

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53964; File No. SR-NASDAQ-2006-005)

June 8, 2006

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto to Modify Nasdaq's Delisting Procedures to Conform to Recent Amendments to Commission Rules Regarding Removal from Listing and Withdrawal from Registration

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 4, 2006, The NASDAQ Stock Market LLC ("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. On May 5, 2006, Nasdaq filed Amendment No. 1 to the proposal.³ On May 17, 2006, Nasdaq filed Amendment No. 2 to the proposal.⁴ 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 modify Nasdaq's delisting procedures to comply with Rule 12d2-2 under the Act,⁵ which became effective on April 24, 2006.

Nasdaq would implement the proposed rule change upon the later of its approval or the date Nasdaq begins to operate as a national securities exchange.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced the original proposed rule change in its entirety.

⁴ In Amendment No. 2, Nasdaq amended the implementation date of the proposed rule change to the later of Commission approval or the date Nasdaq begins to operate as a national securities exchange.

⁵ 17 CFR 240.12d2-2.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.⁶

Rules of The NASDAQ Stock Market LLC

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[4480.] 4380. Termination Procedure

(a) Failure to maintain compliance with the applicable provisions of [Rules 4350, 4450, or 4360] the Rule 4300, 4400 and 4500 Series will result in the termination of an issue's listing unless an exception is granted as provided in the Rule 4800 Series. Termination shall become effective in accordance with the procedures set forth in the Rule 4800 Series, including IM-4800.

(b)

(1) An issuer may voluntarily terminate its listing upon [written notice to Nasdaq and application to the Commission.] compliance with all requirements of Rule 12d2-2(c) under the Exchange Act. In part, Rule 12d2-2(c) requires that the issuer may delist by filing an application on Form 25 with the Commission, provided that the issuer: (i) complies with all applicable laws in effect in the state in which it is incorporated and with the applicable Nasdaq Rules; (ii) provides notice to Nasdaq no fewer than 10 days before the issuer files the Form 25 with the Commission, including a statement of the material facts relating to the reasons for delisting; and (iii) contemporaneous with providing notice to Nasdaq, publishes notice of its intent to delist, along with its reasons therefore, via a press release and on its web site, if it has one. Any notice provided on the issuers web

⁶ Changes are marked to the rule text that appears in the electronic manual of The NASDAQ Stock Market, LLC found at www.nasdaqtrader.com. These rules will become effective when Nasdaq fulfills certain conditions and commences operations as a national securities exchange as set forth in Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

site pursuant to Rule 12d2-2(c) must remain available until the delisting has become effective. The issuer must also provide a copy of the Form 25 to Nasdaq simultaneously with its filing with the Commission. Nasdaq will provide notice on its web site of the issuer's intent to delist as required by Rule 12d2-2(c)(3).

(2) An issuer that seeks to voluntarily delist a class of securities pursuant to Rule 4380(b)(1) that has received notice from Nasdaq, pursuant to the Rule 4800 Series or otherwise, that it fails to comply with one or more requirements for continued listing, or that is aware that it is below such continued listing requirements notwithstanding that it has not received such notice from Nasdaq, must disclose this fact (including the specific continued listing requirements that it is below) in: (i) its statement of all material facts relating to the reasons for withdrawal from listing provided to Nasdaq along with written notice of its determination to withdraw from listing required by Rule 12d2-2(c)(2)(ii) under the Exchange Act; and (ii) its press release and web site notice required by Rule 12d2-2(c)(2)(iii) under the Exchange Act.

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IM – 4800. Removal from Listing.

Rules 4804(e), 4806(e), 4807(f) and 4809(c) provide that Nasdaq will delist an issuer in certain circumstances, following Nasdaq's determination that the issuer no longer meets the requirements for continued listing and after the issuer has received notice of that determination and an opportunity to appeal the determination pursuant to this Rule 4800 Series. This interpretive material describes the steps Nasdaq will follow to effect such a delisting. Consistent with Exchange Act Rule 12d2-2, to effect a delisting, Nasdaq will provide public notice of its final determination to remove a security from listing by issuing a press release and

posting notice on its web site. This public notice will be disseminated no fewer than 10 days before the delisting becomes effective and will remain posted until the delisting is effective. Following such public notification, Nasdaq will file an application on Form 25 with the Commission to delist the security, and will promptly provide a copy of that Form 25 to the issuer. The Form 25, and the delisting of the security, will become effective 10 days after it is filed pursuant to Exchange Act Rule 12d2-2(d)(1), unless the Commission postpones such delisting pursuant to Rule 12d2-2(d)(3).

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4804. Written Notice of Staff Determination

(a) – (d) No change.

(e) If an issuer receives a Staff Determination (other than a Staff Determination that serves as a public reprimand letter as described in Rule 4801(k)(2)) and does not request a hearing within the period specified in Rule 4805, the securities of the issuer will be suspended and Nasdaq will follow the procedures described in IM-4800 and submit an application on Form 25 to the Securities and Exchange Commission to strike the security from listing. [A copy of such application will be furnished to the issuer in accordance with Section 12 of the Act and the rules thereunder.]

4805. Request for Hearing

No change

4806. The Listing Qualifications Panel

(a) – (d) No change

(e) If the Panel determines to delist the issuer and the issuer does not timely request review by the Listing Council and the Listing Council does not call the matter for review or

withdraws its call for review, Nasdaq will follow the procedures described in IM-4800 and submit an application on Form 25 to the Securities and Exchange Commission to strike the security from listing. [A copy of such application will be furnished to the issuer in accordance with Section 12 of the Act and the rules thereunder.]

4807. Review by the Nasdaq Listing and Hearing Review Council

(a) – (e) No change.

(f) If the Listing Council determines to delist the issuer and the Nasdaq Board does not call the matter for review or withdraws its call for review, Nasdaq will follow the procedures described in IM-4800 and submit an application on Form 25 to the Securities and Exchange Commission to strike the security from listing. [A copy of such application will be furnished to the issuer in accordance with Section 12 of the Act and the rules thereunder.]

4808. Reconsideration by the Listing Qualifications Panel and the Listing and Hearing Review Council

No change

4809. Discretionary Review by Nasdaq Board

(a) A Listing Council Decision may be called for review by the Nasdaq Board solely upon the request of one or more Director not later than the next Nasdaq Board meeting that is 15 calendar days or more following the date of the Listing Council Decision. Such review shall be undertaken solely at the discretion of the Nasdaq Board and will not operate as a stay of the Listing Council Decision, unless the call for review specifies to the contrary. At the sole discretion of the Nasdaq Board, the call for review of a Listing Council Decision may be withdrawn at any time prior to the issuance of a decision.

(b) No change.

(c) If the Nasdaq Board conducts a discretionary review, the issuer shall be provided with a written decision that meets the requirements of Rule 4811. The Nasdaq Board may affirm, modify or reverse the Listing Council Decision and may remand the matter to the Listing Council, Listing Qualifications Panel, or staff of the Listing Department with appropriate instructions. [This] The decision of the Nasdaq Board will take immediate effect, unless it specifies to the contrary, and [decision] represents the final action of Nasdaq [and will take immediate effect unless it specifies to the contrary]. If the Nasdaq Board determines to delist the issuer, the securities of the issuer will be immediately suspended, unless the Nasdaq Board specifies to the contrary, and Nasdaq will follow the procedures described in IM-4800 and submit an application on Form 25 to the Commission to strike the security from listing. [A copy of such application will be furnished to the issuer in accordance with Section 12 of the Act and the rules thereunder.]

[(d) If the Nasdaq Board declines to conduct a discretionary review or withdraws its call for review, the issuer shall be promptly provided with written notice that the Listing Council Decision represents the final action of Nasdaq.]

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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

On July 14, 2005, the Commission adopted amendments to its rules governing delisting from a national securities exchange.⁷ These amendments, which became effective on April 24, 2006, modified the procedures surrounding the way an issuer voluntarily delists from a national securities exchange and the way that a national securities exchange delists an issuer for cause. As a result, Nasdaq is proposing certain changes to its rules to incorporate the requirements of Commission Rule 12d2-2.⁸ Specifically, Nasdaq proposes to require public notice of Nasdaq's final determination to delist an issuer, no fewer than 10 days before the delisting becomes effective, via a press release and posting on Nasdaq's Web site.⁹ This notice will remain posted on the Web site until the delisting is effective. Nasdaq also proposes to clarify that it will follow these same procedures upon the withdrawal of a call for review by the Nasdaq Listing and Hearing Review Council or the Nasdaq Board, as is permitted by existing Nasdaq Rules 4807(b) and 4809(d).

In addition, Nasdaq proposes to relocate the existing requirements concerning a voluntary delisting and adopt a new requirement that an issuer must comply with the provisions of Commission Rule 12d2-2(c)¹⁰ when it wishes to voluntarily delist and also notify Nasdaq at the same time that it files a Form 25 with the Commission to voluntarily delist. This requirement

⁷ See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

⁸ 17 CFR 240.12d2-2.

⁹ See 17 CFR 240.12d2-2(b)(1). Nasdaq notes that Nasdaq Rule 4804 already requires notice to the issuer of the decision to delist the issuer's securities, and Nasdaq Rules 4805 and 4807 provide an opportunity for the issuer to appeal that decision.

¹⁰ 17 CFR 240.12d2-2(c).

will facilitate Nasdaq's compliance with its obligation to provide notice on its Web site that the issuer has determined to withdraw its securities from listing and/or registration on Nasdaq.¹¹ Nasdaq also proposes to require an issuer that has received notice from Nasdaq that it fails to comply with one or more requirements for continued listing, or that otherwise is aware that it is below such continued listing requirements, to disclose this fact in certain notices required by Commission Rule 12d2-2(c).

Finally, Nasdaq proposes to remove Nasdaq Rule 4809(d) because it would be redundant.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 6 of the Act,¹² in general and with Sections 6(b)(5) of the Act,¹³ in particular, because it is designed to protect investors and the public interest by following Rule 12d2-2 under the Exchange Act and provide a fair procedure for the prohibition or limitation of listing by 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.

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

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

¹¹ 17 CFR 240.12d2-2(c)(3).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

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 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. Please include File Number SR-NASDAQ-2006-005 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2006-005. 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 Exchange. 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-NASDAQ-2006-005 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.¹⁴

Nancy M. Morris
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).