

**SECURITIES AND EXCHANGE
COMMISSION****Sunshine Act Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of September 5, 2006:

A closed meeting will be held on Thursday, September 7, 2006 at 2 p.m.

Commissioners, Counsels to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (6), 7(i)(A), (C), (D), and (E), (9)(ii), and (10) permit consideration of the scheduled matters at the closed meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting scheduled for Thursday, September 7, 2006 will be:

- Formal orders of investigation;
- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings of an enforcement nature;
- Litigation matters; and
- Consideration of amicus participation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551-5400.

Dated: August 30, 2006.

Nancy M. Morris,
Secretary.

[FR Doc. 06-7442 Filed 8-31-06; 8:45 am]

BILLING CODE 8010-01-M

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34-54379; File No. SR-CBOE-2006-66]

**Self-Regulatory Organizations;
Chicago Board Options Exchange,
Incorporated; Order Approving a
Proposed Rule Change Regarding
Market-Maker Appointments**

August 28, 2006.

On July 11, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend CBOE Rule 8.3 to provide that in the event a Market-Maker is a nominee of a member organization or has registered the Market-Maker's membership for a member organization, the member organization with which the Market-Maker is associated would be permitted to request that the Exchange deem all class appointments be made to the member organization instead of to the individual Market-Maker.³ In such a case, if an individual Market-Maker were no longer associated with a member organization, the class appointments would continue to be held by the member organization and not the individual Market-Maker. In the event a member organization did not request that the class appointments be held by the member organization, a Market-Maker's class appointments would continue to be held in the name of the individual Market-Maker and not the member organization with which the Market-Maker is associated. The proposed rule change was published for comment in the **Federal Register** on July 27, 2006.⁴ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

exchange⁵ and, in particular, the requirements of Section 6 of the Act⁶ and the rules and regulations thereunder. The Commission specifically finds that the proposed rule change is consistent with Section 6(b)(5) of the Act⁷ in that it is designed to promote just and equitable principles of trade, to remove impediments and to 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 believes that the proposal should provide more flexibility to Market-Maker organizations in structuring class appointments.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-CBOE-2006-66) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Nancy M. Morris,
Secretary.

[FR Doc. E6-14597 Filed 9-1-06; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34-54378; File No. SR-NASDAQ-2006-032]

**Self-Regulatory Organizations; The
NASDAQ Stock Market LLC; Notice of
Filing of Proposed Rule Change and
Amendment No. 1 Thereto To Revise
The Nasdaq Capital Market Listing
Requirements**

EFFECTIVE DATE: August 28, 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 August 23, 2006, 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. On August 28, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.³ The

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Nasdaq makes clarifying changes to the rule text in the Nasdaq Capital

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ If such a request is made by a member organization, CBOE would consider that the submission of electronic quotations and orders would be made by and on behalf of the member organization with which the individual Market-Maker is associated. However, CBOE proposes that CBOE Rule 8.3 would state that the individual Market-Maker would continue to have all of the obligations of a Market-Maker under Exchange rules in these circumstances.

⁴ See Securities Exchange Act Release No. 54184 (July 20, 2006), 71 FR 42690.

Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to revise certain listing requirements applicable to the Nasdaq Capital Market. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].⁴

4200. Definitions.

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

- (1) No change.
- (2) [Reserved
- (3) Reserved

(4) "Best efforts offering" means an offering of securities by members of a selling group under an agreement which imposes no financial commitment on the members of such group to purchase any such securities except as they may elect to do so.

(5) Reserved

(6) "Cash available for distribution" means cash flow of a limited partnership less amount set aside for restoration or creation of reserves.]

[(7)] (3) "Cash flow" means cash funds provided from limited partnership operations, including lease payments on net leases from builders and sellers, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payments, capital improvements and replacements.

[(8)] (4) "Consolidated Quotations Service" (CQS) means the consolidated quotation collection system for securities listed on an exchange other than Nasdaq implementing SEC Rule 602.

[(9)] (5) "Country of Domicile" means the country under whose laws an issuer is organized or incorporated.

(6) "Covered security" means a security described in Section 18(b) of the Securities Act of 1933.

(7) Reserved

Market convertible debt listing standards. Nasdaq also makes clarifying changes to the purpose section regarding convertible debt, rights and warrants, and non-Canadian foreign securities and American Depository Receipts.

⁴ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://www.complinet.com/nasdaq>. These rules became effective on August 1, 2006, when Nasdaq commenced operations as a national securities exchange for Nasdaq-listed securities. The rule text incorporates changes made by Amendment No. 1. See *id.*

- (8) Reserved
- (9) Reserved
- (10)—(39) No change.
- (b)—(c) No change.

* * * * *

4310. Listing Requirements for Domestic and Canadian Securities

To qualify for listing in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a), (b), and (c) hereof. Issuers that meet these requirements, but that are not listed on the Nasdaq Global Market, are listed on the Nasdaq Capital Market.

(a) No change.

(b) No change.

(c) In addition to the requirements contained in paragraph (a) and (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for listing on Nasdaq:

(1) No change

(2) [(A)] For initial listing, the issuer shall have *either*:

(A) (i) stockholders' equity of \$5 million; and

(ii) a market value of publicly held shares of \$15 million; and

(iii) an operating history of at least two years; or

(B) [(ii)] (i) stockholders' equity of \$4 million; and

(ii) market value of listed securities of \$50 million (currently traded issuers must meet this requirement and the bid price requirement under Rule 4310(c)(4) for 90 consecutive trading days prior to applying for listing); [or] and

(iii) a market value of publicly held shares of \$15 million; or

(C) [(iii)] (i) stockholders' equity of \$4 million; and

(ii) net income from continuing operations of \$750,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years; and

(iii) a market value of publicly held shares of \$5 million.

[(B)] (3) For continued listing, the issuer shall maintain *either*:

(A) [(i)] stockholders' equity of \$2.5 million; or

(B) [(ii)] market value of listed securities of \$35 million; or

(C) [(iii)] net income from continuing operations of \$500,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

[(3)] For initial listing, the issuer shall have an operating history of at least one year or a market value of listed securities of \$50 million.]

(4) No change.

(5) (A) In the case of a convertible debt security, for initial listing, there

shall be a principal amount outstanding of at least \$10 million.

(B) In addition, for the initial listing of convertible debt, one of the following conditions must be satisfied:

(i) the issuer of the debt must have an equity security that is listed on Nasdaq, the American Stock Exchange or the New York Stock Exchange;

(ii) an issuer whose equity security is listed on Nasdaq, the American Stock Exchange or the New York Stock Exchange, directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security, or has guaranteed the debt security;

(iii) a nationally recognized securities rating organization (an "NRSRO") has assigned a current rating to the debt security that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO; or,

(iv) if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned: (1) an investment grade rating to an immediately senior issue; or (2) a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a *pari passu* or junior issue.

(C) For continued listing of a convertible debt security, there shall be a principal amount outstanding of at least \$5 million.

(6)(A) In the case of common stock, for initial and continued listing, there shall be at least 300 round lot holders of the security.

(B) In the case of preferred stock and secondary classes of common stock, for initial and continued listing, there shall be at least 100 round lot holders of the security, provided in each case that the issuer's common stock or common stock equivalent equity security [is] *must be* listed on [either] Nasdaq or [another national securities exchange] *be a covered security*. In the event the issuer's common stock or common stock equivalent security *either* is not listed on [either] Nasdaq or [another national securities exchange] *is not a covered security*, the preferred stock and/or secondary class of common stock may be listed on Nasdaq so long as the security satisfies the listing criteria for common stock.

(C) No change.

(7)(A) In the case of common stock, there shall be at least 1,000,000 publicly held shares for initial listing and 500,000 publicly held shares for continued listing. For initial listing such shares shall have a market value [of at least \$5 million] *as provided in the applicable provision of Rule 4310(c)(2)*. For continued listing such shares shall

have a market value of at least \$1 million.

(B) In the case of preferred stock and secondary classes of common stock, there shall be at least 200,000 publicly held shares having a market value of at least \$[2] 3.5 million for initial listing and 100,000 publicly held shares having a market value of [\$500,000] \$1 million for continued listing. In addition, the issuer's common stock or common stock equivalent security must be listed on [either] Nasdaq or [another national securities exchange] *be a covered security*. In the event the issuer's common stock or common stock equivalent security *either* is not listed on [either] Nasdaq or [another national securities exchange] *is not a covered security*, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.

(C) Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.

(8) No change.

(9)(A) In the case of rights and warrants, for initial listing only, there shall be at least [100,000] 400,000 issued and the underlying security [shall] *must* be listed on Nasdaq or [another national securities exchange] *be a covered security*. For continued listing, the underlying security *must remain listed on Nasdaq or be a covered security*.

(B) In the case of put warrants (that is, instruments that grant the holder the right to sell to the issuing company a specified number of shares of the Company's common stock, at a specified price until a specified period of time), for initial listing only, there shall be at least [100,000] 400,000 issued and the underlying security [shall] *must* be listed on Nasdaq or [another national securities exchange] *be a covered security*. For continued listing, the underlying security *must remain listed on Nasdaq or be a covered security*.

(C) No change.

(10)–(30) No change.

(d) No change.

4320. Listing Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for listing on Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b), and (e) of this Rule.

Issuers that meet these requirements, but that are not listed on the Nasdaq Global Market, are listed on the Nasdaq Capital Market.

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a) and (b), the security shall satisfy the criteria set out in this subsection for listing on Nasdaq. In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued listing on Nasdaq.

(1) No change.

(2)(A) For initial listing, the issue shall *meet the requirements of Rule 4310(c)(2)(A), (B) or (C)*. [have a minimum bid price of \$4 and the issuer shall have:

(i) stockholders' equity of U.S. \$5 million;

(ii) market value of listed securities of U.S. \$50 million (currently traded issuers must meet this requirement for 90 consecutive trading days prior to applying for listing); or

(iii) net income from continuing operations of U.S. \$750,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.]

(B) For continued listing, the issuer shall *meet the requirements of Rule 4310(c)(3)(A), (B) or (C)*. [maintain:

(i) stockholders' equity of U.S. \$2.5 million;

(ii) market value of listed securities of U.S. \$35 million; or

(iii) net income from continuing operations of U.S. \$500,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.]

(C) No change.

(D) No change.

(E) No change.

(3)(A) In the case of a convertible debt security, for initial listing, there shall be a principal amount outstanding of at least \$10 million.

(B) *In addition, for the initial listing of convertible debt, one of the following conditions must be satisfied:*

(i) *the issuer of the debt must have an equity security that is listed on Nasdaq, the American Stock Exchange or the New York Stock Exchange;*

(ii) *an issuer whose equity security is listed on Nasdaq, the American Stock Exchange or the New York Stock Exchange, directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security, or has guaranteed the debt security;*

(iii) *a nationally recognized securities rating organization (an "NRSRO") has assigned a current rating to the debt security that is no lower than an S&P*

Corporation "B" rating or equivalent rating by another NRSRO; or,

(iv) *if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned: (1) an investment grade rating to an immediately senior issue; or (2) a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a pari passu or junior issue.*

(C) For continued listing of a convertible debt security, there shall be a principal amount outstanding of at least \$5 million.

(4)(A) [There] *In the case of common stock, for initial and continued listing, there shall be at least 300 round lot holders of the security.*

(B) In the case of preferred stock and secondary classes of common stock, *for initial and continued listing, there shall be at least 100 round lot holders of the security, provided in each case that the issuer's common stock or common stock equivalent equity security [is] must be listed on [either] Nasdaq or [another national securities exchange] be a covered security*. In the event the issuer's common stock or common stock equivalent security *either* is not listed on [either] Nasdaq or [another national securities exchange] *is not a covered security*, the preferred stock and/or secondary class of common stock may be listed on Nasdaq so long as the security satisfies the listing criteria for common stock.

(C) No change.

(5) There shall be at least 1,000,000 publicly held shares for initial listing and 500,000 publicly held shares for continued listing. For initial listing, such shares shall have a market value [of at least \$5 million] *as provided in the applicable provision of Rule 4310(c)(2)*. For continued listing, such shares shall have a market value of at least \$1 million. In the case of preferred stock and secondary classes of common stock, there shall be at least 200,000 publicly held shares having a market value of at least \$[2] \$3.5 million for initial listing and 100,000 publicly held shares having a market value of [\$500,000] \$1 million for continued listing. In addition, the issuer's common stock or common stock equivalent security *must* be listed on either Nasdaq or [another national securities exchange] *be a covered security*. In the event the issuer's common stock or common stock equivalent security *either* is not listed on [either] Nasdaq or [another national securities exchange] *is not a covered security*, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock. Shares held directly or

indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.

(6) In the case of rights, warrants and ADRs for initial listing only, at least [100,000] 400,000 shall be issued. Issuers of ADRs must also meet the round lot holders and publicly held shares requirements set forth in the applicable provisions of Rules 4310(c)(2), 4320(e)(4) and 4320(e)(5) [subsections (4) and (5) above].

(7) In the case of rights and warrants, for initial and continued listing, the underlying security shall be listed on Nasdaq or [another national securities exchange] be a covered security.

(8)-(26) No change.

(f) No change.

* * * * *

IM-4803. Staff Review of Deficiency

As provided in Rule 4803(a)(1)(A), the staff of the Listing Department may accept a plan to regain compliance with respect to quantitative deficiencies from standards that do not themselves provide a compliance period. Such standards include:

Rules [4310(c)(2)(B)(i) and (iii)]

4310(c)(3)(A) and 4310(c)(3)(C)

Rule 4310(c)(6)

Rule 4310(c)(7) (but only as to the number of publicly held shares, and not as to such shares' market value)

[Rules 4320(e)(2)(B)(i) and (iii)]

Rule 4320(e)(2)(B)

Rules 4320(e)(4) and (5) (but only as to the number of publicly held shares, and not as to such shares' market value)

Rules 4450(a)(1), (3), and (4)

Rules 4450(b)(1)(B), (b)(2), and (b)(5), and

Rules 4450(h)(1) and (4).

In a case where an issuer fails to comply with the requirement of Rules [4310(c)(2)(B)(iii), 4320(e)(2)(B)(iii),] 4310(c)(3)(C) or 4450(b)(1)(B), the Listing Department shall not accept a plan to achieve compliance with those requirements in the future, since compliance requires stated levels of net income or assets and revenues during completed fiscal years and therefore can only be demonstrated through audited financial statements. Similarly, an issuer may not submit a plan relying on partial-year performance to demonstrate compliance with these standards. An issuer cited for non-compliance with these requirements may, however, submit a plan that demonstrates current or near-term compliance with Rules [4310(c)(2)(B)(i), 4320(e)(2)(B)(i),] 4310(c)(3)(A) or 4450(a)(3) (i.e., the alternative listing requirement relating to stockholders' equity), or Rules

[4310(c)(2)(B)(ii), 4320(e)(2)(B)(ii),] 4310(c)(3)(B) or 4450(b)(1)(A) (i.e., the alternative listing requirement relating to market value of listed securities).

* * * * *

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, as amended, and discussed any comments it received on the proposed rule change, as amended. 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 increase the initial and continued listing requirements applicable to companies seeking to list, or already listed, on the Nasdaq Capital Market, as set forth in Rule 4310 (for domestic and Canadian securities) and Rule 4320 (for non-Canadian foreign securities and American Depositary Receipts).⁵ Nasdaq believes that these changes will facilitate a finding by the Commission that the listing standards for the Capital Market are substantially similar to the listing standards applicable to securities listed on the New York Stock Exchange, the American Stock Exchange, or the Nasdaq Global Market. This finding is required before the Commission can designate securities listed on the Capital Market as "covered securities," which are exempt from state regulation under Section 18 of the Securities Act of 1933 ("Securities Act").⁶

Primary Listing Standards

The Exchange states that currently, a company can list on the Capital Market by meeting a stockholders' equity, income or market value of listed securities requirement, along with other applicable listing standards. Nasdaq proposes to modify the income and market value of listed securities components of these listing standards to also require a minimum of \$4 million in equity in each case. In addition, for companies listing under the equity

alternative, Nasdaq proposes to require a two year operating history, instead of the one year history currently required. Further, for companies listing under the market value of listed securities and equity alternatives, Nasdaq proposes to increase the market value of publicly held shares requirement for initial listing from \$5 million to \$15 million. Finally, Nasdaq proposes to clarify that all companies must have 300 round lot shareholders for continued listing of a primary class of common stock.

Secondary Classes of Common Stock and Preferred Stock

Nasdaq states that it currently permits the listing of secondary classes of common stock and preferred stock on the Capital Market under lower liquidity standards, when the primary class of common stock is listed on Nasdaq or a national securities exchange. Nasdaq proposes to increase the market value of publicly held shares requirement from \$2 million to \$3.5 million for initial listing and from \$500,000 to \$1 million for continued listing of these securities. In addition, Nasdaq proposes to modify the listing standards so that the lower liquidity standards are available only when a company's common stock or its equivalent is listed on Nasdaq or is a "covered security" as defined in Section 18 of the Securities Act. Finally, Nasdaq proposes to clarify that companies must have 100 round lot shareholders for continued listing under these listing standards.

Rights and Warrants

Nasdaq proposes to increase the requirement for initial listing of rights and warrants to require that there be 400,000 outstanding. In addition, Nasdaq proposes to require that for initial and continued listing, the security underlying a right or warrant must be listed on Nasdaq or be a covered security.⁷

Convertible Debt

Nasdaq states that its rules currently permit the listing of convertible debt on the Capital Market. Nasdaq proposes to modify those rules, to require that for the initial listing of convertible debt either that: (i) The issuer of the debt must have an equity security that is listed on Nasdaq, the American Stock Exchange or the New York Stock Exchange; (ii) an issuer whose equity security is listed on Nasdaq, the American Stock Exchange or the New York Stock Exchange, directly or indirectly owns a majority interest in, or is under common control with, the

⁵ See Amendment No. 1, *supra* note 3.

⁶ 15 U.S.C. 77r(b).

⁷ See Amendment No. 1, *supra* note 3.

issuer of the debt security, or has guaranteed the debt security; (iii) a nationally recognized securities rating organization (an "NRSRO") has assigned a current rating to the debt security that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO; or, (iv) if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned: (1) An investment grade rating to an immediately senior issue; or (2) a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a *pari passu* or junior issue.⁸

Other Changes

Nasdaq also proposes to make technical and conforming changes to the rules by adding a definition of "covered security" in Rule 4200, deleting certain other definitions in Rule 4200 that have no current applicability under Nasdaq rules, and adjusting cross references contained in IM-4803.⁹

Implementation

Nasdaq states that it recognizes that the proposed changes could result in a security that currently meets all the listing requirements becoming non-compliant. Therefore, Nasdaq proposes that the changes to the continued listing requirements be made effective 30 days¹⁰ after the proposed rule change is approved by the Commission. Nasdaq believes that this period would provide currently-listed companies with adequate time to comply.

In the case of companies applying for initial listing, Nasdaq proposes that the new requirements be effective upon approval for companies that apply after the date this proposed rule change is submitted to the SEC. Nasdaq states that companies that had applied for listing prior to the date this proposed rule change is submitted to the SEC would be able to continue to qualify under the prior standards, provided that they complete the listing process not later than 30 days¹¹ after the proposed rule change is approved by the Commission. Companies that apply after the date this proposed rule change is submitted to the SEC would be approved for listing based on the rules in effect at the time of the approval. The Exchange believes

that this schedule provides notice to companies applying for listing that they would be subject to higher standards upon approval of the rule, so such companies would not be prejudiced, but recognizes that companies that have previously applied did so in reliance on the prior listing standards, and therefore provides them a reasonable period of time to complete the listing process on that basis.

The Exchange states that these procedures are similar to those used when the listing standards were revised in 1997 and 2001.¹²

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 6 of the Act¹³ in general and with Section 6(b)(5) of the Act,¹⁴ in particular. Section 6(b)(5) requires that Nasdaq's rules be 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 Exchange believes that the proposed rule change, as amended, would raise the listing standards on the Nasdaq Capital Market, which will help protect investors. Further, Nasdaq believes that the proposed rule change will facilitate the Commission's review of Nasdaq's petition to treat securities listed on the Capital Market as covered securities under Section 18(b) of the Securities Act,¹⁵ which would remove an impediment to the mechanism of a free and open market.¹⁶

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 were neither solicited nor received.

¹² See Securities Exchange Act Release Nos. 38961 (August 22, 1997), 62 FR 45895 (Aug. 29, 1997) (approving SR-NASD-1997-16); and 44499 (June 29, 2001), 66 FR 35819 (July 9, 2001) (approving SR-NASD-2001-14).

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 77r(b).

¹⁶ Petition to Amend Rule 146(b) to Designate Securities Listed on the Nasdaq Capital Market as Covered Securities for the Purpose of Section 18 of the Securities Act of 1933 (February 28, 2006) (designated as Commission File No. 4-513, available at: <http://www.sec.gov/rules/petitions/petn4-513.pdf>).

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 Nasdaq 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, 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-2006-032 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-NASDAQ-2006-032. 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 Nasdaq. All

⁸ See Amendment No. 1, *supra* note 3.

⁹ Nasdaq notes that the references to Rule 4320 in the final paragraph of IM-4803 have been deleted based on the new structure of the rules.

Nonetheless, the substance of this interpretive material continues to apply to non-U.S. companies in the same manner that it applies to domestic companies due to the cross reference to Rule 4310(c)(3) contained in Rule 4320(e)(2)(B).

¹⁰ See Amendment No. 1, *supra* note 3.

¹¹ See Amendment No. 1, *supra* note 3.

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-2006-032 and should be submitted on or before September 26, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54376; File No. SR-NASD-2006-093]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Regarding Pricing for Non-Members Using Nasdaq's Brut and Inet Facilities

August 28, 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 July 31, 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 and II 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. In addition, the Commission is granting accelerated approval of the proposed rule change.

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

Nasdaq proposes to modify the pricing for non-NASD members using Nasdaq's Brut and Inet Facilities to trade non-Nasdaq securities. The filing will apply to these non-members the same rule change that Nasdaq is instituting for members.³ Nasdaq seeks

approval to implement the proposed rule change retroactively as of August 1, 2006. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].⁴

7010. System Services

(a)-(h) No change.

(i) ITS/CAES System, Brut, and Inet Order Execution and Routing

(1)-(8) No change.

(9) The fees applicable to non-members using Nasdaq's Brut and Inet Facilities shall be the fees established for members under Rule 7010(i), as amended by SR-NASD-2005-019, SR-NASD-2005-035, SR-NASD-2005-048, SR-NASD-2005-071, SR-NASD-2005-125, SR-NASD-2005-137, SR-NASD-2005-154, SR-NASD-2006-013, SR-NASD-2006-023, SR-NASD-2006-031, SR-NASD-2006-057, [and] SR-NASD-2006-078, and SR-NASD-2006-092 and as applied to non-members by SR-NASD-2005-020, SR-NASD-2005-038, SR-NASD-2005-049, SR-NASD-2005-072, SR-NASD-2005-126, SR-NASD-2005-138, SR-NASD-2005-155, SR-NASD-2006-014, SR-NASD-2006-024, SR-NASD-2006-032, SR-NASD-2006-058, [and] SR-NASD-2006-079, and SR-NASD-2006-093.

(j)-(y) No change.

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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 III 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

In SR-NASD-2006-092,⁵ Nasdaq amended NASD Rule 7010(i), which has

historically contained the fees for the trading systems of The Nasdaq Stock Market, to reflect the Nasdaq Exchange's commencing operations for trading of securities listed on the Nasdaq Exchange. During a transitional period, the Nasdaq Exchange will operate for its own listed stocks, while The Nasdaq Stock Market, Inc. continues to operate under authority delegated by NASD to provide quotation, execution, and trade reporting services for non-Nasdaq listed securities. Nasdaq states that the Brut and Inet platforms owned by Nasdaq will be operated as facilities of the Nasdaq Exchange for purposes of trading Nasdaq-listed securities, and as facilities of NASD for purposes of trading non-Nasdaq securities. Accordingly, SR-NASD-2006-092 amended NASD Rule 7010(i) to remove fees and credits associated with trading Nasdaq-listed stocks, which are now contained in Rule 7018 of the Nasdaq Exchange.⁶ Nasdaq states that NASD Rule 7010(i) would continue to govern fees and credits for the ITS/CAES System (formerly the Nasdaq Market Center) operated by Nasdaq for trading non-Nasdaq securities, as well as Brut and Inet to the extent that they are used for trading non-Nasdaq securities. The ITS/CAES System, Brut and Inet are collectively referred to in the rule as the Nasdaq Facilities.

SR-NASD-2006-092 also added a sentence to the rule to provide that for purposes of determining a member's volume in all securities under NASD Rule 7010(i), the term "Nasdaq Facilities," shall also be deemed to include the member's volume in Nasdaq-listed securities traded through the facilities of the Nasdaq Exchange (*i.e.*, the Nasdaq Market Center, Brut and Inet). Nasdaq states that this clarification was necessary to ensure that fees and credits for trading non-Nasdaq securities remain at their current levels during the transitional period before the Nasdaq Exchange begins to trade non-Nasdaq securities.

In SR-NASD-2006-092, Nasdaq also changed its fees for routing orders to the New York Stock Exchange ("NYSE") through its DOT system. NYSE recently announced that it would impose a significant fee increase on broker-dealers, such as Nasdaq's Brut broker-

⁶ See Securities Exchange Act Release No. 54285 (August 8, 2006) (File No. SR-NASDAQ-2006-023) (notice of filing and immediate effectiveness of proposed rule change regarding technical and conforming changes to Nasdaq Rule 7018). Telephone conversation among John Yetter, Senior Associate General Counsel, Nasdaq, David Liu, Special Counsel, Division of Market Regulation ("Division"), Commission, and Theodore S. Venuti, Attorney, Division, Commission, on August 14, 2006.

⁴ Changes are marked to the rule text that appears in the electronic NASD Manual found at <http://www.nasdaq.com>. The Nasdaq Exchange states that it will not file conforming changes to its rules with regard to order execution and routing by non-members, since persons that are not members of the Nasdaq Exchange will not be permitted to use its order execution and routing systems.

⁵ See *supra* note 3.

¹⁷ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 54375 (August 28, 2006) (File No. SR-NASD-2006-092).