

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59014; File No. SR-NASDAQ-2008-084)

November 25, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of a Proposed Rule Change to Require Limited Partnerships to Obtain Shareholder Approval for the Use of Equity Compensation and Make Other Clarifying Changes to the Listing Requirements for Limited Partnerships

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 November 18, 2008, The NASDAQ Stock Market LLC (“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 Substance of the Proposed Rule Change

Nasdaq proposes to require limited partnerships to obtain shareholder approval for the use of equity compensation and make other clarifying changes to the listing requirements for limited partnerships. Nasdaq will implement the proposed rule change upon approval. The text of the proposed rule change is below. Proposed new language is underlined; there are no proposed deletions.³

4360. Qualitative Listing Requirements for Nasdaq Issuers That Are Limited Partnerships

(a) – (j) No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

(k) Shareholder Approval. Each issuer that is a limited partnership must obtain shareholder approval when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants, as would be required under Rule 4350(i)(1)(A) and IM-4350-5.

(l) Auditor Registration. Each issuer that is a limited partnership must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7212].

(m) Notification of Material Noncompliance. Each issuer that is a limited partnership must provide Nasdaq with prompt notification after an executive officer of the issuer, or a person performing an equivalent role, becomes aware of any material noncompliance by the issuer with the requirements of this Rule 4360.

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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

Currently, NASDAQ rules require that issuers, except Limited Partnerships (“LPs”),

obtain shareholder approval for a variety of corporate actions, including the issuance of equity compensation. NASDAQ's shareholder approval requirements have not historically been applied to LPs because their structure requires that public investors have limited rights and that the general partners make all significant decisions about the operation of the company. As such, limited partners do not expect to have a voice in the operations of the partnership.

Nonetheless, the Commission recently noted that the "rationale for treating an LP differently than, for example, a traditional corporation with respect to shareholder input on equity compensation is less compelling" and that it is "beneficial from a corporate governance perspective" to require shareholder approval for equity compensation.⁴ As such, and in response to these findings by the Commission, Nasdaq now proposes to expand the requirement to obtain shareholder approval for equity compensation to entities that are LPs.

In addition, Nasdaq proposes to modify the rules applicable to LPs to require that the auditor of a listed LP must be registered with the Public Company Accounting Oversight Board ("PCAOB") and that an LP must notify Nasdaq of any material non-compliance with the corporate governance rules. When Nasdaq adopted these requirements for other companies in 2003 in response to requirements imposed by the Sarbanes-Oxley Act of 2002, Nasdaq inadvertently excluded LPs from these requirements. Nonetheless, these requirements are already applicable to LPs. Specifically, with respect to the proposed auditor registration requirement, it is unlawful for an auditor to participate in the preparation or issuance of an audit report with respect to any listed company, including an LP, unless it is registered with the PCAOB.⁵ With respect to the proposed notification requirement, LPs have agreed in Nasdaq's

⁴ Securities Exchange Act Release No. 55796 (May 22, 2007) (approving SR-NYSE-2007-28).

⁵ Section 102 of the Sarbanes Oxley Act, 15 U.S.C. 7212.

listing agreement, which each listed company must sign prior to listing, to promptly notify Nasdaq in writing of any corporate action or other event which will cause the company to cease to be in compliance with NASDAQ listing requirements.⁶ As such, including these changes in Nasdaq's rules are simply clarifying changes designed to highlight the requirements and facilitate understanding and compliance of the rules by LPs.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general and with Sections 6(b)(5) of the Act,⁸ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of 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 designed to help protect investors in LP securities against insider self-dealing and the potential dilutive effect of equity compensation plans and enhance the transparency surrounding the application of NASDAQ's requirements.

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.

⁶ See http://www.nasdaq.com/about/Listing_Agreement.pdf.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

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 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-NASDAQ-2008-084 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2008-084. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-NASDAQ-2008-084 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Jill M. Peterson
Assistant Secretary

⁹ 17 CFR 200.30-3(a)(12).