

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52896; File No. SR-NASD-2005-116)

December 6, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change to Modify Nasdaq's Auditor Peer Review Requirement

On September 29, 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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to modify NASD Rule 4350(k), regarding the oversight of accountants that audit listed issuers.³ The proposed rule change was published for comment in the Federal Register on October 26, 2005.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

Current NASD Rule 4350(k) requires each issuer listed on Nasdaq to be audited by an independent accountant that has received an external quality control review by another independent public accountant (a "peer review") or is enrolled in an acceptable peer review program. The proposed rule change would replace this requirement with a provision that requires each listed issuer to be audited by an independent accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board ("PCAOB"), as

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposed rule change would also make a conforming amendment to the language of NASD Rule 4200(a).

⁴ Securities Exchange Act Release No. 52645 (Oct. 20, 2005), 70 FR 61864.

provided for in the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”).⁵ The PCAOB is charged, among other things, with conducting a continuing program of inspections of registered public accounting firms.⁶

The Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b) of the Act⁷ and the rules and regulations thereunder applicable to a national securities association,⁸ and in particular, with Section 15A(b)(6) of the Act.⁹ The Commission believes that the proposed rule change will align Nasdaq’s requirements with the auditor oversight requirements of the Sarbanes-Oxley Act and eliminate the redundancy of Nasdaq’s current rule.

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

⁶ See Section 104 of the Sarbanes-Oxley Act, 15 U.S.C. 7214.

⁷ 15 U.S.C. 78o-3(b).

⁸ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78o-3(b)(6).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NASD-2005-116) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Jonathan G. Katz
Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).