

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49746; File No. SR-NASD-2004-081)

May 20, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Unit Listing Standards

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 May 17, 2004, 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”) the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing.<sup>5</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 amend the listing standards for units. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.<sup>6</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> 15 U.S.C. 78s(b)(1).

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

<sup>5</sup> Nasdaq asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> The proposal is marked against the rule text of the current NASD manual, which is available on [www.nasdaq.com](http://www.nasdaq.com). There are no other pending rule filings that would affect the text of this rule.

## **Rule 4420. Quantitative Designation Criteria**

**(a) – (g)** no change.

### **(h) Units**

#### **(1) Initial and Continued Inclusion Requirements**

(a) All units shall have at least one equity component. All components of such units shall satisfy the requirements for initial and continued listing under Rules 4420 and 4450, as applicable, or, in the case of debt components, satisfy the requirements of 4420(h)(1)(b).

(b) All debt components of a unit, if any, shall meet the following requirements:

(i) the debt issue must have an aggregate market value or principal amount of at least \$5 million;

(ii) the issuer of the debt security must have equity securities listed on the Nasdaq National Market; and

(iii) in the case of convertible debt, the equity into which the debt is convertible must itself be subject to real-time last sale reporting in the United States, and the convertible debt must not contain a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time or from time to time unless the company establishes a minimum period of ten business days within which such price reduction will be in effect.

(c) All components of the unit shall be issued by the same issuer. All units and issuers of such units shall comply with the initial and continued inclusion requirements under Rules 4420 and 4450, as applicable.

(2) Minimum Inclusion Period and Notice of Withdrawal

In the case of units, the minimum period for inclusion of the units shall be 30 days from the first day of inclusion, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Issuers and underwriters seeking to withdraw units from inclusion must provide Nasdaq with notice of such intent at least 15 days prior to withdrawal.

([2]3) Disclosure Requirements for Units

Each Nasdaq National Market issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations promulgated thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period. The issuer of a unit shall further provide information regarding the terms and conditions of the components of the unit (including information with respect to any original issue discount or other significant tax attributes of any component) and the ratio of the components comprising the unit. An issuer shall also disclose when a component of the unit is separately listed on Nasdaq. These disclosures shall be made on the issuer's website, or if it does not maintain a website, in its annual report provided to unit holders. An issuer shall also immediately

publicize through, at a minimum, a public announcement through the news media, any change in the terms of the unit, such as changes to the terms and conditions of any of the components (including changes with respect to any original issue discount or other significant tax attributes of any component), or to the ratio of the components within the unit. Such public notification shall be made as soon as practicable in relation to the effective date of the 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 has recently received inquiries about listing of units comprised of common stock and subordinated notes, sometimes referred to as Income Deposit Securities or IDS’s. Listing standards for these securities have been approved for the American Stock Exchange LLC (“Amex”) and the New York Stock Exchange, Inc. (“NYSE”). Nasdaq now proposes listing standards for such units that are substantially similar to the standards of these other markets. In particular, Nasdaq proposes to require that all units shall have at least one equity component, and that all components must meet the Nasdaq National Market initial and continued inclusion

requirements under Nasdaq Rules 4420 and 4450, or in the case of debt components, meet certain specified standards including: an aggregate market value or principal amount of at least \$5 million; a requirement that the debt issuer have equity listed on Nasdaq; and in the case of convertible debt, limitations on changes to conversion prices and a last sale reporting requirement for the equity into which the debt is convertible. In that regard, real time last sale reporting must be available for the underlying equity security, and it will not be sufficient that a unit containing the equity security is subject to last sale reporting. In addition, all components of the unit shall be issued by the same issuer, and all units and the issuer of such units shall be required to comply with the initial and continued inclusion requirements under Nasdaq Rules 4420 and 4450, as applicable.

An issuer would be required to provide information regarding the terms and conditions of the components of the unit on a website, or if it does not maintain a website, in its annual report provided to unit holders. In addition, an issuer would be required to disclose when a component of the unit is separately listed on Nasdaq. The proposal would also require an issuer to immediately publicize through, at a minimum, a public announcement through the news media, any change in the terms of a listed unit, such as changes to the terms and conditions of any of the components or to the ratio of components within the unit. Nasdaq believes that this heightened disclosure requirement is appropriate to ensure that sufficient information regarding the attributes of these securities is publicly available on a timely basis.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>7</sup> in general and with Section 15A(b)(6) of the Act,<sup>8</sup> in particular, in that it will promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest. Specifically, the proposed rule change will permit the listing of units comprised of equity and debt components on Nasdaq.

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

Nasdaq does not believe that the proposed rule change will impose 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 on the proposed rule change were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing on May 17, 2004 pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder<sup>10</sup> because the proposal: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30

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<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.<sup>11</sup>

Nasdaq has asked the Commission to waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it recently approved similar proposals by the Amex and NYSE, which Nasdaq's proposal is based upon.<sup>12</sup> The Amex and NYSE proposals were published for comment and the Commission received no comments on them.<sup>13</sup> Finally, the Commission does not believe Nasdaq's proposal raises any new regulatory issues. For these reasons, the Commission designates the proposal to be effective and operative upon filing of the proposal on May 17, 2004 with the Commission.<sup>14</sup>

At any time within 60 days of the filing of the amended 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.

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<sup>11</sup> As required under Rule 19b-4(f)(6)(iii), Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

<sup>12</sup> See Securities Exchange Act Release No. 48666 (October 21, 2003); 68 FR 61239 (October 27, 2003) (SR-Amex-2003-83); Securities Exchange Act Release No. 49515 (April 1, 2004); 69 FR 19592 (April 13, 2004) (SR-NYSE-2004-17).

<sup>13</sup> See *id.*

<sup>14</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).





#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change. 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-NASD-2004-081 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-081. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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-NASD-2004-081 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).