

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54284; File No. SR-NASDAQ-2006-016)

August 8, 2006

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Eliminate Registration of Foreign Associates under Nasdaq Membership Rules

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 July 21, 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. 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 Substance of the Proposed Rule Change

Nasdaq proposes to eliminate the requirement for “foreign associates” to register with Nasdaq. Nasdaq will implement the proposed rule change immediately upon approval by the Commission. The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in [brackets].

1060. Persons Exempt from Registration

(a) The following persons associated with a member are not required to be registered with Nasdaq:

(1) – (4) No change.

(5) Persons associated with a member that are not citizens, nationals, or residents of the United States or any of its territories or possessions and that will conduct all of their securities

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

activities in areas outside the jurisdiction of the United States and will not engage in any securities activities with or for any citizen, national or resident of the United States.

For purposes of Rule 1060(a)(4), the terms “option” and “direct participation program” shall have the meanings assigned to such terms by NASD Rules 2860 and 1022(e)(1)(A), respectively, and the definitions contained in such NASD rules shall apply to Nasdaq members as if such Rules were part of Nasdaq’s Rules.

(b) No change.

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1100. [Foreign Associates] Reserved

[(a) All persons associated with a member who are designated as Foreign Associates shall be required to be registered but shall be exempt from the requirement to pass a Qualification Examination. Persons associated with a member shall be designated as Foreign Associates if they meet the following criteria:]

[(1) They are not citizens, nationals, or residents of the United States or any of its territories or possessions;]

[(2) They will conduct all of their securities activities in areas outside the jurisdiction of the United States and they will not engage in any securities activities with or for any citizen, national or resident of the United States.]

[(b) Prior to the time the exemption provided for in paragraph (a) hereof may become effective, the member desiring to employ any such person must file with Nasdaq a “Uniform Application for Securities Industry Registration or Transfer” for each such person and must certify that such person meets the criteria of paragraph (a), as well as that:]

[(1) Such person is not subject to any of the prohibitions to registration with Nasdaq;]

[(2) Service of process for any proceeding instituted by Nasdaq in respect to such person may be sent to an address designated by the member.]

[(c) In the event of the termination of the employment of a Foreign Associate, the member must notify Nasdaq immediately by filing a notice of termination.]

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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 had 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 eliminate the “foreign associate” registration category under Nasdaq Rule 1100 and add an exemption to Nasdaq Rule 1060 for persons formerly covered by this registration category. Nasdaq’s rule is based on NASD Rule 1100, which provides that an associated person of a member may be designated as a “foreign associate” if the person (i) is not a citizen, national, or resident of the United States, and (ii) will conduct all of his or her securities activities outside the jurisdiction of the United States and will not engage in any securities activities with or for any citizen, national or resident of the United States. The NASD

rule provides that a foreign associate is not required to pass any qualification examinations but must register with NASD.

In its current form, Nasdaq Rule 1100 duplicates the NASD requirement. Nasdaq believes, however, that it does not have a compelling policy reason for duplicating the NASD's registration requirement or extending it to non-NASD members. Nasdaq members that are NASD members will already be required to register their foreign associates with the NASD. The NASD's role as the primary regulator with respect to firms with public customers may be indicative of a need to pursue broad registration of broker-dealer employees even if such employees have no nexus with U.S. securities markets, but a duplicative requirement by Nasdaq would serve no regulatory purpose. With respect to the small number of non-NASD members that become Nasdaq members, Nasdaq has no reason to expect that any would have associated persons categorized as foreign associates and believes that there would be no regulatory benefit associated with the registration of those that might fit within this category. Accordingly, Nasdaq proposes to amend its rule to exempt foreign associates from registration with Nasdaq.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³ in general, and with Section 6(b)(5) of the Act,⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(5).

national market system, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change will mitigate unnecessary burdens on its members and their associated persons without diminishing the regulatory protections associated with its membership rules.

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

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 Nasdaq 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-2006-016 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2006-016. 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 Nasdaq. 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2006-016 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.⁵

Nancy M. Morris
Secretary

⁵ 17 CFR 200.30-3(a)(12).