believes that companies satisfying the proposed minimum \$4 price requirement, along with all of Nasdaq's other listing requirements, are suitable for listing. Nasdaq notes that the proposed \$4 minimum price meets the criteria from the definition of a penny stock contained in Rule 3a51-1 under the Act.<sup>6</sup> In addition, the proposed \$4 price is the same as the requirement recently adopted for listing on the New York Stock Exchange.<sup>7</sup>

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<sup>6</sup> See 17 CFR 240.3a51-1(a)(2)(i)(C).

<sup>7</sup> See Section 102.01B (applicable to domestic companies) and Section 103.01A (applicable to non-U.S. companies) of the NYSE Listed Company Manual, which require

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general and with Sections 6(b)(5) of the Act,<sup>9</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 proposed rule change removes an impediment for certain otherwise qualified companies to list on Nasdaq, and thereby benefit from Nasdaq's liquid and transparent marketplace and strong regulation.

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

Nasdaq 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.

### 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

Because the foregoing rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of this filing, or such shorter time as the Commission

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a \$4 minimum price for initial listing. Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (approving SR-NYSE-2008-17).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of filing.<sup>12</sup> However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. In making this determination, the Commission notes that it recently approved a substantially similar rule proposal for the NYSE.<sup>14</sup> The Commission believes that the Nasdaq's proposed rule change raises no new regulatory issues that were not previously considered by the Commission in approving the NYSE's similar proposal. In approving the NYSE proposal, the Commission found that adopting a \$4 price requirement for initial listing was consistent with the requirements of the Act and that this requirement meets the criteria from the definition of penny stock contained in Rule 3a51-1 under

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) under the Act requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this notice requirement.

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

<sup>13</sup> Id.

<sup>14</sup> See supra note 7.

the Act.<sup>15</sup> Further, the Commission notes that the NYSE's proposal was subject to full notice and comment, and the Commission received no comments on the price requirement portion of the NYSE's rule proposal. Accordingly, for the reasons discussed above, the Commission finds that the Exchange's proposal is consistent with the protection of investors and the public interest and therefore designates the proposed rule change operative immediately upon filing.<sup>16</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.

#### 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-NASDAQ-2008-093 on the subject line.

##### Paper Comments:

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

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<sup>15</sup>

Id.

<sup>16</sup>

For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-NASDAQ-2008-093. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-093 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Florence E. Harmon  
Acting Secretary

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