

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51905; File No. SR-NASD-2005-006)

June 22, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto to Require Semi-Annual Financial Reporting by Foreign Private Issuers

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> notice is hereby given that on January 18, 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” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq submitted Amendment No. 1 to its proposed rule change on February 4, 2005<sup>3</sup> and submitted Amendment No. 2 to its proposed rule change on June 6, 2005<sup>4</sup>. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

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

<sup>3</sup> Amendment No. 1 modified the proposed rule language to require that interim financial information be published on a press release that would also be submitted on a Form 6-K. As originally proposed, the rule language required that interim financial information be submitted on a press release or on a Form 6-K.

<sup>4</sup> Amendment No. 2 made technical corrections to the filing and replaced and superceded the original filing and Amendment No. 1 in its entirety.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to require that foreign private issuers listed on Nasdaq provide semi-annual financial information. Nasdaq will implement the proposed rule change for interim periods ending after January 1, 2006.

The text of the proposed rule change is below. Proposed additions are italicized.<sup>5</sup>

**4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issuers Except for Limited Partnerships**

Nasdaq shall review the issuer's past corporate governance activities. This review may include activities taking place while the issuer is listed on Nasdaq or an exchange that imposes corporate governance requirements, as well as activities taking place after a formerly listed issuer is no longer listed on Nasdaq or an exchange that imposes corporate governance requirements. Based on such review, Nasdaq may take any appropriate action, including placing of restrictions on or additional requirements for listing, or the denial of listing of a security if Nasdaq determines that there have been violations or evasions of such corporate governance standards. Such determinations shall be made on a case-by-case basis as necessary to protect investors and the public interest.

(a) No change

**(b) Distribution of Annual and Interim Reports**

(1) No change

(2) No change

(3) No change

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<sup>5</sup> The proposed rule change is marked to show changes to the rule text appearing in the electronic NASD Manual available at [www.nasd.com](http://www.nasd.com). No pending rule filings would affect the text of this rule.

(4) Each foreign private issuer shall publish, in a press release, which would also be submitted on a Form 6-K, an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English but does not have to be reconciled to U.S. GAAP, must be provided not later than six months following the end of the issuer's second quarter.

(c) – (n) No change

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

(a) No change

**(b) Distribution of Annual and Interim Reports**

(1) No change

(2)(A) – (B) No change

(C) Each foreign private issuer that is a limited partnership shall publish, in a press release, which would also be submitted on a Form 6-K, an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English but does not have to be reconciled to U.S. GAAP, must be provided not later than six months following the end of the issuer's second quarter. Such information shall be distributed to limited partners if required by statute or regulation in the jurisdiction in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(c) – (i) 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

Pursuant to Nasdaq and SEC rules, domestic issuers are required to file quarterly financial reports. While non-U.S. issuers are not subject to this requirement and are only required to file financial reports annually,<sup>6</sup> most non-U.S. issuers listed on Nasdaq do in fact provide more frequent disclosure to investors. Nasdaq believes that it would be beneficial to create a uniform standard, applicable to all Nasdaq-listed foreign private issuers, to assure that investors have access to more recent financial information. As such, Nasdaq proposes to require that non-U.S. issuers provide, in a press release that would also be submitted on a Form 6-K, an interim balance sheet and semi-annual income statement, not later than six months following the end of the issuer's second quarter. Under the proposed rule, the information provided would be required to be translated into English, but would not have to be reconciled to U.S. Generally Accepted Accounting Principles ("GAAP").

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<sup>6</sup> This information is required to be filed six months after the company's fiscal year-end. Accordingly, the only financial information presently available could be as much as 18-months old.

In order to allow sufficient time for non-U.S. issuers to modify any necessary practices regarding the preparation of interim financial reports, Nasdaq proposes that this new rule not be immediately effective. Instead, the proposed rule will be effective for interim periods ending after January 1, 2006.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>7</sup> in general and with Section 15A(b)(6) of the Act,<sup>8</sup> 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. As noted above, Nasdaq believes that the proposed rule will provide enhanced disclosure to investors regarding foreign private issuers that trade on Nasdaq.

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.

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

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<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-006 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-006. 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-2005-006 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.<sup>9</sup>

J. Lynn Taylor  
Assistant Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).