

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59610; File No. SR-NASDAQ-2009-023)

March 20, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trading the Two-Character Ticker Symbol “UG”

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 March 13, 2009, 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. Nasdaq has filed this proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(5) thereunder,<sup>4</sup> which renders the proposal 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 proposes to trade the common stock of United-Guardian, Inc. on Nasdaq using the two-character symbol “UG”.

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

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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) [sic].

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

Historically, securities listed on Nasdaq have traded using four or five character symbols.<sup>5</sup> In 2005, however, Nasdaq announced its intent to allow companies listed on Nasdaq to also use one, two or three character symbols beginning on January 31, 2007.<sup>6</sup> This announcement was designed to provide market participants and vendors the time needed to make required changes to their own systems that may be affected by the change. Since February 20, 2007, Nasdaq has had the ability to accept and distribute Nasdaq-listed securities with one, two or three character symbols. Nasdaq reminded market participants about this change again on March 1, 2007, stressing that “[a]ll customers should have completed their coding and testing efforts to ensure their readiness to support 1-, 2- and 3-character NASDAQ-listed issues,”<sup>7</sup> and on March 22, 2007, Delta Financial Corporation transferred to Nasdaq from the American Stock Exchange and

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<sup>5</sup> This includes securities listed on Nasdaq's predecessor market, operated as a facility of the NASD.

<sup>6</sup> See Head Trader Alert 2005-133 (November 14, 2005), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2005-133> and Vendor Alert 2005-070 (November 14, 2005), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=nva2005-070>. See also Head Trader Alert 2006-144 (September 29, 2006), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2006-144>, Head Trader Alert 2006-193 (November 16, 2006), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2006-193> and Vendor Alert 2006-065 (October 4, 2006), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=nva2006-065>.

<sup>7</sup> Head Trader Alert 2007-050 (March 1, 2007), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2007-050>.

maintained its three-character symbol, DFC.<sup>8</sup> Subsequently, the Commission approved a rule change to permit any company to transfer from another exchange to Nasdaq and maintain its three-character symbols.<sup>9</sup> During 2008, several companies transferred from the New York Stock Exchange and the American Stock Exchange (now NYSE Amex) and maintained their two-character symbols.<sup>10</sup> There have been no trading problems reported to Nasdaq as a result of listing securities on Nasdaq with two-character or three-character symbols.

Nasdaq now proposes to allow United-Guardian, Inc, which currently trades on NYSE Amex with the two-character symbol UG, to transfer its common stock to Nasdaq and continue using that two-character symbol. Nasdaq believes that allowing this company to maintain its symbol will reduce investor confusion and promote competition among exchanges. Specifically, allowing United-Guardian to maintain its trading symbol will reduce investor confusion associated with its transfer to Nasdaq because investors will continue to be able to obtain quotations and execute trades using the same familiar symbol and will allow the issuer to maintain a symbol that has become a part of its

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<sup>8</sup> See Securities Exchange Act Release No. 55519 (March 26, 2007) 72 FR 15737 (April 2, 2007) (SR-NASDAQ-2007-025).

<sup>9</sup> See Securities Exchange Act Release No. 56028 (July 9, 2007), 72 FR 38639 (July 13, 2007) (approving SR-NASDAQ-2007-031). Over 45 companies with three-character symbols have listed on Nasdaq.

<sup>10</sup> See Securities Exchange Act Release No. 57696 (April 22, 2008) 73 FR 22987 (April 28, 2008) (SR-NASDAQ-2008-034 relating to CA, Inc. listing on Nasdaq using the symbol CA); Exchange Act Release No. 57875 (May 27, 2008) 73 FR 31524 (June 2, 2008) (SR-NASDAQ-2008-047 relating to Hawaiian Holdings, Inc. listing on Nasdaq using the symbol HA); Exchange Act Release No. 58684 (September 30, 2008.) 73 FR 58281 (October 6, 2008) (SR-NASDAQ-2008-075 relating to Tech/Ops Sevcon, Inc. listing on Nasdaq using the symbol TO).

identity to investors.<sup>11</sup> Further, Nasdaq believes that permitting United-Guardian to maintain its symbol will enhance competition among exchanges by removing concerns about investor confusion surrounding its symbol from the factors a company must consider when choosing where to list its equities. This proposal is also consistent with the historical practice of allowing companies to maintain their symbols when they switch among national securities exchanges<sup>12</sup> and with the Commission's recent approval of a national symbology plan, which, when operative, will permit the portability of symbols.<sup>13</sup>

Given the foregoing, Nasdaq believes that market participants were provided adequate notice of this change and are prepared to accommodate the trading of this company on Nasdaq using the symbol UG. Further, Nasdaq believes that any change to the symbol will cause confusion among investors and market participants. As such, Nasdaq proposes to begin trading the common stock of United-Guardian, Inc. on Nasdaq using the symbol UG on March 16, 2009.

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<sup>11</sup> A market transfer will still be transparent to investors because, under the Commission's rules, a company must announce the transfer of its listing on a Form 8-K. See Form 8-K, item 3.01(d). In addition, the issuer must publish notice of its intent to withdraw a class of securities from listing and/or registration, along with its reasons for such withdrawal, via a press release and, if it has a publicly accessible Web site, on that Web site. See Exchange Act Rule 12d2-2(c)(2)(iii), 17 CFR 240.12d2-2(c)(2)(iii).

<sup>12</sup> See, e.g., Darwin Professional Underwriters, Inc (from NYSE Arca to NYSE keeping the symbol DR), Chile Fund, Inc. (from NYSE to Amex keeping the symbol CH), and iShares NYSE 100 (from NYSE to NYSE Arca keeping the symbol NY).

<sup>13</sup> See Securities Exchange Act Release No. 58904 (November 6, 2008) 73 FR 67218 (November 13, 2008) (File No. 4-533, approving the National Market System Plan for the selection and reservation of securities symbols).

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act, in general and with Section 6(b)(5) of the Act, 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. As described above, the proposed rule change will reduce investor confusion and encourage competition between national securities exchanges.

### 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 rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(5) thereunder<sup>15</sup> in that it effects a change to an order-entry or trading system that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(5).

not have the effect of limiting the access to or availability of the system. As such, this proposed rule change is effective upon the Commission's receipt of this filing.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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.

#### 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-2009-023 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-NASDAQ-2009-023. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-2009-023 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).