

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55052; File No. SR-NASDAQ-2006-047]

Self-Regulatory Organization; the NASDAQ Stock Market LLC; Order Approving Proposed Rule Change To Modify Its Listing Rules in the Case of a Reverse Merger

January 5, 2007.

On November 13, 2006, The NASDAQ Stock Market LLC ("Nasdaq") 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 clarify the process an issuer must follow when applying for initial listing in connection with a reverse merger. The proposed rule change was published for comment in the **Federal Register** on December 6, 2006.³ The Commission received no comments regarding 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 exchange.⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ which requires that the rules of an exchange 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 a national securities system, and, in general, to protect investors and the public interest.

Nasdaq proposes to amend Nasdaq Rule 4340(a) and related interpretive material to state that an issuer must apply for initial listing prior to consummating a transaction whereby the issuer combines with an entity that is not listed on Nasdaq, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a "backdoor listing" on Nasdaq ("Reverse Merger").

Current Nasdaq Rule 4340(a) states that an issuer must apply for initial listing "following" a Reverse Merger. Nasdaq proposes to replace the word "following" with the phrase "in connection with" and require the issuer

to "submit an application for the post-transaction entity with sufficient time to allow Nasdaq to complete its review before the transaction is completed." Because the entity resulting from the Reverse Merger could be substantially different from the one originally approved for Nasdaq listing, it is reasonable and consistent with the Act for Nasdaq to conduct a de novo listing review of the new entity and, for the new entity to keep the listing, to require sufficient time to complete the review before the Reverse Merger is completed. The Commission believes that this proposal is reasonably designed to enhance the transparency and integrity of the listing process.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-NASDAQ-2006-047) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Nancy M. Morris,
Secretary.

[FR Doc. E7-311 Filed 1-11-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55042; File No. SR-NASDAQ-2006-055]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change as Amended by Amendment No. 1 To Temporarily Adjust Tier Volume Limits

January 4, 2007.

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 December 15, 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 substantially prepared by Nasdaq. On December 21, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change. The order provides notice of the proposed rule change as modified by Amendment No. 1 and approves the proposed rule

change, as amended, on an accelerated basis.

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

Nasdaq proposes to reduce, for the month of November 2006, the average daily volume tiers in Nasdaq-listed securities contained in Nasdaq Rule 7018(a) to qualify for certain fee and rebate levels. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and http://nasdaq.complinet.com/file_store/pdf/rulebooks/SR-NASDAQ-2006-055.pdf.

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 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

Nasdaq is proposing to reduce, for the month of November 2006, the average daily volume tiers for trading and routing in Nasdaq-listed securities contained in Nasdaq Rule 7018(a) to qualify for certain fee and rebate levels. Currently, in order to qualify for a per-share execution fee of \$0.0028, members must have an average daily volume through Nasdaq facilities in all securities during a particular month of (i) more than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity accessed and/or routed. For the month of November 2006, Nasdaq is proposing to reduce those qualification volume tiers to 27 million shares and 47 million shares, respectively. In addition, Nasdaq is also reducing for the month of November 2006 the monthly average daily volume tier required to obtain the \$0.0025 credit rebate from its current 30 million share level to 27 million shares. For routed orders, to qualify for a fee of the greater of (a) \$0.0028 per share executed or (b) a pass-through of all applicable access fees charged by electronic communications networks that charge

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 54825 (November 28, 2006), 71 FR 70818.

⁴ 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).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.