

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54581; File No. SR-NASDAQ-2006-039)

October 6, 2006

Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Reporting Required when Nasdaq Lists the Security of an Affiliate

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 September 28, 2006, the NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) 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. Pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> Nasdaq has designated this proposal as “non-controversial,” which renders the proposed rule change effective upon filing with the Commission. 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 is proposing a proposed rule change to modify the reporting required when Nasdaq lists the security of an affiliate. The text of the proposed rule change is available on Nasdaq’s Web site (<http://www.nasdaq.com>), at Nasdaq’s principal office, and at the Commission's Public Reference Room.

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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).

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 is proposing to revise Rule 4370 to file on a quarterly basis, rather than on a monthly basis, the report detailing Nasdaq's monitoring of (1) the Nasdaq Affiliate's compliance with the provisions of Rule 4200, 4300 and 4400 Series (which include quantitative and qualitative listing requirements) and (2) the trading of the Affiliate Security, including summaries of all related surveillance alerts, complaints, regulatory referrals, busted or adjusted trades, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data.

The proposed rule change is similar to a recent New York Stock Exchange rule filing.<sup>5</sup> Additionally, Nasdaq notes that providing these reports on a quarterly rather than monthly basis will not affect the compliance monitoring done by Nasdaq and NASD, but will make the reporting less burdensome.<sup>6</sup> Further, by adopting a quarterly reporting

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<sup>5</sup> See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11270 (March 6, 2006)(SR-NYSE-2005-77), adopting NYSE Rule 497.

<sup>6</sup> The NASD performs regulatory services on behalf of Nasdaq pursuant to a regulatory services contract. Telephone conversation between Jonathan Cayne,

cycle, the reports will be more closely aligned with the issuer's financial reporting cycle and NASD's review and surveillance cycle.

In addition, the proposed rule change would permit Nasdaq to file a report with the Commission within five business days of providing notice to the Nasdaq Affiliate of its non-compliance with Nasdaq's listing requirements rather than at the same time that Nasdaq notifies the Nasdaq Affiliate. This proposed change is also similar to language in the recent New York Stock Exchange rule filing referenced above.

Finally, the proposed rule change would clarify that the applicable provisions of the Rule 4200, 4300, and 4400 Series that are the subject of Nasdaq's reports are those related to the listing requirements.

Nasdaq will implement the proposed rule change 30 days after filing.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act<sup>7</sup> in general, and with Section 6(b)(5) 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.

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Associate General Counsel, Nasdaq, and Rebekah Liu, Special Counsel, Division of Market Regulation, Commission, on October 6, 2006.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

This proposed rule change is filed pursuant to paragraph (A) of Section 19(b)(3) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder. The proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Nasdaq provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change. 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.<sup>11</sup>

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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).

<sup>11</sup> See 15 U.S.C. 78(b)(3)(C).

#### 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-NASDAQ-2006-039 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-2006-039. 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 available publicly.

All submissions should refer to File Number SR-NASDAQ-2006-039 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>12</sup>

Nancy M. Morris  
Secretary

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