

Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 24, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc. (Detwiler, Mitchell & Co., Common Stock, \$.01 Par Value); File No. 1-10331

July 29, 2003.

Detwiler, Mitchell & Co., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its Common Stock, \$.01 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The Board of Directors ("Board") of the Issuer approved resolutions on July 1, 2003 to withdraw its Security from listing on the Exchange. The Board states that the reasons it decided to delist the Security from the PCX are: (i) The Issuer has approximately 221 record holders of its Security making it eligible for deregistration under Section 12(g) of the Act; (ii) the Issuer estimated the potential cost savings from deregistration and delisting from the Nasdaq SmallCap Market and the PCX to be in the range of \$125,000 to \$200,000 annually; (iii) the Issuer would be relieved from the time-consuming burdens of compliance with the reporting and other requirements of the Act, which have become more burdensome because of the enactment of the Sarbanes-Oxley Act of 2002; relief from these burdens would represent a substantial benefit to the business and operations of the Issuer, which cannot be quantified in monetary terms and is not reflected in estimates of cash cost savings; (iv) the reactions of stockholders, employees and clients to the prospect of deregistration and delisting were almost universally favorable, and stockholders seem to be impressed by the potential for cost savings while understanding that the

Issuer's Security will continue to be publicly traded on Pink Sheets LLC's quotations service ("pink sheets"); (v) the desultory trading market in the Security through its listing on the Nasdaq SmallCap market and PCX was no more beneficial to the stockholders, and does not provide them a better trading market, than would be available to them if the Security were deregistered and traded in the "pink sheets" market place; the Security trades less than 10,000 shares annually on the PCX; and (vi) the Issuer could continue to provide quarterly and (audited) annual financial statements and press releases to its stockholders containing substantially the same information about the financial condition and results of operations of the Issuer as have been provided to them in the past, and will continue to provide stockholders with reports of current developments as in the past so that registration will not substantially reduce the flow of useful information to the stockholders. The Issuer states that its Security has traded over-the-counter and has been quoted in the pink sheets since July 7, 2003.

The Issuer stated in its application that it has complied with the rules of the PCX that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the PCX and from registration under Section 12(b)<sup>3</sup> of the Act and shall not affect its obligation to be registered under Section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before August 18, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**  
*Secretary.*

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<sup>1</sup> 15 U.S.C. 78l(d).

<sup>4</sup> 15 U.S.C. 78l(g).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Dot Hill Systems Corp., Common Stock, \$.001 par value); File No. 1-13317

July 29, 2003.

Dot Hill Systems Corp., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its Common Stock, \$.001 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer stated that it is taking such action because the Issuer believes that listing on the Nasdaq National Market will provide superior trading and visibility in the investment community, among other advantages. The Issuer also stated that this is of particular importance as the Issuer anticipates pursuing a follow-on public offering in the near future.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under Section 12(b) of the Act<sup>3</sup> shall not affect its obligation to be registered under Section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before August 18, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

<sup>1</sup> 15 U.S.C. 78l(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

<sup>3</sup> 15 U.S.C. 78l(b).

<sup>4</sup> 15 U.S.C. 78l(g).

<sup>1</sup> 15 U.S.C. 78l(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48236; File No. SR-NASD-2003-105]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. To Implement a Six-Month Pilot Program Establishing Fees for Written Interpretations of Nasdaq Listing Rules

July 28, 2003.

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 July 3, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("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.<sup>3</sup> 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 implement a pilot program that establishes fees for written interpretations of Nasdaq listing rules. The text of the proposed rule change is below. Proposed new language is in *italics*.

\* \* \* \* \*

#### 4500. Issuer Listing Fees

##### 4550. Written Interpretations of Nasdaq Listing Rules

*(a) An issuer listed on The Nasdaq SmallCap Market or The Nasdaq National Market may request from Nasdaq a written interpretation of the*

*Rules contained in the 4000 through 4500 Series. In connection with such a request, the issuer must submit to The Nasdaq Stock Market, Inc. a non-refundable fee of \$2,000. A response to such a request generally will be provided within four weeks from the date Nasdaq receives all information necessary to respond to the request.*

*(b) Notwithstanding paragraph (a), an issuer may request a written interpretation of the Rules contained in the 4000 through 4500 Series by a specific date that is less than four weeks, but at least one week, after the date Nasdaq receives all information necessary to respond to the request. In connection with such a request for an expedited response, the issuer must submit to The Nasdaq Stock Market, Inc. a non-refundable fee of \$10,000.*

*(c) An applicant to The Nasdaq Stock Market that has submitted the applicable entry fee under Rule 4510 or Rule 4520 will not also be required to submit a fee in connection with a request for a written interpretation involving the applicant's initial inclusion on Nasdaq. In addition, an issuer is not required to submit a fee in connection with a request for an exception from the Nasdaq shareholder approval rules pursuant to Rule 4350(i)(2).*

*(d) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the written interpretation fee prescribed herein.*

#### 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

The purpose of the proposed rule change is to institute a six-month pilot program that establishes a fee for written interpretations of Nasdaq listing rules. Nasdaq proposes that this rule change become effective on October 1, 2003 or upon Commission approval,

whichever date is later. Nasdaq will monitor the effect of this rule change on the listing rules interpretative process during this period. Prior to the completion of the pilot, Nasdaq will evaluate the impact of this rule and report its findings to the Commission, and thereafter, determine the appropriate course of action.

Currently, issuers may contact Nasdaq to request an interpretation regarding the application of Nasdaq's listing rules to a particular set of facts. For example, an issuer negotiating a private placement might want to ensure that the proposed transaction does not require shareholder approval under Nasdaq's rules. Alternatively, an issuer seeking to add a new director to its board of directors may inquire as to the impact of a prior relationship with that individual on the person's independence under Nasdaq rules.

Issuers can request formal interpretative guidance of Nasdaq's listing rules by submitting a letter that identifies the issuer and provides all relevant facts and circumstances surrounding the question. Staff of Nasdaq's Listing Qualifications Department will prepare a response letter, which the Nasdaq Office of General Counsel reviews prior to issuance. Written interpretations are binding on Nasdaq unless the issuer has made a material misstatement or omission, there is a subsequent change in the facts or circumstances that the issuer described in its letter, or there is a subsequent change in Nasdaq's listing requirements.<sup>4</sup> Since written interpretations are based on the specific facts and circumstances presented by an issuer, an issuer may not rely on a written interpretation that has been provided to another issuer. However, to provide transparency regarding our rules and policies, Nasdaq publishes anonymous summaries of these interpretative letters on its Web site, at <http://www.nasdaq.com/about/StaffInterpLetters.stm>.

Nasdaq currently provides written interpretations at no cost to issuers. In recent years, however, there has been an increase in the complexity of transactions for which issuers have sought interpretations. As a result, Nasdaq staff now spends an increasing amount of time on routine interpretation letters, with some interpretations

<sup>4</sup> Nasdaq also provides oral guidance regarding its listing rules. Issuers will often request such guidance on a "no names" basis, while they still are structuring a transaction or analyzing the impact of a proposed change. Since oral guidance may not be based on a complete review of all relevant facts and circumstances, it is not binding on Nasdaq.

<sup>5</sup> 17 CFR 200.30-3(a)(1).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Commission revised text in the description of the proposed rule change to clarify certain terms of the pilot, and added a reference to its proposed start date, with the consent of Nasdaq. See e-mails from John Nachmann, Senior Attorney, Nasdaq, to Andrew Shipe, Special Counsel, and Leah Mesfin, Attorney, Division of Market Regulation, Commission, dated July 21 and July 22, 2003.