

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 CBOE. 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-CBOE-2006-60 and should be submitted on or before August 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54167; File No. SR-NASDAQ-2006-002]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto To Add Generic Listing Standards for Index-Linked Securities

July 18, 2006.

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 March 29, 2006, The NASDAQ Stock Market, LLC ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Nasdaq. On May 5, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit

comments on the proposed rule change, as amended, from interested persons and to approve the proposal on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to reflect in the Nasdaq rules the generic listing standards for index-linked notes ("ILNs") previously approved for NASD pursuant to Rule 19b-4(e) under the Act.<sup>4</sup> These "generic" listing standards were recently approved by the Commission for The Nasdaq Stock Market, Inc. ("Nasdaq Market") as part of the NASD, Inc. rule book,<sup>5</sup> but because their approval came several days after the approval of Nasdaq's registration as a national securities exchange,<sup>6</sup> they were not a part of the Nasdaq rule set included in the Exchange Approval Order.

The text of the proposed rule change is available on Nasdaq's Web site (<http://www.nasdaq.com>), at Nasdaq's principal office, and at the Commission's Public Reference Room. The text of the proposed rule change is also set forth below. Proposed new language is *italicized*; proposed deletions are in [brackets].

\* \* \* \* \*

#### 4420. Quantitative Designation Criteria

In order to be listed on the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), [or] (m) or (n) below.

(a)–(l) No change.

##### (m) Index-Linked Securities

*Index-linked securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. Nasdaq may submit a rule filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 to permit the listing and trading of index-linked securities that do not otherwise meet the standards set forth below in paragraphs (1) through (9). Nasdaq will consider for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 index-linked securities, provided:*

<sup>4</sup> 17 CFR 240.19b-4(e).

<sup>5</sup> See Securities Exchange Act Release No. 53142 (Jan. 19, 2006), 71 FR 4180 (Jan. 25, 2006).

<sup>6</sup> See Securities Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006 "Exchange Approval Order").

(1) Both the issue and the issuer of such security meet the criteria for other securities set forth in paragraph (f) of this rule, except that the minimum public distribution of the security shall be 1,000,000 units with a minimum of 400 public holders, unless the security is traded in \$1,000 denominations, in which case there is no minimum number of holders.

(2) The issue has a term of not less than one (1) year and not greater than ten (10) years.

(3) The issue must be the non-convertible debt of the issuer.

(4) The payment at maturity may or may not provide for a multiple of the positive performance of an underlying index or indexes; however, in no event will payment at maturity be based on a multiple of the negative performance of an underlying index or indexes.

(5) The issuer will be expected to have a minimum tangible net worth in excess of \$250,000,000 and to exceed by at least 20% the earnings requirements set forth in paragraph (a)(1) of this Rule. In the alternative, the issuer will be expected: (i) to have a minimum tangible net worth of \$150,000,000 and to exceed by at least 20% the earnings requirement set forth in paragraph (a)(1) of this Rule, and (ii) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(6) The issuer is in compliance with Rule 10A-3 under the Securities Exchange Act of 1934.

(7) Initial Listing Criteria—Each underlying index is required to have at least ten (10) component securities. In addition, the index or indexes to which the security is linked shall either (A) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the 1934 Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or (B) the index or indexes meet the following criteria:

(i) Each component security has a minimum market value of at least \$75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least \$50 million;

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> In Amendment No. 1 Nasdaq made minor revisions to the proposed rule text.

(ii) Each component security shall have trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;

(iii) Each index will be calculated based on a capitalization, modified capitalization, price, equal-dollar or modified equal-dollar weighting methodology;

(iv) Indexes based upon the equal-dollar or modified equal-dollar weighting method will be rebalanced at least quarterly;

(v) In the case of a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

(vi) No underlying component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities);

(vii) 90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading on a national securities exchange or a national securities association;

(viii) Each component security shall be issued by a 1934 Act reporting company, shall be listed on Nasdaq or another national securities exchange, and shall be an "NMS stock" as defined in Rule 600 of SEC Regulation NMS; and

(ix) Foreign country securities or American Depositary Receipts ("ADRs") that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index.

(8) **Index Maintenance and Dissemination**—(i) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "firewall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. (ii) The current

value of an index will be widely disseminated at least every 15 seconds, except as provided in the next clause (iii). (iii) The values of the following indexes need not be calculated and widely disseminated at least every 15 seconds if, after the close of trading, the indicative value of the index-linked security based on one or more of such indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA BuyWrite Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm). (iv) If the value of an index-linked security is based on more than one index, then the composite value of such indexes must be widely disseminated at least every 15 seconds.

(9) **Surveillance Procedures.** NASD will implement on behalf of Nasdaq written surveillance procedures for index-linked securities. Nasdaq will enter into adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

(10) **Index-linked securities** will be treated as equity instruments. Furthermore, for the purpose of fee determination, index-linked securities shall be deemed and treated as Other Securities.

[(m)] (n) NASD Regulation

No change.

\* \* \* \* \*

#### 4450. Quantitative Maintenance Criteria

(a) and (b) No change.

(c) **Other Securities Designated Pursuant to Rule 4420(f) and Index-Linked Securities**

(1) The aggregate market value or principal amount of publicly held units (except index-linked securities that were listed pursuant to Rule 4420(m)) must be at least \$1 million.

(2) **Delisting or removal proceedings** will be commenced (unless the Commission has approved the continued trading) with respect to any index-linked security that was listed pursuant to paragraph (7)(B) of Rule 4420(m) if any of the standards set forth in paragraph (7)(B) of such rule are not continuously maintained, except that:

(i) the criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index may not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted and price weighted indexes as of the first day of January and July in each year;

(ii) the total number of components in the index may not increase or decrease by more than 33 $\frac{1}{3}$ % from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;

(iii) the trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and

(iv) in a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

(3) With respect to an index-linked security that was listed pursuant to paragraph (7)(A) of Rule 4420(m), delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading of the subject index-linked security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the 1934 Act approving the index or indexes for the trading of options or other derivatives.

(4) **Delisting or removal proceedings** will also be commenced with respect to any index-linked security listed pursuant to Rule 4420(m) (unless the Commission has approved the continued trading of the subject index-linked security), under any of the following circumstances:

(i) if the aggregate market value or the principal amount of the securities publicly held is less than \$400,000;

(ii) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis, provided, however, that the values of the following indexes need not be calculated and disseminated at least every 15 seconds if, after the close of trading, the indicative value of any index-linked security linked to one or more of such indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA BuyWrite Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm); or

(iii) if such other event shall occur or condition exists which in the opinion of Nasdaq makes further dealings on Nasdaq inadvisable.

(d) through (i) 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

The proposed rule change will add generic listing standards to permit the listing and trading of ILNs pursuant to Rule 19b-4(e) under the Act.<sup>7</sup> Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,<sup>8</sup> if the Commission has approved, pursuant to Section 19(b) of the Act,<sup>9</sup> the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivatives securities product, and the self-regulatory organization has a surveillance program for the product class.<sup>10</sup>

Nasdaq believes adopting generic listing standards for these securities and applying Rule 19b-4(e) should fulfill the intended objective of that Rule by allowing those ILNs that satisfy the proposed generic listing standards to commence trading, without the need for the public comment period and Commission approval. This has the potential to reduce the time frame for bringing ILNs to market and thereby reduce the burdens on issuers and other market participants. The failure of a particular index to comply with the proposed generic listing standards

under Rule 19b-4(e), however, would not preclude a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular ILN.

On January 19, 2006, the Commission approved the proposed ILN standards for the Nasdaq Market.<sup>11</sup> However, on January 13, 2006, the Commission also approved Nasdaq's registration as a national securities exchange, and because of the timing of the two approvals, the ILN standards were not included in the rule set that the Commission approved for Nasdaq. The purpose of this filing is to update the Nasdaq rules accordingly.

The proposed Nasdaq Rule 4420(m) is the same<sup>12</sup> as the corresponding NASD Rule 4420(m) for the Nasdaq Market and will be administered in the same manner as the Nasdaq Market rule is being administered currently. The proposed rule will become operative as soon as Nasdaq begins its operations as an exchange.

In transitioning to Nasdaq the ILNs that are listed on the Nasdaq Market, Nasdaq will deem all such ILNs, without exception, as subject to the continued listing standards in proposed Nasdaq Rules 4450(c)(3) and (c)(4).<sup>13</sup>

Index Securities will be treated as equity instruments and will be subject to all Nasdaq rules governing the trading of equity securities, including trading halt rules. Index Securities will be subject to the same fee schedule as Other Securities listed under Nasdaq Rule 4420(f). The applicable fee schedule is currently codified as Nasdaq Rule 4530.

<sup>11</sup> See NASD Rule 4420(m).

<sup>12</sup> This proposal includes two clarifications. First, it removes a potential conflict between the provisions of Rules 4450(c)(1) and 4450(c)(4)(i) by clarifying that Rule 4450(c)(1) does not apply to ILNs (and, therefore, the minimum aggregate market value or the principal amount of the publicly held securities is \$400,000, as stated in Rule 4450(c)(4)(i)). Second, it clarifies in the wording of Rule 4420(m)(9) that despite NASD's obligations pursuant to a regulatory services agreement to surveil Nasdaq trading, Nasdaq itself must enter into appropriate written surveillance sharing agreements. See Nasdaq Rule 4420(n). The Commission made minor clarifying changes to this footnote to conform it with Amendment No. 1. Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Rahman Harrison, Special Counsel, Division of Market Regulation, Commission on July 17, 2006.

<sup>13</sup> The Commission deleted text from this paragraph pursuant to authorization by Nasdaq staff. Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Rahman Harrison, Special Counsel, Division of Market Regulation, Commission on July 17, 2006.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 6 of the Act,<sup>14</sup> in general, and with Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is 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

Written comments on the proposed rule change, as amended, were neither solicited nor received.

## III. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2006-002 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-NASDAQ-2006-002. 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

<sup>14</sup> 15 U.S.C. 78f.

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 17 CFR 240.19b-4(e).

<sup>8</sup> 17 CFR 240.19b-4(c)(1).

<sup>9</sup> 15 U.S.C. 78s(b).

<sup>10</sup> See Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998) (the "19b-4(e) Order").

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 Section. Copies of the filing also will be available for inspection and copying at the principal office 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-2006-002 and should be submitted on or before August 15, 2006.

#### IV. Commission's Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>16</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>17</sup> 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 facilitating transactions in securities, and 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 Commission has previously approved the listing and trading of several Index Securities based on a variety of debt structures and market indexes.<sup>18</sup> The Commission has also recently approved, pursuant to Rule 19b-4(e) under the Act,<sup>19</sup> generic listing standards for these securities for the Nasdaq Market,<sup>20</sup> that, in all material

respects, are identical to those listing standards proposed by Nasdaq.

Consistent with its previous orders, the Commission believes that generic listing standards proposed by Nasdaq for Index Securities should fulfill the intended objective of Rule 19b-4(e) under the Act by allowing those Index Securities that satisfy the generic listing standards to commence trading without public comment and Commission approval.<sup>21</sup> This has the potential to reduce the time frame for bringing Index Securities to market and thereby reduce the burdens on issuers and other market participants and thus enhances investors' opportunities.

##### A. Trading of Index Securities

Taken together, the Commission finds that Nasdaq's proposal contains adequate rules and procedures to govern the trading of Index Securities listed pursuant to Rule 19b-4(e) on Nasdaq. All Index Security products listed under the standards will be subject to the full panoply of Nasdaq rules and procedures that now govern the trading of Index Securities and the trading of equity securities on Nasdaq.

Nasdaq has proposed asset/equity requirements and tangible net worth for each Index Security issuer, as well as minimum distribution, principal/market value, and term thresholds for each issuance of Index Securities. As set forth more fully above, Nasdaq's proposed listing criteria include minimum market capitalization, monthly trading volume, and relative weighting requirements for the Index Securities. These requirements are designed to ensure that the trading markets for index components underlying Index Securities are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. The Commission believes that these requirements should minimize the potential for manipulation. The Commission also finds that the requirement that each component security underlying an Index Security be listed on a national securities exchange or traded through the facilities of a national securities system and subject to last sale reporting will contribute to the transparency of the market for Index Securities. Alternatively, if the index component securities are foreign securities that are not reporting companies, the generic listing standards permit listing of an

Index Security if the Commission previously approved the underlying index for trading in connection with another derivative product and if certain surveillance sharing arrangements exist with foreign markets. The Commission believes that if it has previously determined that such index and its components were sufficiently transparent, then Nasdaq may rely on this finding, provided it has comparable surveillance sharing arrangements with the foreign market that the Commission relied on in approving the previous product.

The Commission believes that by requiring pricing information for both the relevant underlying index or indexes and the Index Security to be readily available and disseminated, the proposed listing standards should help ensure a fair and orderly market for Index Securities approved pursuant to such proposed listing standards.

The Commission also believes that the requirement that at least 90 percent of the component securities, by weight, and 80 percent of the total number of Underlying Securities, be eligible individually for options trading will prevent an Index Security from being a vehicle for trading options on a security not otherwise options eligible.

Nasdaq has also developed delisting criteria that will permit Nasdaq to suspend trading of an Index Security in case of circumstances that make further dealings in the product inadvisable. The Commission believes that the delisting criteria will help ensure a minimum level of liquidity exists for each Index Security to allow for the maintenance of fair and orderly markets. Also, Nasdaq will commence delisting proceedings in the event that the value of the underlying index or index is no longer calculated and widely disseminated on at least a 15-second basis.<sup>22</sup>

##### B. Surveillance

Nasdaq must have surveillance procedures to monitor trading in any products listed under the generic listing standards. An Index Security, just like an ETF, derives its value by reference to the underlying index. For this reason, the Commission has required that markets that list index based securities monitor the qualifications of not just the actual security (e.g., the ETF, index option, or Index Securities), but also of the underlying indexes (and of the index providers). In this regard, the Commission believes that a surveillance

<sup>16</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> See Securities Exchange Act Release Nos. 41091 (Feb. 23, 1999), 64 FR 10515 (Mar. 4, 1999) (Narrow-Based Index Options); 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (ETFs); and 43396 (Sept. 29, 2000), 65 FR 60230 (Oct. 10, 2000) (TIRs).

<sup>19</sup> 17 CFR 240.19b-4(e).

<sup>20</sup> See Securities Exchange Act Release No. 53142 (Jan. 19, 2006), 71 FR 4180 (Jan. 25, 2006).

<sup>21</sup> The Commission notes that the failure of a particular index to comply with the proposed generic listing standards under Rule 19b-4(e) under the Act, however, would not preclude Nasdaq from submitting a separate filing pursuant to Section 19(b)(2) of the Act, requesting Commission approval to list and trade a particular index-linked product.

<sup>22</sup> In the case of the BuyWrite Index Securities, CBOE disseminates a daily index value. Additionally, a daily indicative value for the product is also disseminated.

sharing agreement between a self-regulatory organization proposing to list a stock index derivative product and the self-regulatory organization trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. When a new derivative securities product based upon domestic securities is listed and traded on an exchange or national securities association pursuant to Rule 19b-4(e) under the Act, the self-regulatory organization should determine that the markets upon which all of the U.S. component securities trade are members of the Intermarket Surveillance Group ("ISG"), which provides information relevant to the surveillance of the trading of securities on other market centers.<sup>23</sup> For derivative securities products based on previously approved indexes that contain securities from one or more foreign markets, the self-regulatory organization should have a comprehensive Intermarket Surveillance Agreement, as prescribed in the prior Commission order, which covers the securities underlying the new securities product.<sup>24</sup> With respect to indexes not previously approved by the Commission, the Commission finds that Nasdaq's commitment to implement comprehensive surveillance sharing agreements,<sup>25</sup> as necessary, and the definitive requirements that: (i) Each component security shall be a registered reporting company under the Act; and (ii) no more than 20 percent of the weight of the Underlying Index or Underlying Indexes may be comprised of foreign country securities or ADRs not subject to a comprehensive surveillance sharing agreement,<sup>26</sup> will make possible adequate surveillance of trading of Index Securities listed pursuant to the proposed generic listing standards.

With regard to actual oversight, Nasdaq represents that its surveillance procedures are sufficient to detect fraudulent trading among members in the trading of Index Securities pursuant to the proposed generic listing standards.

<sup>23</sup> See Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998) (File No. S7-13-98). ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. The Commission notes that all of the registered national securities exchanges, as well as the NASD, are members of the ISG.

<sup>24</sup> *Id.*

<sup>25</sup> Proposed Nasdaq Rule 4420(m)(9).

<sup>26</sup> Proposed Nasdaq Rules 4420(m)(7)(viii)-(ix).

### C. Acceleration

The Commission finds good cause for approving proposed rule change, as amended, prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The proposal implements generic listing standards substantially identical to those already approved for the Nasdaq Market. The Commission does not believe that Nasdaq's proposal raises any novel regulatory issues. The proposed generic listing criteria should enable more expeditious review and listing of Index Securities by Nasdaq, thereby reducing administrative burdens and benefitting the investing public. Thus, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change (SR-NASDAQ-2006-002), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**Nancy M. Morris**,  
Secretary.

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54170; File No. SR-NASDAQ-2006-006]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change as Amended by Amendment No. 1 Regarding Restrictions on Affiliations Between Nasdaq and Its Members

July 18, 2006.

#### I. Introduction

On April 5, 2006, The NASDAQ Stock Market LLC ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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> a proposed rule change to govern affiliations between Nasdaq and its members and to limit in certain respects Nasdaq's regulatory authority with respect to members with which it is affiliated. On April 12, 2006,

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</sup> 17 CFR 200.30-3(a)(12).

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

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

Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on April 28, 2006.<sup>3</sup> The Commission received three comment letters on the proposal.<sup>4</sup> On June 20, 2006, Nasdaq filed a response to comments.<sup>5</sup> This order approves the proposed rule change, as amended.

#### II. Description of Proposal

Nasdaq Rule 2140 would prohibit Nasdaq or an entity with which it is affiliated from acquiring or maintaining an ownership interest in, or engaging in a business venture<sup>6</sup> with, a Nasdaq member or an affiliate of a Nasdaq member in the absence of an effective filing with the Commission under Section 19(b) of the Act.<sup>7</sup> Further, the rule would prohibit a Nasdaq member from becoming an affiliate<sup>8</sup> of Nasdaq or an affiliate of an entity affiliated with Nasdaq in the absence of an effective filing under Section 19(b) of the Act.<sup>9</sup> However, Nasdaq's rule excludes from this restriction two types of affiliations.

First, a Nasdaq member or an affiliate of a Nasdaq member could acquire or hold an equity interest in The Nasdaq Stock Market, Inc. that is permitted pursuant to Nasdaq Rule 2130 without filing such acquisition or holding under Section 19(b) of the Act.<sup>10</sup> Second, Nasdaq or an entity affiliated with Nasdaq could acquire or maintain an

<sup>3</sup> See Securities Exchange Act Release No. 53697 (April 21, 2006), 71 FR 25265.

<sup>4</sup> See e-mail from Richard Gold, Missoula, MT, dated April 28, 2006 ("Gold E-mail"); and letters to Nancy M. Morris, Secretary, Commission from George R. Kramer, Deputy General Counsel, Securities Industry Association, dated May 19, 2006 ("SIA Letter"), and Kim Bang, Bloomberg L.P., dated May 17, 2006 ("Bloomberg Letter"). One commenter expressed general concerns about already approved Nasdaq rules requiring members to be broker-dealers, and did not address the substance of the proposal. See Gold E-mail.

<sup>5</sup> See letter to Nancy M. Morris, Secretary, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated June 20, 2006 ("Nasdaq Response Letter").

<sup>6</sup> Nasdaq defines a "business venture" as an arrangement under which (A) Nasdaq or an entity with which it is affiliated and (B) a Nasdaq member or an affiliate of a Nasdaq member, engage in joint activities with the expectation of shared profit and a risk of shared loss from common entrepreneurial efforts.

<sup>7</sup> 15 U.S.C. 78s(b).

<sup>8</sup> Nasdaq defines the term "affiliate" under proposed Rule 2140 as having the meaning specified in Commission Rule 12b-2 under the Act; provided, however, that for purposes of Nasdaq Rule 2140, one entity shall not be deemed to be an affiliate of another entity solely by reason of having a common director.

<sup>9</sup> 15 U.S.C. 78s(b).

<sup>10</sup> Nasdaq Rule 2130 provides that "[n]o member or person associated with a member shall be the beneficial owner of greater than twenty percent (20%) of the then-outstanding voting securities of The Nasdaq Stock Market, Inc."