

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61904; File No. SR-NASDAQ-2010-047)

April 14, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Global Select Market Initial Listing Requirements

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 April 6, 2010, 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 the Substance of the Proposed Rule Change

Nasdaq is filing this proposed rule change to amend the Global Select initial listing requirements and to make a technical conforming correction to a rule cross reference. 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).

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5310. Definitions and Computations

(a) - (d) No change.

(e) In the case of a Company listing in connection with its initial public offering, compliance with the market capitalization requirements of Rules 5315(f)(3)(B), [and] (C) and (D) will be based on the Company's market capitalization at the time of listing.

(f) - (h) No change.

(i) A Company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, as described in IM-5101-2, is not eligible to list on the Nasdaq Global Select Market.

5315. Initial Listing Requirements for Primary Equity Securities

Rule 5310 provides guidance about computations made under this Rule 5315.

(a) - (e) No change.

(f)

(1) No change.

(2) Market Value Requirement

The Publicly Held Shares shall meet one of the following:

(A) - (B) No change.

(C) A Market Value of at least \$45[70] million in the case of: (i) a Company listing in connection with its initial public offering; and (ii) a Company that is affiliated with, or a spin-off from, another Company listed on the Global Select Market; or [and (iii)]

(D) A Market Value of at least \$70 million in the case of a closed end management investment company registered under the Investment Company Act of 1940.

(3) Valuation Requirement

A Company, other than a closed end management investment company, shall meet the requirements of sub-paragraph (A), (B), [or] (C), or (D) below:

(A) - (B) No change.

(C) (i) Average market capitalization of at least \$850 million over the prior 12 months, and (ii) total revenue of at least \$90 million in the previous fiscal year[.];
or

(D) (i) Market capitalization of at least \$160 million, (ii) total assets of at least \$80 million for the most recently completed fiscal year, and (iii) stockholders' equity of at least \$55 million.

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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 proposes to amend Rule 5315(f)(3) to adopt a fourth initial listing standard for listing on the Nasdaq Global Select Market. This standard would permit listing if the company has: (i) \$80 million in total assets, (ii) \$55 million in stockholders' equity and (iii) \$160 million of market capitalization. Companies qualifying under this standard will also have to meet all other requirements of Rule 5315, including the ownership and market value requirements contained in Rule 5315(f) and, upon listing, would be subject to the Global Market continued listing standards.

Nasdaq believes that this new listing standard will continue to ensure that only companies of a significant size and financial standing will be able to list on the Global Select Market. In addition, the new listing standard will permit certain companies that qualify for listing today on other national securities exchanges to also qualify for the Global Select Market. In that regard, Nasdaq notes that the Commission recently approved a similar alternative standard for listing on the New York Stock Exchange, Inc. ("NYSE").⁴ This new NYSE alternative allows a company to list if it has total assets of at least \$75 million, stockholders' equity of at least \$50 million, and a global market capitalization of at least \$150 million. The proposed requirements for initial listing on the Nasdaq Global Select Market are higher than those adopted by the NYSE.

Like companies listing under the current Global Select Market initial listing standards, companies listing under the proposed new standard must also comply with the

⁴ Securities Exchange Act Release No. 58934 (November 12, 2008), 73 FR 69708 (SR-NYSE-2008-098, modifying Section 102.01C of the Listed Company Manual).

continued listing standards of Nasdaq's Global Market.⁵ While in some cases based on different criteria, these continued listing standards are generally the same as or lower than those of the NYSE. Nasdaq believes that its Global Market continued listing standards, which Nasdaq strictly applies, are designed to ensure that only companies of adequate size and stature remain listed on Nasdaq.

Nasdaq is also proposing to reduce the market value of publicly held shares ("MVPHS") requirement contained in Rule 5315(f)(2)(C) from \$70 million to \$45 million for companies listing in connection with an initial public offering or that are affiliated with, or a spin-off from, another company listed on the Global Select Market.⁶ Nasdaq believes that this proposed reduction in the market value of publicly held shares requirement to \$45 million for companies that are new to the public markets will enable otherwise qualified companies to qualify for the Global Select Market and is similar to a recent change by the NYSE. In that regard, Nasdaq notes that the NYSE recently adopted a \$40 million public float requirement applicable to initial public offerings and spin-offs for listing on the NYSE.⁷ Nasdaq notes that the proposed \$45 million market

⁵ Under Rule 5450, a company's primary equity security must qualify under at least one of three standards for continued listing: Equity (Rule 5450(b)(1)); Market Value (Rule 5450(b)(2)); or Total Assets/Total Revenue (Rule 5450(b)(3)).

⁶ Closed-end funds will continue to be required to have a minimum of \$70 million of MVPHS. Nasdaq does not believe that it is unfairly discriminatory to apply different public float requirements to closed-end funds given that they are subject to their own separate listing standards and have characteristics that make them significantly different from operating companies.

⁷ Securities Exchange Act Release No. 60501 (August 13, 2009), 74 FR 42348 (August 21, 2009) (SR-NYSE-2009-080, approving changes to Section 102.01B of the Listed Company Manual).

value of publicly held shares requirement is higher than the analogous NYSE requirement.⁸

In addition, Nasdaq proposes to add Rule 5310(i) to provide that a company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time is not eligible to list on the Global Select Market.⁹

Nasdaq believes that the proposed Global Select Market listing standards will continue to exceed the standards established by Rule 3a51-1 of the Exchange Act¹⁰ (the “Penny Stock Rules”), and notes that, in approving the NYSE’s assets and equity test and reduced public float requirement, the Commission found that the NYSE’s rules exceeded those standards.¹¹

The requirement in Rule 5315(f)(3)(A) for a minimum of \$2.2 million income from continuing operations exceeds the \$750,000 income requirement of SEC Rule 3a51-1(a)(2)(i)(A)(3). In addition, companies qualifying under this Rule must have at least three years of positive income, thus satisfying the requirement in SEC Rule 3a51-1(a)(2)(i)(B) that a company have a minimum one year operating history. Rule 5315(f)(3)(B) requires an average market capitalization of at least \$550 million over the prior 12 months; Rule 5315(f)(3)(C) requires an average market capitalization of at least

⁸ Id.

⁹ These companies are commonly referred to as special purpose acquisition companies or SPACs. See IM-5101-2. SPACs cannot currently list on the Global Select Market because they would not be able to meet any of the existing Valuation Requirement alternatives in Rule 5315(f)(3). The addition of proposed Rule 5310(i) will clarify that they also cannot list under the proposed new standards.

¹⁰ 17 CFR 240.3a51-1.

¹¹ Securities Exchange Act Release Nos. 58934 and 60501, supra notes 4 and 7.

\$850 million over the prior 12 months; and proposed Rule 5315(f)(3)(D) would require a minimum market capitalization of \$160 million, as well as equity of at least \$55 million. Nasdaq believes that each of these requirements satisfy the requirements of SEC Rules 3a51-1(a)(2)(i)(A)(2) and 3a51-1(a)(2)(i)(B) that a company have a market value of listed securities of at least \$50 million. While SEC Rule 3a51-1(a)(2)(i)(A)(2) requires a market value of listed securities of \$50 million calculated over a 90 consecutive day period, the \$50 million in market value of listed securities requirement is far lower than the requirements of the Nasdaq rule, including the \$160 million of market capitalization required under proposed Rule 5315(f)(3)(D). As such, Nasdaq believes that proposed rule is comparable to, and arguably more stringent than, the \$50 million market value of listed securities requirement of SEC Rule 3a51-1(a)(2)(i)(A)(2) and (B).

Nasdaq believes that its Global Select Market's rules will also exceed the Penny Stock Rules remaining stock price and distribution requirements. Rule 5315(e)(1) requires companies initially listing on Nasdaq to have a minimum bid price of \$4 per share, thereby satisfying the \$4 requirement of SEC Rule 3a51-1(a)(2)(i)(C). Rule 5315(f)(1) requires a company's securities to have either 450 round lot holders or at least 2,200 total holders, although if a company is publicly traded and has an average monthly trading volume over the prior 12 months of at least 1.1 million shares per month, it can list with 550 total holders. Nasdaq believes that these requirements are comparable to, or more stringent than, the requirement of SEC Rule 3a51-1(a)(2)(i)(D) that a security have at least 300 round lot holders, and satisfy the same objective by assuring adequate liquidity in the security.¹²

¹² Nasdaq notes that each of these requirements exceed the comparable requirements of the NYSE and that the Commission did not raise concerns under the Penny Stock Rules in connection with the NYSE adopting standards comparable to those

Last, SEC Rule 3a51-1(a)(2)(i)(E) requires at least 1 million publicly held shares with a market value of at least \$5 million. Rule 5315(e)(2) requires all securities listing on the Nasdaq Global Select Market to have at least 1.25 million publicly held shares. In addition, Rule 5215(f)(2), as proposed to be amended, would require a minimum \$45 million market value of publicly held shares. As such, Nasdaq believes its initial listing standards for the Global Select Market continue to meet or exceed the requirements of the Penny Stock Rules.

Nasdaq also believes that, the addition of the new valuation requirement does not change the fact that the Nasdaq Global Market quantitative continued listing standards are reasonably related to the quantitative initial listing standards of the Global Select Market, as required by SEC Rule 3a51-1(a)(2)(ii). The quantitative continued listing standards, which are not changing as a result of this proposed rule change, require a company to maintain either \$10 million in stockholders' equity, \$50 million in market value of listed securities, or total assets and total revenue of at least \$50 million each for the most recently completed fiscal year or two of the three most recently completed fiscal years, along with other requirements.¹³

Companies listing under the proposed Global Select Market listing standards would have to comply with these requirements, as well as all other applicable Nasdaq listing rules, including Nasdaq's corporate governance requirements. As with all other listing applicants, Nasdaq reserves the right to apply its discretionary authority to deny

¹³ proposed herein. See Securities Exchange Act Release No. 60501, *supra*, note 7; Securities Exchange Act Release No. 58934, *supra*, note 4.
Rule 5450(b).

initial or continued listing to any company seeking to list under the proposed standards if Nasdaq determines that the listing of such company is contrary to the public interest.¹⁴

Nasdaq is also making a minor technical correction to Rule 5315(f)(3)(C)(i) to insert an omitted word.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁵ in general and with Sections 6(b)(5) of the Act,¹⁶ 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 provide an additional Global Select Market initial listing standard under which a company may qualify and modify the market value of publicly held shares requirement for certain companies. Nasdaq believes that these changes are consistent with the investor protection objectives of the Act in that the proposed requirements remain at a level high enough so that only companies that are suitable for listing on the Global Select Market will qualify to list.

¹⁴ See Rule 5101 and IM-5101-1.

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(5).

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

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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)¹⁷ of the Act and Rule 19b-4(f)(6) thereunder.¹⁸

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. Nasdaq has provided the Commission 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.

Nasdaq believes that the proposed rule change does not significantly affect the protection of investors or the public interest because the changes proposed herein allow

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

only companies of adequate size and quality to list their shares on the Nasdaq Global Select Market. Nasdaq notes that the proposed new listing requirements are more stringent than recently-approved initial listing standards of the NYSE and exceed the requirements of the Penny Stock Rules. Consequently, Nasdaq believes the proposed rule change does not raise any novel regulatory issues or significantly affect the protection of investors or the public interest. Companies listing under the proposed Global Select Market listing requirements would have to comply with all other applicable Nasdaq listing rules, including Nasdaq's corporate governance requirements.

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-2010-047 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-2010-047. 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, 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 Number SR-NASDAQ-2010-047, 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.¹⁹

Florence E. Harmon
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).