

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51420; File No. SR-NASD-2005-003)

March 23, 2005

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change to Amend Rule 4350(n) and IM-4350-7 to Conform the Time Frame for the Disclosure of a Waiver to a Company's Code of Conduct to the Time Frame Required for Similar Disclosure by the Commission's Form 8-K

On January 12, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend NASD Rule 4350 and related interpretive material to conform the time frame for the disclosure of a waiver to a company's code of conduct to the time frame required for similar disclosure by the Commission's Form 8-K. The proposed rule change was published for comment in the Federal Register on February 18, 2005.<sup>3</sup> The Commission received no comments on the proposal.

NASD Rule 4350(n) and interpretive material IM-4350-7 require issuers listed on Nasdaq to adopt codes of conduct that are applicable to all directors, officers, and employees. Each code of conduct must require that any waiver of the code for executive officers or directors may be made only by the board of directors of the issuer and must be disclosed to shareholders, along with the reasons for the waiver. The rule specifies that issuers (other than foreign private issuers) must disclose such waivers in a Form 8-K within five business days. The proposed rule

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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> See Securities Exchange Act Release No. 51197 (February 14, 2005), 70 FR 8414 (February 18, 2005).

change would amend the rule and interpretive material to require such disclosure within four business days.

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 association,<sup>4</sup> and, in particular, the requirements of Section 15A(b)(6) of the Act.<sup>5</sup> The Commission believes that the proposed timing for disclosure of waivers is consistent with similar requirements of Commission rules concerning disclosure of waivers by issuers (other than foreign private issuers) for principal executive, financial, and accounting officers.<sup>6</sup>

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<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

<sup>6</sup> Item 406(a) of Regulations S-K and S-B (17 CFR 229.406(a) and 228.406(a)) requires an issuer to disclose whether the issuer has adopted a code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. Issuers are also required to disclose waivers of the code that are granted to those individuals. See Item 5.05(b) of Form 8-K (17 CFR 249.308). Recent amendments to Form 8-K shorten the time frame for this disclosure from five business days to four business days. See Securities Act Release No. 8400 (March 16, 2004), 69 FR 15594 (March 25, 2004). These amendments were effective August 23, 2004.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>7</sup>, that the proposed rule change (File No. SR-NASD-2005-003) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).