

or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c).

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has represented that its surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules. This approval order is conditioned on the Exchange's adherence to this representation.

In addition, the Commission recently approved the trading of the Shares on the Exchange pursuant to UTP for a pilot period of three months.<sup>24</sup> In the Pilot Order, the Commission noted that exchanges that trade commodity-related securities generally have in place surveillance arrangements with markets that trade the underlying securities. In its proposal to trade the Shares for a pilot period, the Exchange represented that it was in the process of completing these surveillance arrangements and expected to do so "in the near future." The Exchange recently provided the Commission with evidence that it has completed these surveillance arrangements.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on Amex is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule change (SR-NASDAQ-2007-053) thereto, be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-11181 Filed 6-11-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55856; File No. SR-NASDAQ-2007-029]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Require Nasdaq-Listed Issuers To Submit Material News to Nasdaq Using Nasdaq's Electronic Disclosure Submission System

June 4, 2007.

#### I. Introduction

On March 27, 2007, 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to require Nasdaq-listed issuers to submit material news to Nasdaq through Nasdaq's electronic disclosure submission system, except in emergency situations. Nasdaq filed Amendment No. 1 to the proposal on April 25, 2007. The proposed rule change, as amended, was published for comment in the **Federal Register** on May 2, 2007.<sup>3</sup> The Commission received no comments regarding the proposed rule change, as amended. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

Nasdaq Rules 4310(c)(16) and 4320(e)(14) require a Nasdaq-listed issuer, except in unusual circumstances, to make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of any material information that would reasonably be expected to affect the value of its securities or to influence investors' decisions. These rules also require the issuer to provide notice of certain disclosures to Nasdaq's MarketWatch Department ("Nasdaq MarketWatch") prior to the release of the information. Nasdaq reviews these disclosures to determine whether a trading halt is appropriate. Issuers

currently provide material news notifications to Nasdaq MarketWatch electronically through Nasdaq's electronic disclosure submission system, or via fax or telephone. Nasdaq does not disseminate this information.

Although Nasdaq introduced the electronic disclosure submission system in 2004, most issuers continue to provide material news notifications to Nasdaq MarketWatch by fax.<sup>4</sup> According to Nasdaq, the material information from fax-delivered documents and telephone notifications must be retyped manually into Nasdaq MarketWatch's database systems, a process that uses staff time, introduces error risk, and results in a less robust audit trail. To reduce this administrative burden, Nasdaq proposes to amend Nasdaq Rule 4120, "Trading Halts," and IM-4120-1, "Disclosure of Material Information," to require issuers to submit material news notifications to Nasdaq through Nasdaq's electronic disclosure submission system, except in emergency situations.<sup>5</sup> In an emergency, an issuer would continue to be required to notify Nasdaq prior to disseminating material news, but Nasdaq would accept notification by telephone or fax.

Under the proposal, Nasdaq may issue a Staff Determination that is a public reprimand letter or, in extreme circumstances, a Staff Determination to delist an issuer's securities, if an issuer repeatedly fails to notify Nasdaq prior to the distribution of material news, or repeatedly fails to use the electronic disclosure submission system in the absence of an emergency.<sup>6</sup> In determining whether to issue a public reprimand letter, Nasdaq will consider whether the issuer has demonstrated a pattern of failures, whether the issuer has been contacted concerning previous violations, and whether the issuer has taken steps to assure that future violations will not occur.<sup>7</sup>

Nasdaq proposes to implement the proposal approximately 90 days after the proposal is approved.

#### III. Discussion

The Commission finds that the proposed rule change is consistent with

<sup>4</sup> Nasdaq notes, for example, that of approximately 4,200 material news notifications submitted to Nasdaq MarketWatch in January 2007, over 70% were submitted by fax.

<sup>5</sup> Nasdaq defines emergency situations to include: lack of computer or internet access; a technical problem on either the issuer or Nasdaq system, or an incompatibility between those systems; and a material development such that no draft disclosure document exists, but immediate notification to Nasdaq MarketWatch is important based on the event. See Nasdaq IM-4120-1.

<sup>6</sup> See Nasdaq IM-4120-1.

<sup>7</sup> See Nasdaq IM-4120-1.

<sup>24</sup> See *supra* note 3.

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</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> See Securities Exchange Act Release No. 55672 (April 26, 2007), 72 FR 24349.

the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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 market system and, in general, to protect investors and the public interest.

By requiring issuers to submit material news notifications to Nasdaq through Nasdaq's electronic disclosure submission system, except in emergencies, the Commission believes that the proposal appears to be reasonably designed to reduce the administrative burdens and error risk associated with retyping material news information provided by telephone or fax into Nasdaq's database systems. By reducing the error risk associated with retyping this information into Nasdaq's database systems, the Commission also believes that the proposal appears to be reasonably designed to help to enhance the accuracy and integrity of Nasdaq's audit trail.

Under the proposal, Nasdaq may issue a Staff Determination that is a public reprimand letter or, in extreme circumstances, a determination to delist an issuer's securities, if an issuer fails repeatedly to notify Nasdaq prior to the distribution of material news or fails repeatedly to use the electronic disclosure submission system in the absence of an emergency.<sup>10</sup> The Commission notes that the procedures in the Nasdaq Rule 4800 Series, "Procedures for Review of Nasdaq Listing Determinations," will apply to any such Staff Determinations.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NASDAQ-2007-029), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-11189 Filed 6-11-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55854; File No. SR-NASDAQ-2006-045]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Allow the Use of a Company's Web Site To Distribute an Annual Report and Meet Other Nasdaq Listing Requirements

June 4, 2007.

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 October 31, 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 substantially prepared by Nasdaq. On April 25, 2007, Nasdaq submitted Amendment No. 1, which replaced the text of the original filing in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes changes to Rule 4350 to facilitate the use of technology to satisfy Nasdaq listing requirements and to make certain clarifying and technical corrections. Nasdaq will implement the proposed rule immediately upon approval.

The text of the proposed rule change is below. Proposed new language is in *italic*; proposed deletions are in brackets.<sup>3</sup>

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<sup>12</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> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://www.complinet.com/nasdaq>.

4350. Qualitative Listing Requirements for Nasdaq Issuers Except for Limited Partnerships

#### (a) Applicability

(1) Foreign Private Issuers. A foreign private issuer may follow its home country practice in lieu of the requirements of Rule 4350, provided, however, that such an issuer shall: Comply with Rules 4350(b)(1)(B), 4350(j) and 4350(m), have an audit committee that satisfies Rule 4350(d)(3), and ensure that such audit committee's members meet the independence requirement in Rule 4350(d)(2)(A)(ii). A foreign private issuer that follows a home country practice in lieu of one or more provisions of Rule 4350 shall disclose in its annual reports filed with the Commission *or on its Web site* each requirement of Rule 4350 that it does not follow and describe the home country practice followed by the issuer in lieu of such requirements. In addition, a foreign private issuer making its initial public offering or first U.S. listing on Nasdaq shall make the same disclosures in its registration statement *or on its Web site*.

(2)-(5) No change.

#### (b) Distribution of Annual and Interim Reports

(1)(A) Each issuer *with common stock or voting preferred stock (or their equivalents) listed on Nasdaq* shall [distribute] *make available* to shareholders *of such securities* [copies of] an annual report containing audited financial statements of the company and its subsidiaries, *which may be on Form 10-K, 20-F, 40-F or N-CSR*. [The report shall be distributed to shareholders a reasonable period of time prior to the company's annual meeting of shareholders and shall be filed with Nasdaq at the time it is distributed to shareholders.] *An issuer may comply with this requirement either: (i) By mailing the report to shareholders, or (ii) by posting the annual report to shareholders on or through the company's Web site (or, in the case of an issuer that is an investment company that does not maintain its own Web site, on a Web site that the issuer is allowed to use to satisfy the Web site posting requirement in Exchange Act Rule 16a-3(k)), along with a prominent undertaking in the English language to provide shareholders, upon request, a hard copy of the company's annual report free of charge. An issuer that chooses to satisfy this requirement via a Web site posting must, simultaneous with this posting, issue a press release stating that its annual report has been filed with the Commission (or other*

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See Nasdaq IM-4120-1.

<sup>11</sup> 15 U.S.C. 78s(b)(2).