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May 15, 2012

Securities and Exchange Commission
100 F St. NW
Washington, DC 20549-9303
Rule-comments@sec.gov

Files: SR-NASDAQ-2012-002

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Adopt an Alternative to the $4 Initial Listing Bid Price Requirement for the Nasdaq Capital Market of Either $2 or $3, if Certain Other Listing Requirements Are Met

Dear Securities and Exchange Commission:

In this rule filing, Nasdaq would like to compete on a level playing field for listings with the NYSE MKT, formerly known as the NYSE Amex by reducing the minimum initial listing bid price down from the present $4 to $2. This is a reasonable request. If the listing requirements of the NYSE MKT are good enough to fulfill the requirements of federal securities law, then Nasdaq should be allowed to use the same listing requirements. The Commission and its staff should resist the temptation to impose additional requirements on Nasdaq that are not imposed on NYSE MKT.

Survival rates for $2-$4 companies are similar to those of higher priced stocks.

[1] I am also on the boards of directors of the EDGA and EDGX stock exchanges. My comments are strictly my own and don't necessarily represent those of Georgetown University, EDGX, EDGA, or anyone else for that matter.

Good rulemaking should be based on good evidence. The NYSE MKT (formerly NYSE Amex) currently permits stocks to list with initial prices of $2. I took a quick look at the survivorship of stocks that started trading on the Amex in recent years using the Center for Research in Securities Prices (CRSP) data. I looked at the survivorship of stocks that began trading between $2 and $4 and compared it with the survivorship of stocks that started trading on the Amex with prices between $4 and $6. The results are in the attached table. The survival rates of the lower priced Amex-listed stocks compared with the higher-priced stocks are statistically indistinguishable. Thus, there is no empirical evidence to suggest that investors have been harmed by Amex's listing of stocks between $2 and $4 relative to stocks between $4 and $6. Nasdaq should be permitted to list stocks in the same price category under the same conditions.

<u>If the NYSE MKT listing requirements are inadequate to protect consumers, then the SEC should change the NYSE MKT requirements.</u>

The SEC has broad authority to amend or abrogate SRO rules that do not fulfill the requirements of the Exchange Act, and it should not hesitate to wield its authority when needed. The current proposal has some convoluted provisions regarding net tangible assets and net revenue that are not imposed on Amex listings. My understanding is that these are needed to meet the requirements of the Penny Stock Rules, which provide an unfair and anticompetitive advantage for Amex listings.

Either the Amex standards are good enough or they are not. If they are good enough, then the Commission should allow Nasdaq to use them. If they are not good enough, then the Commission should fix them. Permanently cementing in place an unlevel playing field makes no sense. The Commission should re-examine the Penny Stock Rules to create a level playing field.

<u>Congress wants the SEC to make markets more hospitable for smaller companies.</u>

Companies in the $2 range are invariably smaller companies. Congress has demonstrated through the JOBS Act that it is adopting a policy of lighter standards for smaller companies. The Commission should listen to the message that Congress is sending and work on making markets better for smaller companies. Approving proposals like this one without delay (and without adding onerous requirements) is one way of doing that.

<u>Less competition in this space means more companies will "go dark" and deregister from the Commission.</u>

Exchanges compete vigorously for new listings. This competition leads them to help smaller companies list, and also to provide an array of services to the listed companies. These services include, for example, assistance with various investor relations functions that help to keep investors informed.

The Commission's refusal to provide a level playing ground in this area reduces the choices available to smaller companies and thus reduces their access to these various market-improving services. With fewer listing alternatives, it is more likely that smaller companies will choose to "go dark" and deregister their shares from the Commission. This is much easier now that the JOBS act has significantly increased the number of shareholders of record needed to trigger mandatory registration with the SEC. This would result in less information available to investors and thus a great loss of investor protection.

Pushing companies off exchange hurts corporate governance.

Companies that are listed on exchanges are required to adhere to the corporate governance rules of the exchanges. It should be a matter of public policy to encourage smaller firms to follow these good governance procedures by allowing them to list on exchanges that require such good corporate governance. Reducing competition in listings would result in fewer public listings and thus hurt consumers with poorer corporate governance.

In summary, the Commission should treat all exchanges equally and permit Nasdaq to use the same listing standards as NYSE MKT.

If you have any questions, feel free to email me at angelj@georgetown.edu or call me at (202) 687-3765.

Respectfully submitted,

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Table 1

Survival rates of Amex Listings by year and starting price.

			Survival rates by ending year										
Starting Year	Starting Price $	Number of companies	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
1999	2-4	35	0.86	0.77	0.71	0.63	0.57	0.57	0.51	0.43	0.40	0.40	0.40
1999	4-6	15	0.80	0.80	0.73	0.73	0.67	0.60	0.47	0.47	0.47	0.40	0.40
2000	2-4	36	1.00	0.94	0.81	0.67	0.61	0.56	0.50	0.47	0.36	0.33	0.31
2000	4-6	29	0.97	0.93	0.79	0.59	0.59	0.45	0.38	0.28	0.28	0.28	0.24
2001	2-4	18		1.00	0.78	0.72	0.72	0.67	0.61	0.56	0.56	0.50	0.44
2001	4-6	8		1.00	1.00	1.00	0.88	0.63	0.63	0.63	0.63	0.50	0.50
2002	2-4	15			1.00	0.93	0.87	0.80	0.73	0.60	0.53	0.53	0.53
2002	4-6	9			1.00	1.00	1.00	0.89	0.89	0.78	0.78	0.67	0.56
2003	2-4	23				1.00	1.00	1.00	0.87	0.78	0.65	0.65	0.61
2003	4-6	22				1.00	1.00	0.91	0.91	0.91	0.86	0.77	0.68
2004	2-4	39					1.00	0.97	0.95	0.82	0.67	0.62	0.59
2004	4-6	14					1.00	0.93	0.86	0.86	0.79	0.57	0.57
2005	2-4	30						1.00	0.97	0.93	0.63	0.53	0.43
2005	4-6	26						1.00	0.96	0.85	0.77	0.65	0.58
2006	2-4	26							0.92	0.85	0.81	0.81	0.77
2006	4-6	18							1.00	0.94	0.72	0.61	0.56
2007	2-4	23								1.00	1.00	0.74	0.70

2007	4-6	22								1.00	0.95	0.82	0.82
2008	2-4	13									1.00	1.00	0.92
2008	4-6	4									1.00	1.00	1.00
2009	2-4	9										1.00	1.00
2009	4-6	9										1.00	1.00
2010	2-4	15											1.00
2010	4-6	6											1.00

This table displays the survival rates of Amex-listed companies by year of initial listing. Data were obtained from the CRSP daily data. The table looks at firms that started trading on the Amex in the given years with starting prices (defined as the closing price on the first day of trading) between $2 and $4 and between $4 and $6. Companies are classified as survivors if they are still either 1) listed on the Amex as of the end of the given year, or 2) have stopped trading on the Amex but their last trading price was more than $1.00 per share. As an example of reading this table, note that 86% of the Amex companies that started trading on the Amex in calendar year 1999 were still surviving by the end of 2001.