

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51197; File No. SR-NASD-2005-003)

February 14, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of 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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that 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") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to modify Rule 4350 and related interpretative 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. Nasdaq will implement the proposed rule change immediately upon approval by the Commission. The text of the proposed rule change is available on Nasdaq's Web site (<http://www.nasdaq.com>), at the principal office of the NASD, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

NASD Rule 4350(n) requires each Nasdaq-listed issuer to adopt a code of conduct applicable to all directors, officers and employees of the issuer. This rule also requires that any waivers of the code for directors or executive officers must be approved by the issuer's board of directors and that issuers (other than foreign private issuers) must disclose such waivers in a Form 8-K within five business days.

Similarly, Item 406 of Regulations S-K and S-B³ require 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. The Commission also requires an issuer to disclose waivers of the code that are granted to those individuals. Recent amendments to Form 8-K shorten the time frame for this disclosure from five business days to four business days.⁴

³ 17 CFR 229.406(a) and 228.406(a).

⁴ Securities Act Release No. 8400 (March 16, 2004), 69 FR 15594 (March 25, 2004). These amendments were effective August 23, 2004.

To conform with these Commission changes, Nasdaq proposes to modify the existing five business-day period for disclosure in its rules to instead require such disclosure within four business days of the granting of a waiver to the code of conduct to any executive officer or director.⁵

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁶ in general and with Section 15A(b)(6) of the Act,⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is consistent with these requirements in that it is designed to enhance the disclosure required by issuers and align that disclosure with the time frames required by the Commission for similar disclosures, thereby reducing confusion among issuers and investors.

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, as amended.

⁵ Foreign private issuers will continue to be permitted to make such disclosure either on the issuer's next Form 20-F or 40-F, or on a Form 6-K, consistent with the Commission's requirements. See Securities Act Release No. 8177, 68 FR 5110 (Jan. 31, 2003) (adopting new Item 16B to Form 20-F and paragraph (9) to General Instruction B of Form 40-F regarding disclosure by foreign private issuers of waivers to the code of conduct). See also Securities Exchange Act Release No. 50573 (Oct. 20, 2004), 69 FR 62493 (Oct. 26, 2004) (adopting conforming changes to NASD Rule 4350(n) and IM-4350-7).

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(6).

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be

disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Please include File Number SR-NASD-2005-003 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-2005-003. 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. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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-2005-003 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.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).