

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60590; File No. SR-NASDAQ-2009-078)

August 31, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to the Nasdaq Listing Rules to Make Certain Conforming and Technical Changes

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 August 18, 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 designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ 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 Substance of the Proposed Rule Change

Nasdaq proposes to revert to the previously approved requirements of certain listing standards that were inadvertently changed when adopting the new Listing Rules, and to complete certain conforming changes to the Listing Rules that were not fully implemented with their adoption. The text of the proposed rule change is below. Proposed new language is italicized and proposed deletions are in brackets.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ Changes are marked to the rules of The NASDAQ Stock Market LLC found at <http://nasdaqomx.cchwallstreet.com>.

5415. Initial Listing Requirements for Preferred Stock and Secondary Classes of Common Stock

(a) No change.

(b) When the Company's Primary Equity Security is not listed on [either]the Global Market or is not a Covered Security, the preferred stock and/or secondary class of common stock may be listed on the Global Market so long as it satisfies the initial listing criteria for Primary Equity Securities set forth in Rule 5405.

* * * * *

5460. Continued Listing Requirements for Preferred Stock and Secondary Classes of Common Stock

(a) When the Company's Primary Equity Security of the Company is listed on the Global Market or is a Covered Security[another National Securities Exchange], the preferred stock or secondary class of common stock must meet all of the requirements set forth in (1) through (5) below.

- (1) At least 100,000 Publicly Held Shares;
- (2) A Market Value of Publicly Held Shares of at least \$1,000,000;
- (3) Minimum bid price of at least \$1 per share;
- (4) At least 100 Public Holders; and
- (5) At least two registered and active Market Makers.

(b) When the Primary Equity Security of the Company is not listed on [either]the Global Market or is not a Covered Security[another National Securities Exchange], the preferred stock and/or secondary class of common stock may continue to be listed on the Global Market so long as it satisfies the continued listing criteria for Primary Equity Securities set forth in Rule 5450.

* * * * *

5615. Exemptions from Certain Corporate Governance Requirements

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy and Companies transferring from other markets. This rule also describes the applicability of the corporate governance rules to controlled companies and sets forth the phase-in schedule afforded to Companies ceasing to be controlled companies.

(a) No change.

- (1) No change.

IM-5615-1. No change.

- (2) No change.

IM-5615-2. No change.

- (3) No change.

IM-5615-3. No change.

(4) No change.

(5) Management Investment Companies

Management investment companies (including business development companies) are subject to all the requirements of the Rule 5600 Series, except that management investment companies registered under the Investment Company Act of 1940 are exempt from the [requirements of] Independent Directors requirement, the Independent Director Oversight of Executive Officer Compensation and Director Nominations requirements, and the Code of Conduct [requirements] requirement, set forth in Rules 5605(b), (d) and (e), and 5610, respectively.

IM-5615-4. Management Investment Companies

Management investment companies registered under the Investment Company Act of 1940 are already subject to a pervasive system of federal regulation in certain areas of corporate governance covered by 5600. In light of this, Nasdaq exempts from [Rule] Rules 5605(b), (d), (e) and 5610 management investment companies registered under the Investment Company Act of 1940. Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of the Rule 5600 Series.

(b) – (c) No change.

IM-5615-5. No change.

* * * * *

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

On March 12, 2009, Nasdaq filed a proposed rule change to revise the rules relating to the qualification, listing, and delisting of companies listed on, or applying to list on, Nasdaq to improve the organization of the rules, eliminate redundancies and simplify the rule language.⁵ These new listing rules (the “Listing Rules”) were effective April 13, 2009. Nasdaq has observed that the March filing introduced inadvertent changes in the Listing Rules related to the Global Market listing requirements for preferred stock and secondary classes of securities, and to the governance requirements applicable to management investment companies registered under the Investment Company Act of 1940⁶. This filing modifies those rules to revert to the requirements as they previously existed in the listing rules (the “Old Rules”), and to make certain conforming changes.⁷

Nasdaq is proposing technical changes to conform Listing Rule 5415(b) and Listing Rules 5460(a) and (b) with the meaning of Old Rules 4420(k) and 4450(h), respectively, and to make them consistent with each other and the analogous Capital Market rules. Old Rules 4420(k) and 4450(h) provided quantitative initial and continued listing requirements for preferred stock and secondary classes of common stock. These rules also allowed the application of the respective initial and continued listing requirements applicable to common stock if the issuer’s common stock or common stock equivalent security was not listed on either Nasdaq or another national securities exchange. In adopting Listing Rule 5415(a), Nasdaq replaced the term “national securities exchange” with the newly-defined term “Covered

⁵ Securities Exchange Act Release No. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009) (SR-NASDAQ-2009-018).

⁶ 15 U.S.C. § 80-a1 [sic] *et seq.*

⁷ The text of Nasdaq’s prior rules is included in Exhibit 5B of SR-NASDAQ-2009-018, *supra* note 5, available at: <http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2009/SR-NASDAQ-2009-018.pdf>.

Security,”⁸ which was also used in the analogous Capital Market Listing Rules 5510 and 5555. Nasdaq did not, however, make conforming changes to Listing Rules 5415(b) and 5460 to replace the old term with the new. Further, in the case of Rule 5415(b), rule text inadvertently omits the word “not,” which is necessary for the rule to retain its meaning. In the case of Rules 5460(a) and (b), the term “Covered Security” was not used at all. Accordingly, Nasdaq is proposing technical changes to Listing Rule 5415(b), and Listing Rules 5460(a) and (b) to make them consistent with each other and Rules 5610 and 5655, the analogous Capital Market rules.

Under Old Rule 4350(a)(2) and IM-4350-6, a management investment company registered under the Investment Company Act of 1940⁹ was exempt from Old Rule 4350(c), which contained the requirements for a company to have a majority independent board, hold executive sessions, and for independent directors to make certain compensation and nomination decisions, and Old Rule 4350(n), which contained the code of conduct requirement. Old Rule 4350(a)(2) was moved to Listing Rule 5615(a)(5) and exempts a registered management investment company from Listing Rule 5605(b), which contains the requirement for a company to have a majority independent board and executive sessions, and Listing Rule 5610, which contains the code of conduct requirement. However, the part of Old Rule 4350(c) which relates to the requirement for independent directors to make certain compensation and nomination decisions was moved to Listing Rules 5605(d) and (e), both of which are not cross-referenced in Listing Rule 5615(a)(5). As a consequence, Listing Rule 5615(a)(5) no longer contains the full range of exemptions that were previously provided under Old Rule 4350(a)(2). Accordingly, Nasdaq is proposing to amend the cross-reference found in Listing Rule 5615(a)(5) and IM-

⁸ Listing Rule 5005(a)(9) defines a Covered Security as “a security described in Section 18(b) of the Securities Act of 1933.”

⁹ 15 U.S.C. § 80-a1 [sic] et seq.

5615-4 to include Listing Rules 5605(d) and (e), thus conforming Listing Rule 5615(a)(5) with Old Rule 4350(a)(2). Nasdaq also proposes to expand the explanation of the cross references in the rule, consistent with the style of the Listing Rules.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁰ in general and with Sections 6(b)(5) of the Act,¹¹ 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 national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to revert to the previously approved requirements of certain listing standards that were inadvertently changed when adopting the new Listing Rules, and to complete certain conforming changes to the Listing Rules that were not fully implemented with their adoption.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition 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

No written comments were either solicited or received.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)¹² of the Act and Rule 19b-4(f)(6) thereunder.¹³

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.

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-2009-078 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2009-078. 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 the Exchange. 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 No. SR-NASDAQ-2009-078 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).