

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-54241

July 31, 2006

In the Matter of the Application of the Nasdaq Stock Market, Inc. and the NASDAQ Stock Market LLC for an Exemption from Section 12(a) Allowing Trading of Certain Unregistered Securities

I. Introduction

On January 13, 2006, the Commission approved the application of the Nasdaq Stock Market, Inc. (“Nasdaq”) to register one of its subsidiaries, the NASDAQ Stock Market LLC (“Nasdaq Exchange”) as a national securities exchange.¹ Prior to Nasdaq’s submission of the application to become an exchange, Nasdaq was a wholly-owned subsidiary of the National Association of Securities Dealers, Inc. (“NASD”) that operated as an interdealer quotation system. Historically under NASD rules, a company’s securities were eligible for listing on Nasdaq if the security was registered under either Section 12(g)² or Section 12(b)³ of the Securities Exchange Act of 1934 (“Exchange Act”).⁴ However, in certain circumstances, NASD rules also permitted the trading of securities that are exempt from registration under Section 12(g) of the Exchange Act.

Among other exempt securities, NASD rules allow the trading of any security of an insurance company that is exempt from registration under Section 12(g)(2)(G) of the Exchange

¹ See Release No. 34-53128 (January 13, 2006) [71 FR 3550].

² 15 U.S.C. 78l(g).

³ 15 U.S.C. 78l(b).

⁴ 15 U.S.C. 78a et seq.

Act⁵ and the securities of certain foreign private issuers that are exempt from Section 12(g) registration pursuant to Exchange Act Rule 12g3-2(b).⁶

⁵ 15 U.S.C. 781(g)(2)(G). Section 12(g)(2)(G) provides that any security issued by an insurance company is exempt from registration if all of the following conditions are met:

- Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.
- Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.
- After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in Section 16.

⁶ 17 CFR 240.12g3-2(b). Rule 12g3-2(b)(1) states:

Securities of any foreign private issuer shall be exempt from section 12(g) of the Act if the issuer, or a government official or agency of the country of the issuer's domicile or in which it is incorporated or organized:

(i) Shall furnish to the Commission whatever information in each of the following categories the issuer since the beginning of its last fiscal year (A) has made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (B) has filed or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange, or (C) has distributed or is required to distribute to its security holders;

(ii) Shall furnish to the Commission a list identifying the information referred to in paragraph (b)(1)(i) of this section and stating when and by whom it is required to be made public, filed with any such exchange, or distributed to security holders;

(iii) Shall furnish to the Commission, during each subsequent fiscal year, whatever information is made public as described in paragraphs (b)(1)(i)(A), (B) or (C) of this section promptly after such information is made or required to be made public as described therein;

(iv) Shall, promptly after the end of any fiscal year in which any changes occur in the kind of information required to be published as referred to in the list furnished under paragraph (b)(1)(ii) of this section or any subsequent list, furnish to the Commission a revised list reflecting such changes; and

(v) Shall furnish to the Commission in connection with the initial submission the following information to the extent known or which can be obtained without unreasonable effort or expense: the number of holders of each class of equity securities resident in the United States, the amount and percentage of each class of outstanding equity securities held by residents in the United States, the circumstances in which such securities were acquired, and the date and circumstances of the most recent public distribution of securities by the issuer or an affiliate thereof.

Once the Nasdaq Exchange begins to operate as a national securities exchange, Section 12(a) of the Exchange Act⁷ would prohibit any Nasdaq Exchange member, broker, or dealer from effecting any transaction in any security, other than an “exempted security” as defined in Section 3(a)(12) of the Exchange Act,⁸ on the Nasdaq Exchange, unless the security is registered under Section 12(b) of the Exchange Act. There are no exemptions from Section 12(b) registration afforded to insurance companies and foreign private issuers that correspond to the exemptions available to these issuers under Section 12(g)(2)(G) of the Exchange Act and Exchange Act Rule 12g3-2(b). Accordingly, the securities of these issuers would need to be registered under Section 12(b) of the Exchange Act before transactions in those securities could be effected by Nasdaq Exchange members, brokers and dealers, consistent with Section 12(a) on the Nasdaq Exchange, absent the exemption provided by this order.

II. Request by Nasdaq and the Nasdaq Exchange for an Exemption from Section 12(a) of the Exchange Act

On July 31, 2006, the Commission received an application (the “Nasdaq Application”)⁹ from the Nasdaq and the Nasdaq Exchange for an exemption pursuant to Section 36 of the Exchange Act,¹⁰ in accordance with the procedures set forth in Exchange Act Rule 0-12.¹¹ Section 36 of the Exchange Act gives the Commission the authority to exempt any person, security or transaction from any Exchange Act provision by rule, regulation or order, to the extent that the exemption is necessary or appropriate in the public interest and

⁷ 15 U.S.C. 78j(a).

⁸ 15 U.S.C. 78c(a)(12).

⁹ Letter from Edward S. Knight to Nancy M. Morris (July 31, 2006). The Nasdaq Application is included in accompanying Release No. 34-54240 (July 31, 2006).

¹⁰ 15 U.S.C. 78mm.

¹¹ 17 CFR 240.0-12. Exchange Act Rule 0-12 sets forth procedures for filing applications for orders for exemptive relief pursuant to Section 36.

consistent with the protection of investors. Nasdaq and the Nasdaq Exchange have requested a three-year exemption from Section 12(a) of the Exchange Act, with respect to transactions in securities of the issuers listed in Exhibit C to the Nasdaq Application that are currently exempt from registration under Section 12(g) of the Exchange Act. According to Nasdaq and the Nasdaq Exchange, the securities of four insurance companies and nine foreign private issuers currently are trading on Nasdaq in reliance on these exemptions.¹²

An exemption from Section 12(a) would permit Nasdaq Exchange members and brokers or dealers to effect transactions in these securities on the Nasdaq Exchange without registration under Section 12(b) of the Exchange Act. Nasdaq and the Nasdaq Exchange believe that the three-year period will provide these issuers with adequate time to complete the Section 12(b) registration process and prepare financial statements should they choose to continue to have their securities traded on the Nasdaq Exchange after expiration of the three-year period. Under the terms of the requested exemption, the insurance companies would have to continue to satisfy the conditions set forth in Section 12(g)(2)(G) of the Exchange Act and the foreign private issuers would have to remain in compliance with the conditions set forth in Exchange Act Rule 12g3-2(b) to qualify for the exemption.

Prior to submitting this request, Nasdaq and the Nasdaq Exchange notified the insurance companies and the foreign private issuers of their plan to request a Section 12(a) exemption on the issuers' behalf and allowed each issuer that did not wish to be the subject of the request to opt-out of the process. Nasdaq and the Nasdaq Exchange provided these issuers a period of 10 business days to notify Nasdaq of an opt-out preference. The issuers that chose to opt-out from the request are listed in Exhibit B to the Nasdaq Application.

¹² See the Nasdaq Application.

III. Order Granting Nasdaq's Application for an Exemption Pursuant to Section 36 of the Exchange Act

We believe that exempting Nasdaq Exchange members, brokers and dealers for a limited time from the requirements of Section 12(a) regarding the trading of the securities listed in Exhibit C to the Nasdaq Application is necessary and appropriate in the public interest, and is consistent with the protection of investors in order to afford these issuers time to comply with the Section 12(b) registration requirements. As represented by Nasdaq and the Nasdaq Exchange in their request, immediate registration under Section 12(b) could force these issuers to withdraw from Nasdaq, consequently depriving U.S. investors of the accustomed market for the securities of those issuers and, in some cases, potentially reducing the depth and liquidity of the market for these securities. We believe that a three-year exemption will serve the public interest by minimizing any unnecessary disruptions that could result from the sudden withdrawal of these securities from Nasdaq, thereby potentially exposing investors in these securities to a less liquid market, absence of market surveillance by an exchange, and delays in execution of transfers.

We concur with Nasdaq and the Nasdaq Exchange that the requested three-year exemption period is appropriate and will provide the affected issuers with sufficient transition time to register their securities.¹³ Until the expiration of the exemption granted by this Order, Nasdaq Exchange members, brokers and dealers will be permitted to effect transactions in the securities subject to this exemption so long as the issuers of these securities continue to satisfy the conditions of Section 12(g)(2)(G) of the Exchange Act or Exchange Act Rule 12g3-2(b), whichever is applicable.

¹³ Issuers whose securities are exempt from Section 12(g) under Section 12(g)(2)(G) of the Exchange Act or Exchange Act Rule 12g3-2(b) would be required to prepare and file a registration statement on Form 10 for domestic companies or Form 20-F for foreign private issuers. Under Form 20-F, foreign private issuers would have to restate their financial statements in accordance with U.S. generally accepted accounting principles, or provide a reconciliation of their primary financial statements to U.S. GAAP, for at least two fiscal years. Thus, the three year period would give these issuers sufficient time to prepare the required financial statements should they choose to continue to have their securities traded on the Nasdaq Exchange.

Accordingly, IT IS ORDERED pursuant to Section 36 of the Exchange Act that, under the terms and conditions set forth below, a Nasdaq Exchange member, broker or dealer may effect a transaction on the Nasdaq Exchange in a security of an issuer listed in Exhibit C to the Nasdaq Application that has not been registered under Section 12(b) of the Exchange Act without violating Section 12(a) of the Exchange Act. This exemption shall take effect on August 1, 2006, the same date as the start of Nasdaq Exchange's operation, and shall expire on August 1, 2009.

This exemption is limited to the securities of the issuers listed in Exhibit C to the Nasdaq Application and is conditioned on the continued satisfaction of the conditions set forth in Section 12(g)(2)(G) of the Exchange Act with respect to the securities of the insurance companies, or Exchange Act Rule 12g3-2(b) with respect to the securities of the foreign private issuers. As specified in the Nasdaq Application, Nasdaq will verify the satisfaction of these conditions. In addition, this exemption does not extend to any other section or provision of the Exchange Act.

By the Commission (Chairman COX and Commissioners GLASSMAN, ATKINS, CAMPOS and NAZARETH).

Nancy M. Morris
Secretary