

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55652; File No. SR-NASDAQ-2007-021)

April 20, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule to Describe How a Failure to Comply with Nasdaq's Requirements Concerning Direct Registration Programs Is Treated

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 6, 2007, The NASDAQ Stock Market, LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act² and Rule 19b-4(f)(6)³ thereunder so that the proposal was effective upon filing with the Commission.⁴ The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the rule change is to describe how a failure to comply with Nasdaq's requirements concerning direct registration programs is to be treated.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(f)(6).

⁴ Nasdaq gave the Commission written notice of its intention to file the proposed rule change on March 2, 2007. The Commission reviewed the proposed rule change and gave Nasdaq permission to file the proposed rule change on March 6, 2007. Nasdaq has asked the Commission to waive the thirty-day pre-operative waiting period. See Rule 19b-4(f)(6). 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 these statements.⁵

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq recently adopted a requirement that listed securities be eligible to participate in a direct registration program.⁶ In that filing, Nasdaq inadvertently failed to modify its procedural rules to govern how a failure to comply with the new requirement would be treated. This filing addresses that oversight by including the direct registration requirement in the list of deficiencies where Nasdaq staff will accept a plan to regain compliance for the company. As such, if a company is not eligible for a direct registration program, Nasdaq staff would review the company's plan to regain compliance and could allow to company up to one hundred five days from the date that Nasdaq notifies the company of the deficiency to regain compliance.⁷ If staff does not accept the company's plan or the company does not comply in the time allowed by the staff, Nasdaq would issue a delisting letter that could be appealed under Nasdaq Rule 4805(a).

⁵ The Commission has modified the text of the summaries prepared by Nasdaq.

⁶ Securities Exchange Act Release No. 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) (SR-NASDAQ-2006-008). These rules became effective for new listings beginning on January 1, 2007, and will become effective for all companies on January 1, 2008.

⁷ Nasdaq Rule 4803(b).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act⁸ and with Section 6(b)(5) of the Act⁹ in particular because the proposed rule 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 national market system and, in general, to protect investors and the public interest. The proposed rule change clarifies how Nasdaq will treat non-compliance with its 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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder because it: (i) does not

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for thirty days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

At any time within sixty 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.

Nasdaq requested that the Commission waive the thirty-day operative delay contained in Rule 19b-4(f)(6)(iii) under the Act.¹² Because this proposed rule rectifies an oversight to update Nasdaq procedural rules to govern how a failure to comply with a new substantive requirement would be treated, the Commission believes waiver of the thirty-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designated the proposal to be effective and operative upon filing with the Commission.¹³

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

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For purposes only of waiving the thirty-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2007-021 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-2007-021. 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 Section, 100 F Street, NE, Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of Nasdaq and on Nasdaq's Web site at http://www.complinet.com/file_store/pdf/rulebooks/NASDAQ_SR-NASDAQ-2007-021.pdf.

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-2007-021 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

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).