

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53067; File No. SR-NASD-2005-153)

January 6, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Procedures for Review of Listing Determinations

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 December 23, 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”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed this proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder<sup>4</sup> as non-controversial, and therefore the proposed rule change is effective immediately upon filing. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to amend the rules governing delisting proceedings to permit delivery of documents by hand-delivery, overnight mail, facsimile, or e-mail in all instances. The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in [brackets].<sup>5</sup>

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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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at <http://www.nasdr.com>.

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#### 4813. Delivery of Documents

Delivery of any document under this Rule 4800 Series [by an issuer, Nasdaq, or the NASD] may be made by electronic delivery, hand delivery [to the designated address], [by] facsimile [to the designated facsimile number], or [and] overnight courier [to the designated address, to Nasdaq or the NASD by e-mail, or to an issuer by e-mail if the issuer consents to such method of delivery]. Delivery shall be considered timely if the electronic delivery, hand delivery, fax, or overnight courier is received on or before the relevant deadline. [hand delivered prior to the relevant deadline or upon being e-mailed or faxed and/or sent by overnight courier service prior to the relevant deadline.] If an issuer has not specified a facsimile number, e-mail address, or street address, delivery shall be made to the last known facsimile number, e-mail address, and street address. If an issuer is represented by counsel or a representative, delivery [shall] may be made to the counsel or representative.

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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 proposes to amend the rule governing delivery of documents in delisting proceedings to allow the electronic delivery of documents without specific consent to that delivery method. Nasdaq believes that this change reflects current prevailing practice and a preference for e-mail communication by Nasdaq issuers.<sup>6</sup> Nasdaq believes this would increase the efficiency, speed, and transparency of communication among hearing participants and would also reduce the administrative burden on Nasdaq created by the current requirement of overnight and facsimile delivery in some instances.

## 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 the proposal is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Nasdaq believes that the proposed change is designed to improve the procedures applicable to the review of listing determinations, as well as to provide greater transparency to these procedures.

### B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would 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

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<sup>6</sup> Consistent with current practice related to delivery of documents, the parties will give a specific address for any delivery of documents involving electronic (or any other) means. Telephone conversation between Jeffrey Davis, Associate Vice President, NASD, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, on January 5, 2006.

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

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

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-153 on the subject line.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

Paper comments:

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

All submissions should refer to File Number SR-NASD-2005-153. 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-2005-153 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>11</sup>

Nancy M. Morris  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).