

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59318; File No. SR-NASDAQ-2009-003)

January 29, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify Nasdaq's Listing Requirements Related To The Distribution of Annual Reports

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 15, 2009, The NASDAQ Stock Market LLC ("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 has designated the proposed rule change as effecting a change described under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. 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 modify Rules 4350(b)(1)(A) and 4360(b)(1), which relate to the distribution of a listed issuer's annual report.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.⁴

4350. Qualitative Listing Requirements for Nasdaq Issuers Except for Limited Partnerships

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

(a) No change.

(b) Distribution of Annual and Interim Reports

(1)(A) Each issuer shall make available to shareholders of such securities an annual report containing audited financial statements of the company and its subsidiaries, which, for example, may be on Form 10-K, 20-F, 40-F or N-CSR. An issuer may comply with this requirement either:

(i) by mailing the report to shareholders[.]; or

(ii) by satisfying the requirements for furnishing an annual report contained in Exchange Act Rule 14a-16; or

(iii) by posting the annual report to shareholders on or through the company's website (or, in the case of an issuer that is an investment company that does not maintain its own website, on a website that the issuer is allowed to use to satisfy the website posting requirement in Exchange Act Rule 16a-3(k)), along with a prominent undertaking in the English language to provide shareholders, upon request, a hard copy of the company's annual report free of charge. An issuer that chooses to satisfy this requirement [via a website posting] pursuant to this paragraph (iii) must, simultaneous with this posting, issue a press release stating that its annual report has been filed with the Commission (or other appropriate regulatory authority). This press release must also state that the annual report is available on the company's website and include the website address and that shareholders may receive a hard copy free of charge upon request. An issuer must provide such hard copies within a reasonable period of time following the request.

(B) No change.

(2) – (4) No change.

(c) – (n) No change.

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

(a) No change.

(b) Distribution of Annual and Interim Reports

(1) Each issuer that is a limited partnership shall distribute to limited partners copies of an annual report containing audited financial statements of the limited partnership. The report shall be distributed to limited partners within a reasonable period of time after the end of the limited partnership's fiscal year end and shall be filed with Nasdaq at the time it is distributed to limited partners. A limited partnership may comply with this requirement either:

(A) by mailing the report to the limited partners; or

(B) by satisfying the requirements for furnishing an annual report contained in Exchange Act Rule 14a-16; or

(C) by posting the annual report on or through the limited partnership's website, along with a prominent undertaking in the English language to provide limited partners, upon request, a hard copy of the partnership's annual report free of charge. A limited partnership that chooses to satisfy this requirement pursuant to this paragraph (C) must, simultaneous with this posting, issue a press release stating that its annual report has been filed with the Commission (or other

appropriate regulatory authority). This press release must also state that the annual report is available on the limited partnership's website and include the website address and that limited partners may receive a hard copy free of charge upon request. A limited partnership must provide such hard copies within a reasonable period of time following the request.

(2) No change.

(c) – (m) No 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 is proposing to modify Rule 4350(b)(1)(A), which relates to the distribution of a company's annual report. At present, the Rule requires that a company either: (i) distribute a physical copy of its annual report to shareholders, or (ii) issue a press release announcing the filing of its annual report and the availability of that report on the company's website or upon request. Nasdaq proposes to maintain these two alternatives, but proposes to also allow a company to satisfy this requirement by following the requirements related to "Internet

Availability of Proxy Materials” contained in the Commission’s Rule 14a-16.⁵ Nasdaq believes that accepting compliance with the comparable Commission requirement to furnish an annual report will ease the compliance burden on companies while continuing to assure that this information is available to shareholders. In addition, Nasdaq believes that maintaining the requirement to issue a press release when relying on the existing alternative will allow companies that are not subject to the Commission’s proxy rules to continue to take advantage of technology to satisfy the requirement to distribute their annual report.

Nasdaq is also proposing to modify Rule 4360(b)(1) to add the manner in which a limited partnership may satisfy the requirement to deliver an annual report. Presently, this rule is silent as to how the requirement can be satisfied, but Nasdaq believes that limited partnerships can comply in the same manner as described in Rule 4350(b)(1)(A). As such, the addition would clarify that a limited partnerships [sic] must satisfy the requirement in the same way as other listed issuers, although Rule 4360(b)(1) would have non-substantive differences from Rule 4350(b)(1) to reflect its applicability to partnerships (instead of corporations), which are held by limited partners (instead of shareholders). Nasdaq notes that pursuant to Rule 4360(e), a limited partnership is only required to hold annual meetings if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership’s limited partnership agreement. As such, limited partnerships frequently will not hold meetings or solicit proxies, and therefore would not be subject to the Commission’s proxy rules, but could still satisfy the requirement to deliver the annual report through the alternatives described in the proposed rule.

⁵ 17 CFR 240.14a-16.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general and with Sections 6(b)(5) 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, 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 facilitate compliance with Nasdaq rules by aligning Nasdaq's disclosure requirements with those of the Commission.

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.

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

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. In making this determination, the Commission notes that the NYSE recently adopted a substantially similar listing requirement governing the distribution of annual reports,¹² and the Commission believes that the Nasdaq's proposed rule change raises no new regulatory issues. The Commission also notes that the NYSE's proposal was subject to full notice and comment, and the Commission received no comments on the NYSE's rule proposal. In addition, the Commission believes that waiving the 30-day operative delay will immediately give issuers that have just filed, or are about to file, their annual reports with the Commission the option to comply with Nasdaq's distribution of annual reports requirement by satisfying the requirements for furnishing an annual report contained in Rule

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² See Securities Exchange Act Release No. 59123 (December 19, 2008), 73 FR 7991 (December 30, 2008) (SR-NYSE-2008-128).

14a-16 under the Act. The Commission also believes that it is consistent with the protection of investors and the public interest to allow limited partnerships to distribute annual reports to their limited partners under the same terms and conditions as Nasdaq's other listed operating companies. The Commission believes that waiving the 30-day operative delay for limited partnerships will also allow these partnerships who have just filed, or are about to file, their annual reports with the Commission, to immediately take advantage of the same means of distribution under Nasdaq rules that are available for any other operating company. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

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-2009-003 on the subject line.

¹³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Paper Comments:

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

All submissions should refer to File Number SR-NASDAQ-2009-003. 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, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2009-003 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).