

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50573; File No. SR-NASD-2004-105)

October 20, 2004

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. to Amend Rule 4350(n) and IM-4350-7 to Provide Time Frames for Foreign Issuers and Foreign Private Issuers to Disclose Certain Code of Conduct Waivers

On July 8, 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”), 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> a proposed rule change to amend NASD Rule 4350 and related Interpretive Material to set forth specific time frames within which non-U.S. issuers must disclose any waivers of their codes of conduct for directors or executive officers. On August 23, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the Federal Register on September 1, 2004.<sup>4</sup> The Commission received no comments on the proposal.

NASD Rule 4350(n) and Interpretive Material IM-4350-7 require issuers listed on Nasdaq to adopt codes of conduct that are applicable to all directors, officers and employees. Each code of conduct must require that any waiver of the code for executive officers or directors may be made only by the board of directors of the issuer and must be promptly disclosed to shareholders, along with the reasons for the waiver. The rule specifies that domestic issuers

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Mary M. Dunbar, Vice President and General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated August 20, 2004 (“Amendment No. 1”).

<sup>4</sup> See Securities Exchange Act Release No. 50267 (August 26, 2004), 69 FR 53478 (September 1, 2004).

must disclose such waivers in a Form 8-K within five business days. The proposed rule change would amend the rule and interpretive material to specify that all issuers, other than foreign private issuers, must disclose such waivers in a Form 8-K within five business days, and to establish that foreign private issuers must disclose such waivers either in a Form 6-K or in the next Form 20-F or 40-F.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,<sup>5</sup> and, in particular, the requirements of Section 15A(b)(6) of the Act.<sup>6</sup> The Commission believes that the proposed method and timing for disclosure of waivers by foreign private issuers is consistent with rules of other exchanges concerning such waivers and with the requirements of the Commission concerning disclosure of waivers by a foreign private issuer for principal executive, financial and accounting officers. In addition, the Commission believes that the proposed rule change appropriately clarifies that non-U.S. issuers that are not foreign private issuers must meet the same disclosure requirements as domestic issuers.

---

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>7</sup>, that the proposed rule change, as amended, (File No. SR-NASD-2004-105) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Jill M. Peterson  
Assistant Secretary

---

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).