

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61594; File No. SR-NASDAQ-2010-024)

February 25, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Round Lot Holder Initial Listing Requirement for Listing of Warrants on the Nasdaq Global and Capital Markets Except for Initial Firm Commitment Underwritten Public Offering

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 February 19, 2010, 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 and II below, which Items have been substantially 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 the Substance of the Proposed Rule Change

NASDAQ is filing this proposed rule change to adopt a round lot holder requirement for listing on the Global and Capital markets, and to make a technical correction to a cross referenced rule.

The text of the proposed rule change is below. Proposed new language is underlined and proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

5410. Initial Listing Requirements for Rights and Warrants

For initial listing, the rights or warrants must meet all the requirements below:

- (a) No change.
- (b) The underlying security must be listed on the Global Market or be a Covered Security; [and]
- (c) There must be at least three registered and active Market Makers[.] ; and
- (d) In the case of warrants, there must be at least 400 Round Lot Holders (except that this requirement will not apply to the listing of warrants in connection with the initial firm commitment underwritten public offering of such warrants).

* * * * *

5515. Initial Listing Requirements for Rights, Warrants, and Convertible Debt

The following requirements apply to a Company listing convertible debt, rights or warrants on The Nasdaq Capital Market.

- (a) For initial listing, rights, warrants and put warrants (that is, instruments that grant the holder the right to sell to the issuing company a specified number of shares of the Company's common stock, at a specified price until a specified period of time) must meet the following requirements:
 - (1) No change.
 - (2) The underlying security must be listed on Nasdaq or be a Covered Security; [and]
 - (3) At least three registered and active Market Makers[.] ; and
 - (4) In the case of warrants, at least 400 Round Lot Holders (except that this requirement will not apply to the listing of rights or warrants in connection with the initial firm commitment underwritten public offering of such warrants).

- (b) – (c) No change.

* * * * *

5730. Listing Requirements for Securities Not Specified Above (Other Securities)

(a) Initial Listing Requirements

(1) Nasdaq will consider listing on the Global Market any security not otherwise covered by the criteria in the Rule 5400 or 5700 Series, provided the instrument is otherwise suited to trade through the facilities of Nasdaq. Such securities will be evaluated for listing against the following criteria:

(A) The Company shall have assets in excess of \$100 million and stockholders' equity of at least \$10 million. In the case of a Company which is unable to satisfy the income criteria set forth in Rule 5405(b)(1)(A)[paragraph (a)(1)], Nasdaq generally will require the Company to have the following:

(i) – (ii) No change.

(B) – (D) No change.

(2) – (3) No change.

(b) 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

NASDAQ is proposing to adopt a round lot holder requirement for the initial listing of warrants on the Global and Capital Markets, with a limited exemption for companies listing warrants pursuant to a firm commitment underwritten initial public offering.⁴ Currently, Listing Rule 5410 provides that to list a warrant on the Global Market a Company must have at least 450,000 warrants issued, the underlying security must be listed on the Global Market or be a Covered Security⁵, and there must be at least three registered and active Market Makers. To list a warrant on the Capital Market, a Company must have at least 400,000 warrants issued, the underlying security must be listed on NASDAQ or be a Covered Security, and there must be at least three registered and active Market Makers.⁶

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.⁷ These rules (the “Listing Rules”) were operative April 13, 2009. In adopting the new Listing Rules, NASDAQ inadvertently omitted the requirement in the prior rules that a warrant have at

⁴ The Commission notes that the proposed changes to the Global Market warrant holder requirement would apply to the Global Select Market under Nasdaq Rule 5320, which provides that “[i]f the Primary Equity Security of a Company is included in the Global Select Market, any other security of that same Company, such as other classes of common or preferred stock, warrants and units, that qualify for listing on the Global Market shall also be included in the Global Select Market.”

⁵ Rule 5005(a)(9) defines a Covered Security as a security described in Section 18(b) of the Securities Act of 1933.

⁶ Rule 5515(a).

⁷ Securities Exchange Act Release No. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009)(SR-NASDAQ-2009-018).

least 400 round lot holders for initial listing⁸ on the Global Market. NASDAQ is proposing to modify Rule 5410 to add the round lot holder requirement back to the rule.

NASDAQ is also proposing to adopt an identical 400 round lot holder requirement for the initial listing of warrants on the Capital Market. NASDAQ does not currently have a holder requirement for listing warrants on the Capital Market; however, NASDAQ believes that adopting such a requirement will help ensure that warrants listed on the Capital Market will have adequate distribution and a liquid trading market.

NASDAQ is proposing to adopt an exemption from the proposed round lot holder requirements of both the Global and Capital Markets for warrants listed pursuant to a firm commitment underwritten initial public offering. NASDAQ believes that a primary purpose of distribution requirements in listing standards is to ensure a liquid trading market, promoting price discovery and the establishment of an appropriate market price for the listed securities. In the case of warrants, NASDAQ believes that this liquidity concern is partially addressed by the fact that the market price for a warrant is in large part determined by the trading price of the underlying common stock. Warrant values are primarily determined using valuation models that factor in the trading price of the underlying stock, the warrant exercise price and the expiration date of the right or warrant. NASDAQ believes that the sale of warrants in an underwritten public offering provides an additional basis for believing that a liquid trading market will likely develop for such warrants after listing, since the offering process is designed to promote appropriate price discovery. Moreover, the underwriters in a firm commitment underwritten public offering will also generally make a market in the securities for a period of time after the

⁸ Former Rule 4420(d)(1) required warrants to substantially meet the requirements of the Global Market listing rules, which included a minimum of 400 round lot shareholders under all three entry standards.

offering, assisting in the creation of a liquid trading market. For the foregoing reasons, NASDAQ believes that it is consistent with the protection of investors and the public interest to exempt from the proposed holder requirements of Rules 5410 and 5515(a) any series of warrants that is listed in connection with its initial firm commitment underwritten public offering. This proposed exemption is also consistent with a recent change to the listing requirements of the New York Stock Exchange (“NYSE”).⁹

NASDAQ is not proposing to require a minimum number of holders for the initial listing of rights, because rights are generally distributed to the holders of an existing security and becomes a part of the realizable value of that security. As such, because the existing security must meet liquidity requirements, including a continued listing holders requirement, there is not a need to require a separate minimum number of holders of the rights to help ensure the liquidity of the rights.¹⁰

NASDAQ is also making a technical correction to a cross-reference contained in the Listing Rules. Rule 5730(a)(1)(A) was derived from old Rule 4420(d), which contained a cross reference to the Global Market income criteria found under old Rule 4420(a)(1). Rule 4420(a)(1) was moved to new Listing Rule 5405(b)(1)(A), yet the cross reference in Rule 5730(a)(1)(A) was not updated to reflect this new location. Accordingly, NASDAQ proposes to correct the reference in Rule 5730(a)(1)(A).

⁹ See SR-NYSE-2009-115 (December 2, 2009), 74 FR 64781 (December 8, 2009) (amending Section 703.12 of the NYSE Listed Company Manual to exempt from the 400 holders requirement any series of warrants listed in connection with the initial firm commitment underwritten public offering of such warrants).

¹⁰ This is also consistent with the NYSE’s treatment of rights. See Section 703.03(N) of the NYSE Listed Company Manual.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹¹ in general and with Section 6(b)(5) of the Act,¹² in particular in that it is designed to prevent fraudulent and manipulative acts and practices, 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 market system, and, in general, to protect investors and the public interest. The proposed rule change, which imposes a round lot holder requirement applicable to the initial listing of warrants, subject to a limited exception for warrants listed pursuant to firm commitment initial public offerings, will protect investors and the public interest and remove impediments to and perfect the mechanism of a free and open market by helping to assure adequate liquidity, and correcting inadvertent errors in the adoption of the New Listing 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 rule change has become effective pursuant to Section 19(b)(3)(A) of the

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁶ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period.

The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. For the Global Market, Nasdaq would require the same 400 round lot warrant holders requirement that was contained in the rules for warrants prior to the reorganization of its Listing Rules. For the Capital Market, Nasdaq is proposing an identical 400 round lot warrant holders requirement as the Global Market. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest as the proposed changes should help to enhance liquidity and price discovery for warrants. Further, for both the Global Market and the Capital

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 the pre-filing requirement.

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

Market, Nasdaq’s proposed exemption from the holder requirement for initial firm commitment underwritten public offerings is identical to the rules of the NYSE, which were published for notice and comment in the Federal Register.¹⁷ The Commission did not receive any comments during the public comment period. The Commission further notes that waiving the 30-day operative delay for this provision is consistent with the protection of investors and the public interest as market making by the underwriters in an initial firm commitment public offering of warrants for a period of time after the offering should help alleviate short term liquidity concerns.¹⁸ Finally, Nasdaq proposes to correct inaccurate cross references in the Listing Rules. Based on the above, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and therefore deems the proposal effective upon filing.¹⁹

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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.²⁰

¹⁷ See note 9 supra.

¹⁸ As noted by Nasdaq, the price of such warrants would be established by the firm commitment underwritten offering process, in addition to the price of the underlying security, the exercise price of the warrants, and the expiration of the warrants.

¹⁹ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78s(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, as amended, 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-2010-024 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-2010-024. 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 Web site viewing and printing in the Commission's Public Reference Room 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 offices of the 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-2010-024, 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.²¹

Florence E. Harmon
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).