

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55052; File No. SR-NASDAQ-2006-047)

January 5, 2007

Self-Regulatory Organization; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change to Modify its Listing Rules in the Case of a Reverse Merger

On November 13, 2006, The NASDAQ Stock Market LLC (“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 clarify the process an issuer must follow when applying for initial listing in connection with a reverse merger. The proposed rule change was published for comment in the Federal Register on December 6, 2006.³ The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ which requires that the rules of the an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national securities system, and, in general, to protect investors and the public interest.

Nasdaq proposes to amend Nasdaq Rule 4340(a) and related interpretive material to state that an issuer must apply for initial listing prior to consummating a transaction whereby the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 54825 (November 28, 2006), 71 FR 70818.

⁴ 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).

⁵ 15 U.S.C. 78f(b)(5).

issuer combines with an entity that is not listed on Nasdaq, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a “backdoor listing” on Nasdaq (“Reverse Merger”).

Current Nasdaq Rule 4340(a) states that an issuer must apply for initial listing “following” a Reverse Merger. Nasdaq proposes to replace the word “following” with the phrase “in connection with” and require the issuer to “submit an application for the post-transaction entity with sufficient time to allow Nasdaq to complete its review before the transaction is completed.” Because the entity resulting from the Reverse Merger could be substantially different from the one originally approved for Nasdaq listing, it is reasonable and consistent with the Act for Nasdaq to conduct a de novo listing review of the new entity and, for the new entity to keep the listing, to require sufficient time to complete the review before the Reverse Merger is completed. The Commission believes that this proposal is reasonably designed to enhance the transparency and integrity of the listing process.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-NASDAQ-2006-047) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Nancy M. Morris
Secretary

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).