

approved as a CBOE member organization.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2005-105) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53362; File No. SR-NASD-2006-028]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Allow Nasdaq To Take Certain Actions on Behalf of Its Issuers in Connection With Nasdaq's Transition to a National Securities Exchange

February 24, 2006.

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 23, 2006, 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. 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 adopt NASD Rule 4130 to allow Nasdaq to file an application with the Commission or another appropriate regulator on behalf of its issuers to register their listed securities under Section 12(b) of the Act, or seek a temporary exemption from Section 12, in connection with Nasdaq's transition to one of its subsidiaries operating as a national securities exchange. Nasdaq will implement the proposed rule upon

approval. The text of the proposed rule change is below. Proposed new language is in *italics*.³

4130. Permission to Act on Behalf of Issuer

In connection with The NASDAQ Stock Market LLC (the "Nasdaq Exchange") commencing operations as a national securities exchange, each issuer authorizes Nasdaq and the Nasdaq Exchange to file an application to register under Section 12(b) of the Act any class of the issuer's securities that is listed on Nasdaq on the day immediately preceding the day the Nasdaq Exchange commences such operations; provided, however, that this provision shall not be applicable to any security that the issuer informs Nasdaq, pursuant to procedures set forth by Nasdaq, should not be so registered. The application to register under Section 12(b) of the Act will be filed with the Commission or, for those securities subject to Section 12(i) of the Act, with the appropriate banking regulator specified in Section 12(i). The authorization in this paragraph includes allowing Nasdaq and the Nasdaq Exchange to request any appropriate regulatory relief from the provisions of Section 12.

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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 had 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 January 13, 2006, the Commission approved Nasdaq's application to register one of its subsidiaries, The Nasdaq Stock Market LLC ("Nasdaq

Exchange"), as a national securities exchange.⁴ Once the Nasdaq Exchange begins operation, securities listed on Nasdaq will need to have been registered under Section 12(b) of the Act so that brokers and dealers may effect transactions in these securities on the Nasdaq Exchange consistent with Section 12(a) of the Act.⁵ Accordingly, absent relief from the Commission and other regulators, Nasdaq's transition to the Nasdaq Exchange beginning operations as a national securities exchange would require approximately 3,200 Nasdaq National Market and Capital Market issuers to register their Nasdaq-listed securities under Section 12(b) of the Act. This process would require each issuer to file a registration statement with the Commission or other appropriate regulator.⁶ The Nasdaq Exchange would then be required to certify to the Commission and the Banking Regulators that each issuer's securities are approved for listing and registration.

Nasdaq believes that this registration process would be confusing and would place an unnecessary cost and administrative burden on issuers, on the Commission and Banking Regulators, and on Nasdaq, and would not be in the public interest. For the great majority of issuers whose securities are currently listed on Nasdaq, this additional registration process would not result in any significant benefit to the marketplace or investors because they would not receive any additional information regarding the security. Nasdaq issuers whose securities are registered under Sections 12(b) or 12(g) of the Act would have already filed a registration statement pursuant to the Act to register those securities. Similarly, issuers registered under the Investment Company Act of 1940 (the "1940 Act") will have filed detailed information with the Commission.⁷ There are also no material differences in

⁴ Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

⁵ Section 12(a) of the Act, 15 U.S.C. 78l(a). As discussed in footnote 10, Nasdaq anticipates that it will seek relief from the Section 12(b) registration requirement during a limited transition period for certain securities that are currently exempt from registration under Section 12(g).

⁶ Section 12(i) of the Act requires filings relating to certain financial institutions to be made with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision (collectively, the "Banking Regulators"). 15 U.S.C. 78l(i).

⁷ In particular, each registered investment company has filed a registration statement with the Commission under the 1940 Act and has made periodic filings under the 1940 Act identical in form to those required of investment companies that have registered their securities under Section 12(b) of the Act.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Changes are marked to the rule text that appears in the electronic NASD Manual found at <http://www.nasd.com>. No pending rule filings would affect the text of this rule. Because of the nature of this rule, no conforming change will be made to the rules of The NASDAQ Stock Market LLC. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

the regulatory requirements for issuers whose securities are registered under Section 12(b) and those whose securities are registered under Section 12(g) or are exempted pursuant to Section 12(g)(2)(B) of the Act that would negatively impact investors or place additional burdens on the issuers.⁸

As a result, Nasdaq proposes to file a single application for registration on behalf of these issuers by means of a letter to the Commission and Banking Regulators. To provide notice of Nasdaq's plan to seek Section 12(b) registration on behalf of its issuers and to assure sufficient authority for Nasdaq to make this application, however, Nasdaq has proposed adopting a rule specifically permitting Nasdaq and the Nasdaq Exchange to take this action.

Prior to filing this application, Nasdaq will provide notice to each issuer and will allow any issuer that does not wish to register under Section 12(b) the ability to opt-out of Nasdaq's request to the Commission and Banking Regulators.⁹ Nasdaq expects to provide companies 10 business days to request to opt-out of Nasdaq's application on their behalf under Section 12(b). The result of an issuer choosing to opt-out would be that the issuer's securities would be ineligible to be listed and traded on the Nasdaq Exchange as of the operational date; such issuers would instead trade on the pink sheets or OTC Bulletin Board unless the issuer filed a Section 12(b) registration statement with the Commission in connection with listing on the Nasdaq Exchange or on another national securities exchange. Following this opt-out period, Nasdaq will submit a letter to the Commission and Banking Regulators requesting that such letter serve as the application for registration under Section 12(b), as well as the Nasdaq Exchange's certification of such application, for all those issuers with securities registered under Section 12(b) or 12(g) or exempt from registration under Section 12(g)(2)(B) and listed on Nasdaq on the day immediately preceding Nasdaq Exchange's operation as a national

securities exchange.¹⁰ Nasdaq will notify issuers when this relief is granted.¹¹

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹² in general, and furthers the objectives of section 15A(b)(6),¹³ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The proposed rule change would allow Nasdaq's issuers to seamlessly transition to the Nasdaq Exchange, thus removing a potential impediment to the mechanism of a free and open market and protecting the public interest.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which NASD consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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-NASD-2006-028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-028. 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. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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 publicly available. All submissions should refer to File Number SR-NASD-2006-028 and should be submitted on or before March 23, 2006.

⁸ Nasdaq believes that the only differences relate to how the issuer identifies itself on the cover of its periodic reports (e.g., as registered under Section 12(b) instead of Section 12(g)) and the process surrounding a decision to delist or deregister. Nasdaq also notes that an issuer registered under the 1940 Act will satisfy its obligation to file reports under the Act through the filing of reports that it is already required to make under the 1940 Act.

⁹ Nasdaq will make this notification via e-mail to the issuer's e-mail address on file with Nasdaq, or, if no e-mail address is available, via facsimile. Nasdaq will also issue a press release describing this process and post information about this process to its Web site.

¹⁰ Nasdaq also anticipates that this letter will seek relief from the registration requirement for securities currently exempt from registration under Section 12(g)(2)(G) of the Act and Rule 12g3-2(b) thereunder to allow these securities to trade on the Nasdaq Exchange during a limited transition period. The proposed rule would specifically permit Nasdaq to request such regulatory relief. Nasdaq would follow the same notice and opt-out procedures for these companies.

¹¹ Nasdaq will make this notification in the same manner as the earlier notification, including the issuance of a press release. See footnote 9, *supra*.

¹² 15 U.S.C. 78o-3.

¹³ 15 U.S.C. 78o-3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53359; File No. SR-NYSE-2006-09]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Automatic Conversion of CAP-DI Orders

February 24, 2006.

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 21, 2006, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) 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 the Exchange. NYSE filed the proposed rule change as effecting a change in an existing order-entry or trading system pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(5) thereunder,⁴ 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

NYSE is proposing to amend Exchange Rule 123A.30(a)(iv)(P), which was part of the pilot (“Pilot”)⁵ which put into operation Phase 1 of the NYSE HYBRID MARKETSM (“Hybrid Market”) initiative, as proposed in SR-NYSE-2004-05⁶ and amendments thereto (“Hybrid Market filings”) and certain

system changes discussed in SR-NYSE-2005-57.⁷ The text of the proposed rule change is available on the Exchange’s Web site (<http://www.nyse.com>), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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. The Exchange 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

I. Purpose

The Exchange proposed a Pilot to put into operation Phase 1 of the Hybrid Market initiative with respect to a group of securities, known as Phase 1⁸ Pilot securities (“Pilot securities”). Following Commission approval, the Pilot commenced during the week of December 12, 2005 and will terminate the earlier of: (1) March 14, 2006, or (2) Commission approval of the Exchange’s Hybrid Market proposal, if granted.

Commencing with the Pilot; the Exchange systemically ensures that the specialist’s participation when trading along with CAP-DI orders is in accordance with the parity requirements of Exchange Rule 123A.30. The system assigns the proper number of shares to the specialist and CAP-DI orders. The Exchange filed SR-NYSE-2005-57⁹ for immediate effectiveness pursuant to section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(5) thereunder¹¹ to effect this change.

Automatic Conversions of CAP-DI Orders. Current Exchange Rule 123A.30 provides that specialists have the ability, subject to certain restrictions

noted in the rule, to convert CAP-DI orders to participate in transactions or to bid or offer, without an electing trade.

Exchange Rule 123A.30(a)(P)¹² provides in part that the elected or converted portion of a “percentage order that is convertible on a destabilizing tick and designated immediate execution cancel election” (“CAP-DI order”) may be automatically executed. An elected or converted CAP-DI order on the same side of the market as an automatically executed electing order may participate in a transaction at the bid (offer) price if there is volume associated with the bid (offer) remaining after the electing order is filled in its entirety. An elected or converted CAP-DI order on the contra-side of the market as an automatically executed electing order may participate in a transaction at the bid (offer) price if there is volume remaining in the electing order.

In addition, the Exchange added new section (iv)(P) to proposed Exchange Rule 123A.30(a)(P) to provide that when a specialist is bidding or offering and an automatic execution occurs with such bid/offer, marketable CAP-DI orders on the Display Book[®] on the same side as the specialist’s interest will be automatically converted to participate in this execution, with the system assigning the proper number of shares to the specialist and auto-converted CAP-DI orders, as discussed above. This will allow CAP-DI orders to better participate in executions.

However, in certain instances, an automatic conversion of marketable CAP-DI orders will not occur even though the specialist is trading for its own account. This will occur where the execution that included automatically converted CAP-DI orders elects a contra-side stop or stop limit order. In this situation, pursuant to current Exchange Rule 123A.40, the specialist, as party to the election of the stop order, owes such elected stop order an execution at the same price as the specialist traded. The execution of such stop orders, in which the specialist is the contra-party, may be manual¹³ or automatic,¹⁴ depending upon whether

¹² This rule is parallel to amendments made to Rule 123A.30. See Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005).

¹³ If there is no specialist interest remaining in the bid/offer, and the specialist must guarantee an execution to the stop order at the electing price pursuant to Exchange Rule 123A.40, the specialist must do a manual transaction to guarantee that the stop order receives the same price as the specialist.

¹⁴ If there is specialist interest remaining in the bid/offer and the specialist must guarantee an execution to the stop order at the electing price pursuant to Exchange Rule 123A.40, the Display Book system will automatically execute the

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(5).

⁵ See Securities Exchange Act Release No. 52954 (December 14, 2005), 70 FR 75519 (December 20, 2005).

⁶ See Securities Exchange Act Release Nos. 50173 (August 10, 2004), 69 FR 50407 (August 16, 2004); 50667 (November 15, 2004) 69 FR 67980 (November 22, 2004); and 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005) See also Amendment No. 6, filed on September 16, 2005, and Amendment No. 7, filed on October 11, 2005.

⁷ See Securities Exchange Act Release No. 52362 (August 30, 2005), 70 FR 53701 (September 9, 2005). While submitted as effective upon filing, the Exchange intended to implement these changes upon approval of the Hybrid Market filings by the Commission, if such approval is granted.

⁸ See Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005).

⁹ See *supra* note 7.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(5).