

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51741; File No. SR-NASD-2005-054)

May 25, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Certain Amendments to the Restated Certificate of Incorporation and the By-Laws of The Nasdaq Stock Market, Inc.

I. Introduction

On April 19, 2005, the National Association of Securities Dealers (“NASD”), through its subsidiary, The Nasdaq Stock Market Inc. (“Nasdaq”), filed with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change, 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> to make certain amendments to the Nasdaq Restated Certificate of Incorporation (the “Certificate”) and the Nasdaq By-Laws (the “By-Laws”) to phase out the current classified board structure and provide for the annual election of all members of the Nasdaq Board of Directors (the “Nasdaq Board”). The proposed rule change was published for comment in the Federal Register on May 4, 2005.<sup>3</sup> The Commission received no comments on the proposal. On May 25, 2005, Nasdaq submitted

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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. 51626 (April 28, 2005), 70 FR 23286 (May 4, 2005).

Amendment No. 1 to the proposed rule change.<sup>4</sup> This order grants accelerated approval to the proposed rule change, as amended.

## II. Discussion and Commission Findings

The Commission has reviewed the proposed rule change, as amended, and finds that it is consistent with the requirements of Section 15A of the Act,<sup>5</sup> and the rules and regulations thereunder applicable to a national securities association.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with Sections 15A(b)(2) and (6) of the Act,<sup>7</sup> which require, among other things, that Nasdaq be so organized and have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance with the provisions of the Act, and that Nasdaq's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will serve the public interest by enhancing the accountability of board members through more frequent elections and thereby may help Nasdaq fulfill its obligations under the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. In order for the amendments to the Certificate and the By-Laws to take effect as approved, Nasdaq requested

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<sup>4</sup> In Amendment No. 1, Nasdaq modified the text of their proposed rule change to reflect NASD and stockholder approval of the proposed amendments to Nasdaq's Certificate of Incorporation. Specifically, the Amendment stated that the Board of Governors of the NASD (the "NASD Board") approved the proposed rule change on April 21, 2005, and that Nasdaq's stockholders approved the proposed rule change at the 2005 annual meeting of stockholders which was held on May 25, 2005. Amendment No. 1 is a technical amendment and, therefore, not subject to notice and comment.

<sup>5</sup> 15 U.S.C. 78o-3.

<sup>6</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78o-3(b)(2) and (6).

that the Commission accelerate approval of the proposed rule change on May 25, 2005, immediately after the filing of the amendment indicating approval by Nasdaq's stockholders and the NASD Board. Accelerating approval will allow for the timely filing, of the proposed changes being made to the Certificate, with the Secretary of State of the State of Delaware. Furthermore, approval of the proposed rule change on May 25, 2005 will avert the need for a second stockholder vote at a later meeting that would entail additional expense and delay while not conferring benefits from a regulatory or corporate governance standpoint. Accordingly, the Commission finds good cause, consistent with Sections 15A(b)(6) and 19(b) of the Exchange Act, to approve the proposed rule change, as amended, on an accelerated basis.

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that proposed rule change (SR-NASD-2005-054), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).