

relating to the operation and administration of the MSRB.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-MSRB-2006-02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53799; File No. SR-NASDAQ-2006-007]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto to Create the Nasdaq Global Select Market and Rename the Nasdaq National Market

May 12, 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 April 17, 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. Nasdaq has filed this proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. On May 8, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to rename the Nasdaq National Market as the Nasdaq Global Market and to create the Nasdaq Global Select Market, a new tier within the Nasdaq Global Market with higher

initial listing standards.⁶ Nasdaq will implement the proposed rule on July 1, 2006.

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 included below. Proposed new language is *italicized*; deletions are [bracketed].

* * * * *

3350. Short Sale Rule

(a) With respect to trades executed on Nasdaq, no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq [National] *Global* Market security at or below the current best (inside) bid displayed in the Nasdaq Market Center when the current best (inside) bid is below the preceding best (inside) bid in the security. For purposes of this rule, the term “customer” includes a non-member broker-dealer.

(b)-(g) No change.

(h)(1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of an options market maker that would otherwise be in contravention of this Rule, if:

(A) The options market maker is registered with a qualified options exchange as a qualified options market maker in a stock options class on a Nasdaq [National] *Global* Market security or an options class on a qualified stock index; and

(B) No change.

(2) For purposes of this paragraph:

(A)(i) An “exempt hedge transaction,” in the context of qualified options market makers in stock options classes, shall mean a short sale in a Nasdaq [National] *Global* Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting options position or an offsetting options position that was created in a transaction(s) contemporaneous with the short sale,¹ provided that when establishing the short position the options market maker is eligible to receive(s) good faith margin pursuant to Section 220.12 of Regulation T under the Act for that transaction.

⁶ In various places in the purpose section, Nasdaq clarified that the higher listing standards apply to initial listing standards. Telephone conversation between Arnold Golub, Associate Vice President, Nasdaq, and Mia Zur, Special Counsel, Division of Market Regulation (“Division”), Commission, on May 10, 2006.

¹ The phrase contemporaneously established includes transactions occurring simultaneously as well as transactions occurring within the same brief period of time.

(ii) A “exempt hedge transaction,” in the context of qualified options market makers in stock index options classes, shall mean a short sale in a Nasdaq [National] *Global* Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting stock index options position or an offsetting stock index options position that was created in a transaction(s) contemporaneous with the short sale, provided that:

a.-c. No change.

(iii) No change.

(B) A “qualified options market maker” shall mean an options market maker who has received an appointment as a “qualified options market maker” for certain classes of stock options on Nasdaq [National] *Global* Market securities and/or index options on qualified stock indexes pursuant to the rules of a qualified options exchange.

(C) No change.

(D) A “qualified stock index” shall mean any stock index that includes one or more Nasdaq [National] *Global* Market securities, provided that more than 10% of the weight of the index is accounted for by Nasdaq [National] *Global* Market securities and provided further that the qualification of an index as a qualified stock index shall be reviewed as of the end of each calendar quarter, and the index shall cease to qualify if the value of the index represented by one or more Nasdaq [National] *Global* Market securities is less than 8% at the end of any subsequent calendar quarter.

(E)-(F) No change.

(i)(1) No change.

(2) For purposes of this paragraph, an “exempt hedge transaction” shall mean a short sale in a Nasdaq [National] *Global* Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting warrant position or an offsetting warrant position that was created in a transaction(s) contemporaneous with the short sale.² Notwithstanding any other provision of this paragraph, any transaction unrelated to normal warrant market making activity, such as index arbitrage or risk arbitrage that in either case is independent of a warrant market maker’s making functions, with not be considered an “exempt hedge transaction.”

(3)-(4) No change.

(j)-(k) No change.

² The phrase contemporaneously established includes transactions occurring simultaneously as well as transactions occurring within the same brief period of time.

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Amendment No. 1 replaced the original filing in its entirety.

IM-3350. Short Sale Rule

(a)(1) In developing a Short Sale Rule for Nasdaq [National] *Global Market* securities, Nasdaq has adopted an exemption to the Rule for certain market making activity. This exemption is an essential component of the Rule because bona fide market making activity is necessary and appropriate to maintain continuous, liquid markets in Nasdaq [National] *Global Market* securities. Rule 3350(c)(1) states that short selling prohibitions shall not apply to sales by registered Nasdaq market makers in connection with bona fide market making activity and specifies that transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered as bona fide market making. Thus two standards are to be applied: One must be a registered Nasdaq market maker and one must engage in "bona fide" market making activity to take advantage of this exemption. With this interpretation, Nasdaq wishes to clarify for members some of the factors that will be taken into consideration when reviewing market activity that may not be deemed to be bona fide market making activity and therefore would not be exempted from the Rule's application.

(2)–(3) No change.

(b) With respect to trades executed on or reported to Nasdaq, Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq [National] *Global Market* security at or below the current best (inside) bid displayed in the Nasdaq Market Center when the current best (inside) bid is below the proceeding best (inside) bid in the security. For purposes of this rule, the term "customer" includes a non-member broker-dealer. Nasdaq has determined that in order to effect a "legal" short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least \$0.01 above the current inside bid when the current inside spread is \$0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least \$0.01.

(c)–(d) No change.

4200. Definitions

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

(1)–(24) No change.

(25) ["Nasdaq National Market" or "NNM" distinct tier of Nasdaq comprised of securities that meet the

requirements of and are listed as Nasdaq National Market securities.] "*Nasdaq Global Market*" or "*NGM*" is a distinct tier of Nasdaq comprised of two segments: the *Nasdaq Global Market* and the *Nasdaq Global Select Market*. *The Nasdaq Global Market is the successor to the Nasdaq National Market*.

(26) "Nasdaq [National] *Global Market* security" or "[NNM] *NGM* security" means any security listed on Nasdaq which (1) satisfies all applicable requirements of the Rule 4300 Series and substantially meets the criteria set forth in the Rule 4400 Series; (2) is a right to purchase such security; (3) is a warrant to subscribe to such security; or (4) is an index warrant which substantially meets the criteria set forth in Rule 4420.

(27) No change.

(28) "Nasdaq Capital Market security" means any security listed on The Nasdaq Capital Market which (1) satisfies all applicable requirements of the Rule 4300 Series but that is not a Nasdaq [National] *Global Market* security; (2) is a right to purchase such security; or (3) is a warrant to subscribe to such security.

(29) [Reserved.] "*Nasdaq Global Select Market*" or "*NGSM*" security is a segment of the *Nasdaq Global Market* comprised of *NGM* securities that met the requirements for initial inclusion contained in Rules 4425, 4426 and 4427.

(3) [Reserved.] "*Nasdaq Global Select Market* security" or "*NGSM* security" means any security listed on Nasdaq and included in the *Nasdaq Global Select* segment of the *Nasdaq Global Market*.

(31)–(39) No change.

(b)–(c) No change.

4305. Transition of Securities Included on the Market Operated by The Nasdaq Stock Market, Inc.

(a)–(c) No change.

(d) Any issuer listed on the Nasdaq [National] *Global Market* or the Nasdaq Capital Market pursuant to paragraphs (a) or (b) above that had received any notice or was subject to any Rule of The Nasdaq Stock Market, Inc. as a facility of the NASD shall be treated as though such notice or such Rule was a notice from or a rule of Nasdaq in computing applicable times frames.

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 [National] *Global Market*, are listed on the Nasdaq Capital Market.

(a)–(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)–(8) No change.

(9)(A)–(b) No change.

(C) In the case of index warrants, the criteria established in the Rule 4400 Series for Nasdaq [National] *Global Market* securities shall apply.

(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 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 [National] *Global Market*, are listed on the Nasdaq Capital Market.

(a) A security of a foreign issuer, an ADR or similar security issued in respect of a security of a foreign issuer, other than a newly issued security, shall be considered for listing provided that it is:

(1)–(2) No change.

(b)–(f) No change.

4350. Qualitative Listing Requirements for Nasdaq [National Market and Nasdaq Capital Market] Issuers Except for Limited Partnerships

(a)–(n) No change.

4350-1. Qualitative Listing Requirements for Nasdaq [National Market and Nasdaq Capital Market] Issuers Except for Limited Partnerships

(a)–(h) No change.

IM-4390. Impact of Non-Designation of Dually Listed Securities

To foster competition among markets and further the development of the national market system following the repeal of NYSE Rule 500, Nasdaq shall permit issuers whose securities are listed on the New York Stock Exchange to apply also to list those securities on the Nasdaq [National] *Global Market* ["*NNM*"] ("*NGM*"). Nasdaq shall make an independent determination of whether such issuers satisfy all applicable listing requirements and shall require issuers to enter into a dual listing agreement with Nasdaq.

While Nasdaq shall certify such dually listed securities for listing on the [NGM] NGM, Nasdaq shall not exercise its authority under Rule 4390 separately to designate or register such dually listed securities as Nasdaq national market system securities within the meaning of Section 11A of the Act or the rules thereunder. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation Service ("CQS") and Consolidated Tap Association national market system plans ("CQ and CTA Plans"), shall remain subject to those plans and shall not become subject to the Nasdaq UTP Plan, the national market system plan governing securities designated by Nasdaq. For purposes of the national market system, such securities shall continue to trade under their current one, two, or three-character ticker symbol. Nasdaq shall continue to send all quotations and transaction reports in such securities to the processor for the CTA Plan. In addition, dually listed issues that are currently eligible for trading via the Intermarket Trading System ("ITS") shall remain so and continue to trade on the Nasdaq Intermarket trading platform as they do today.

Through this interpretation, Nasdaq also resolves any potential conflicts that arise under Nasdaq rules as result of a single security being both a security object to the CQ and CTA Plans (a "CQS Security"), which is subject to one set of rules, and a listed [NNM] NGM security, which is subject to a different set of rules. Specifically, dually listed securities shall be Nasdaq securities for purposes of rules related to listing and delisting, and shall remain as CQS securities under all other Nasdaq rules. Treating dually listed securities as CQS securities under Nasdaq rules is consistent with their continuing status as CQS securities under the CTA, CQ, and ITS national market system, as described above. This interpretation also preserves the status quo and avoids creating potential confusion for investors and market participants that currently trade these securities on Nasdaq.

For example, Nasdaq shall continue to honor the trade halt authority of the primary market under the CQ and CT Plans. Nasdaq Rule 4120(a)(2) and (3) governing CQS securities shall apply to dually listed securities, whereas Nasdaq Rule 4120(a)(1), (4), (5), (6), and (7) shall not. SEC Rule 10a-1 governing short sales of CQS securities shall continue to apply to dually listed securities, rather than Nasdaq Rule 3350 governing short sales of Nasdaq-listed securities. Market

makers in dually listed securities shall retain all obligations imposed by the Nasdaq Rule 5200 Series regarding CQS securities rather than assuming the obligations appurtenant to Nasdaq-listed securities. The fees applicable to CQS securities set forth in Nasdaq Rule 7010 shall continue to apply to dually listed issues.

4400. NASDAQ [National] Global Market

4410. Applications for Listing

(a) Application for listing on the Nasdaq [National] Global Market shall be on a form supplied by Nasdaq and signed by a corporate officer of the issuer. Compliance with the listing criteria will be determined on the basis of information filed with the appropriate regulatory authority and the records of Nasdaq as of the application date. Nasdaq may require the issuer to submit such other information as is relevant to a listing determination, including information required by paragraph (c) below.

(b) Upon approval of a listing application, Nasdaq shall certify to the Commission, pursuant to Section 12(d) of the Act and the rules thereunder, that it has approved the security for listing and registration. Listing can commence only upon effectiveness of the security's registration pursuant to Section 12(d).

(c) *The security of an issuer that applies for listing on the Nasdaq Global Market and meets the requirements contained in Rules 4425 through 4427, shall be listed on the Nasdaq Global Select Market.*

(d) Issuers that are listed on Nasdaq pursuant to the Rule 4300 Series but that are not listed on the Nasdaq [National] Global Market, are listed on the Nasdaq Capital Market.

4420. Quantitative Listing Criteria

In order to be listed on the Nasdaq [National] Global 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) or (l) below.

(a)–(e) No change.

(f) Other Securities

(1) No change.

(2) Issuers of securities listed pursuant to this paragraph (f) must be listed on the Nasdaq [National] Global Market or the New York Stock Exchange (NYSE) or be an affiliate of a company listed on the Nasdaq [National] Global Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of "other" securities on a case-by-case basis.

(3) No change.

(g) Nasdaq will consider listing on the Nasdaq [National] Global Market Selected Equity-linked Debt Securities (SEEDS) that generally meet the criteria of this paragraph (g). SEEDS are limited-term, non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock (or sponsored American Depositary Receipts (ADRs) overlying such equity securities).

(1) Issuer Listing Standards

(A) The issuer of a SEEDS must be an entity that:

(i) Is listed on the Nasdaq [National] Global Market or the New York Stock Exchange (NYSE) or is an affiliate of a company listed on the Nasdaq [National] Global Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of SEEDS on a case-by-case basis; and

(ii) No change.

(B) In addition, the market value of a SEEDS offering, when combined with the market value of all other SEEDS offerings previously completed by the issuer and traded on the Nasdaq [National] Global Market or another national securities exchange, may not be greater than 25 percent of the issuer's net worth at the time of issuance.

(2) No change.

(3) Minimum Standards Applicable to the Linked Security

An equity security on which the value of the SEEDS is based must:

(A) No change.

(B) Be issued by a company that has a continuous reporting obligation under the Act, and the security must be listed on the Nasdaq [National] Global Market or another national securities exchange and be subject to last sale reporting; and

(C) No change.

(4)–(5) No change.

(h) Units

(1) Initial and Continued Listing Requirements.

(a) No change.

(b) All debt components of a unit, if any, shall meet the following requirements:

(i) No change.

(ii) The issuer of the debt security must have equity securities listed on the Nasdaq [National] Global Market; and

(iii) No change.

(c) No change.

(2) No change.

(3) Disclosure Requirements for Units.

Each Nasdaq [National] Global Market issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed

with the Commission under the federal securities laws and the rules and regulations promulgated thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period. The issuer of a unit shall further provide information regarding the terms and conditions of the components of the unit (including information with respect to any original issue discount or other significant tax attributes of any component) and the ratio of the components comprising the unit. An issuer shall also disclose when a component of the unit is separately listed on Nasdaq. These disclosures shall be made on the issuer's Web site, or if it does not maintain a Web site, in its annual report provided to unit holders. An issuer shall also immediately publicize through, at a minimum, a public announcement through the news media, any change in the terms of the unit, such as changes to the terms and conditions of any of the components (including changes with respect to any original issue discount or other significant tax attributes of any component), or to the ratio of the components within the unit. Such public notification shall be made as soon as practicable in relation to the effective date of the change.

(i)–(m) No change.

4425. Nasdaq Global Select Market

(a) *An issuer that applies for listing on the Nasdaq Global Market and meets the requirements for initial listing contained in Rule 4426 shall be listed on the Nasdaq Global Select Market.*

(b) *Each October, beginning in October 2007, Nasdaq will review the qualifications of all securities listed on the Nasdaq Global Market that are not included in the Nasdaq Global Select Market. Any security that meets the requirements for initial listing on the Nasdaq Global Select Market contained in Rule 4426 at the time of this review will be transferred to the Global Select Market the following January, provided it meets the continued listing criteria at that time. An issuer will not owe any application or entry fees in connection with such a transfer.*

(c) *At any time, an issuer may apply to transfer a security listed on the Nasdaq Global Market to the Nasdaq Global Select Market. Such an application will be approved and affected as soon as practicable if the security meets the requirements for initial listing contained in Rule 4226. An issuer will not owe any application or entry fees in connection with such a transfer.*

(d) *At any time an issuer may apply to transfer a security listed on the Nasdaq Capital Market to the Nasdaq Global Select Market. Such an application will be approved and affected as soon as practicable if the security meets the requirements for initial listing contained in Rule 4426. An issuer transferring from the Nasdaq Capital Market to the Nasdaq Global Select Market will be required to pay the applicable fees contained in Rule 4510.*

(e) *After initial inclusion on the Nasdaq Global Select Market, as issuer will remain on the Nasdaq Global Select Market provided it continues to meet the applicable requirements of the Rule 4300 and 4400 Series, including the qualitative requirements of Rule 4350 and IM-4300.*

(f) *Notwithstanding any provision to the contrary, the security of any issuer that is non-compliant with a qualitative listing requirement that does not provide for a grace period, or where Nasdaq staff has raised a public interest concern, will not be permitted to transfer to the Global Steel Market until the underlying deficiency is resolved. In addition, any security that is below a quantitative continued listing requirement for the Nasdaq Global Market, even if the issuer has not been below the requirement for a sufficient period of time to be continued non-compliant, and any issuer in a grace or compliance period with respect to a quantitative listing requirement, will not be allowed to transfer from the Nasdaq Global or Capital Markets to the Nasdaq Global Select Market until the underlying deficiency is resolved. Nor will any issuer before a Nasdaq Listing Qualifications Panel be allowed to transfer to the Global Select Market until the underlying deficiency is resolved. An issuer that is in a grace or compliance period with respect to a qualitative listing standard, such as the cure period for filling an audit committee vacancy, will be allowed to transfer to the Global Select Market, subject to the continuation of that grace period.*

IM-4425 Launch for the Nasdaq Select Market

In connection with the initial launch of the Nasdaq Global Select Market in July 2006, Nasdaq will review all issuers' qualifications and assign qualified Global Market companies to the new Global Select segment. In addition, qualified Capital Market companies will be given the opportunity to be included in the new segment. In connection with this initial transfer to the Global Select Market, Nasdaq will begin to make its assessment using the

most recent financial data filed as of April 28, 2006, and market data as of April 28, 2006. Nasdaq will treat as an IPO any company that initially listed as an IPO since May 1, 2005 for purposes of the liquidity tests, because these companies would have insufficient market data to establish a 12-month trading history and may have had insufficient time to satisfy the market value of public float requirement applicable to other companies. Similarly, for purposes of the market capitalization requirements of Rules 4426(c)(2) and (c)(3), any company that initially listed as an IPO since May 1, 2005 must have the applicable average market capitalization from the date of listing. Nasdaq also notes that certain Nasdaq-listed issuers that qualify to initially list on the New York Stock Exchange (NYSE) will not be eligible to list on the Global Select Market. Nasdaq will allow (but not require) any Nasdaq-listed issuer that meets the NYSE initial listing standards as of July 2006 but that does not qualify for the Global Select segment when it is adopted to be included in the Global Select Market, subject to a grace period until January 1, 2008 to achieve compliance with all listing criteria for the Global Select Market. Any issuer that avails itself of this grace period that has not achieved compliance with all listing criteria for the Global Select Market by January 1, 2008 will be moved to the Nasdaq Global Market. In addition, any issuer that avails itself of this grace period will remain subject to delisting in the event it fails to satisfy any of the continued listing requirements for the Nasdaq Global Market.

4426. Nasdaq Global Select Market Listing Requirements

(a) *For inclusion in the Nasdaq Global Select Market, an issuer must meet the requirements of paragraphs (b), (c), and (d) of this rule, and all applicable requirements of the Rule 4300 and 4400 Series, including the qualitative requirements of Rule 4350 and IM-4300. Rule 4427 provides guidance about computations made under this Rule 4426.*

(b) *Liquidity Requirements*

(1) *The security must demonstrate either:*

(A) *(i) a minimum of 550 beneficial shareholders, and*

(ii) *an average monthly trading volume over the prior 12 months of at least 1,100,000 shares per month; or*

(B) *a minimum of 2,200 beneficial shareholders; or*

(C) *a minimum of 450 beneficial shareholders, in the case of: (i) an issuer listing in connection with its emergence*

from a bankruptcy or reorganization proceeding; or (ii) an issuer that is affiliated with another company listed on the Global Select Market.

(2) The security must have at least 1,250,000 publicly held shares; and

(3) The publicly held shares must have either:

(A) a market value of at least \$110 million; or

(B) a market value of at least \$100 million, if the issuer has stockholders' equity of at least \$110 million; or

(C) a market value of at least \$70 million in the case of: (i) an issuer listing in connection with its initial public offering; (ii) an issuer that is affiliated with, or a spin-off from, another company listed on the Global Select Market; and (iii) a closed end management investment company.

(c) **Financial Requirements.** An issuer, other than a closed end management investment company, must meet the requirements of one of subparagraphs (1), (2) or (3) of this paragraph.

(1) The issuer must have:

(A) aggregate income from continuing operations before income taxes of at least \$11 million over the prior three fiscal years;

(B) positive income from continuing operations before income taxes in each of the prior three fiscal years; and

(C) at least \$2.2 million income from continuing operations before income taxes in each of the two most recent fiscal years; or

(2) The issuer must have:

(A) aggregate cash flows of at least \$27.5 million over the prior three fiscal years;

(B) positive cash flows in each of the prior three fiscal years; and

(C) both:

(i) average market capitalization of at least \$550 million over the prior 12 months; and

(ii) total revenue of at least \$110 million in the previous fiscal year; or

(3) The issuer must have both:

(A) average market capitalization of at least \$850 million over the prior 12 months; and

(B) total revenue of at least \$90 million in the previous fiscal year.

(d) **Price.** For inclusion in the Nasdaq Global Select Market, an issuer not listed on the Nasdaq Global Market shall have a minimum bid price of \$5 per share.

(e) **Closed End Management Investment Companies.**

(1) A closed end management investment company shall not be required to meet paragraph (c) of this Rule 4426.

(2) In lieu of the requirement in paragraph (b)(3) of this Rule 4426, a

closed end management investment company that is listed concurrently with other closed end management investment companies that have a common investment adviser (or whose investment advisers are "affiliated persons" as defined in the Investment Company Act of 1940) (a "Fund Family") shall be eligible if: (A) the total market value of publicly held shares in such Fund Family is at least \$220 million; (B) the average market value of publicly held shares for all funds in the Fund Family is \$50 million; and (C) each fund in the Fund Family has a market value of publicly held shares of at least \$35 million.

(f) **Other Classes of Securities.** If the common stock of an issuer is included in the Nasdaq Global Select Market, any other security of that same issuer, such as other classes of common or preferred stock, that qualify for listing on the Nasdaq Global Market shall also be included in the Global Select Market.

Rule 4427. Computations and Definitions

(a) In computing the number of publicly held shares for purposes for Rule 4426(b), Nasdaq will not consider shares held by an officer, director or 10% shareholder of the issuer.

(b) In calculating income from continuing operations before income taxes for purposes of Rule 4426(c)(1), Nasdaq will rely on an issuer's financial information as filed with the Commission in the issuer's most recent periodic report and/or registration statement.

(c) In calculating cash flows for purposes of Rule 4426(c)(2), Nasdaq will rely on the net cash provided by operating activities, as reported in the issuer's financial information as filed with the Commission in the issuer's most recent periodic report and/or registration statement, excluding changes in working capital or in operating assets and liabilities.

(d) If an issuer does not have three years of publicly reported financial data, it may qualify under Rule 4426(c)(1) if it has:

(1) reported aggregate income from continuing operations before income taxes of at least \$11 million; and

(2) positive income from continuing operations before income taxes in each of the reported fiscal years.

(e) If an issuer does not have three years of publicly reported financial data, it may qualify under Rule 4426(c)(2) if it has:

(1) reported aggregate cash flows of at least \$27.5 million; and

(2) positive cash flows in each of the reported fiscal years.

(f) A period of less than three months shall not be considered a fiscal year, even if reported as a stub period in the issuer's publicly reported financial statements.

(g) For purposes of Rule 4426, an issuer is affiliated with another company if that other company, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of the issuer. Control, for these purposes, means having the ability to exercise significant influence. Ability to exercise significant influence will be presumed to exist where the parent or affiliated company directly or indirectly owns 20% or more of the other company's voting securities, and also can be indicated by representation on the board of directors, participation in policy making processes, material intercompany transactions, interchange of managerial personnel, or technological dependency.

(h) In the case of an issuer listing in connection with its initial public offering, compliance with the market capitalization requirements of Rules 4426(c)(2) and (c)(3) will be based on the company's market capitalization at the time of listing.

4430. Limited Partnership Rollup Listing Criteria

In addition to meeting the quantitative criteria for Nasdaq [National] Global Market listing, an issuer that is formed as a result of a limited partnership rollup transaction, as defined in Rule 4200, must meet the criteria set forth below in order to be listed:

(a)–(b) No change.

4440. Registration Standards

(a) In addition to meeting the quantitative criteria and the limited partnership rollup criteria, if applicable, for Nasdaq [National] Global Market listing, the issue must also be:

(1) Registered under Section 12(b) of the Act; or

(2) Subject to an exemption issued by the Commission that permits the listing of the security notwithstanding its failure to be registered pursuant to Section 12(b).

4450. Quantitative Maintenance Criteria

After listing as a Nasdaq [National] Global Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e), (f), (g), (h) or (i) below to continue to remain listed on the Nasdaq [National] Global Market. A security maintaining its listing under paragraph (b) need not

also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a)–(c) No change.

(d) Rights and Warrants

Common stock of issuer must continue to be listed on the Nasdaq [National] *Global* Market.

(e)–(h) No change.

(i) Transfers between The Nasdaq [National] *Global* and Capital Markets For Bid Price Deficient Issuers

(1) If a [National] *Global* Market issuer has not been deemed in compliance prior to the expiration of the compliance period for bid price provided in Rule 4450(e)(2), it may transfer to The Nasdaq Capital Market, provided that it meets all applicable requirements for initial listing on the Capital Market set forth in Rule 4310(c) or Rule 4320(e), as applicable, other than the minimum bid price requirement. A Nasdaq [National] *Global* Market issuer transferring to The Nasdaq Capital Market must pay the entry fee set forth in Rule 4520(a). The issuer may also request a hearing to remain on The Nasdaq [National] *Global* Market pursuant to the Rule 4800 Series.

(2) Following a transfer to The Nasdaq Capital Market pursuant to paragraph (1), a Nasdaq [National] *Global* Market issuer will be afforded the remainder any compliance period set forth in Rule 4310(c)(8)(D) or Rule 4320(e)(2)(E)(ii) as if the issuer had been listed on The Nasdaq Capital Market. The compliance periods afforded by this rule and any time spent in the hearing process will be deducted in determining the length of the remaining applicable compliance periods on The Nasdaq Capital Market.

4510. The Nasdaq [National] *Global* Market

(a) Entry Fee

(1) An issuer that submits an application to list any class of its securities (not otherwise identified in this Rule 4500 series) on the Nasdaq [National] *Global* Market, shall pay to Nasdaq a fee calculated on total shares outstanding, according to the following schedule. This fee will be assessed on the date of listing on the Nasdaq [National] *Global* Market, except for \$5,000 which represents a non-refundable, application fee, and which must be submitted with the issuer's application.

Up to 30 million shares	\$100,000
30+ to 50 million shares	125,000
Over 50 million shares	150,000

(2) Total shares outstanding means the aggregate of all classes of equity securities to be listed on the Nasdaq [National] *Global* Market as shown in

the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority. In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.

(3) A closed-end management investment company registered under the Investment Company Act of 1940, as amended (a "Closed-End Fund"), that submits an application for listing on the Nasdaq [National] *Global* Market shall pay to Nasdaq an entry fee of \$5,000 (of which \$1,000 represents a non-refundable, application fee).

(4) An issuer that submits an application to list any class of rights on the Nasdaq [National] *Global* Market, shall pay, at the time of its application, a non-refundable application fee of \$1,000 to Nasdaq.

(5)–(6) No Change.

(7) The fees described in this Rule 4510(a) shall not be applicable with respect to any securities that (i) are listed on another national securities exchange but not listed on Nasdaq, or (ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities transfers their listing exclusively to the Nasdaq [National] *Global* Market.

(8) No change.

(b) Additional Shares

(1) The issuer of each class of security that is a domestic issue which is listed on the Nasdaq [National] *Global* Market shall pay to Nasdaq the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security.

(2)–(5) No change.

(c) Annual Fee—Domestic and Foreign Issues

(1) The issuer of each class of securities (not otherwise identified in this Rule 4500 Series) that is a domestic or foreign issue listed on the Nasdaq [National] *Global* Market shall pay to Nasdaq an annual fee calculated on total shares outstanding according to the following schedule:

Up to 10 million shares	\$24,500
10+ to 25 million shares	30,500
25+ to 50 million shares	34,500
50+ to 75 million shares	44,500
75+ to 100 million shares	61,750
Over 100 million shares	75,000

(2) No change.

(3) If a class of securities is removed from the Nasdaq [National] *Global* Market that portion of the annual fees for such class of securities attributable to the months following the date of removal shall not be refunded, except such portion shall be applied to the

Nasdaq Capital Market fees for that calendar year.

(4) Total shares outstanding means the aggregate of all classes of equity securities listed on the Nasdaq [National] *Global* Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq. In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.

(5) No change.

(d) Annual Fee—American Depository Receipts (ADRs) and Closed-End Funds

(1) The issuer of each class of securities that is an ADR listed on The Nasdaq [National] *Global* Market shall pay to Nasdaq an annual fee calculated on ADRs outstanding according to the following schedule not to exceed \$30,000 per issuer:

Up to 10 million ADRs	\$21,225
10+ to 25 million ADRs	26,500
25+ to 50 million ADRs	29,820
Over 50 million ADRs	30,000

(2) ADRs outstanding means the aggregate of all classes of ADRs listed on the Nasdaq [National] *Global* Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

(3) A Closed-End Fund listed on the Nasdaq [National] *Global* Market shall pay to Nasdaq an annual fee calculated based on total shares outstanding according to the following schedule:

Up to 5 million shares	\$15,000
5+ to 10 million shares	17,500
10+ to 25 million shares	20,000
25+ to 50 million shares	22,500
50+ to 100 million shares	30,000
100+ to 250 million shares	50,000
Over 250 million shares	75,000

(4) For the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed on the Nasdaq [National] *Global* Market or the Nasdaq Capital Market, as shown in the issuer's most recent periodic reports required to be filed with the appropriate regulatory authority or in more recent information held by Nasdaq. The maximum annual fee applicable to a fund family shall not exceed \$75,000. For purposes of this rule, a "fund family" is defined as two or more Closed-End Funds that have a common investment adviser or have investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

(5) No change.

(6) If a class of securities is removed from the Nasdaq [National] *Global Market*, that portion of the annual fees for such class of securities attributable to the months following the date of removal shall not be refunded, except such portion shall be applied to the Nasdaq Capital Market fees for that calendar year.

(e)-(f) No change.

4520. The Nasdaq Capital Market

(a)-(b) No change.

(c) Annual Fee

(1)-(4) No change.

(5) If a class of securities is removed from the Nasdaq Capital Market, that portion of the annual fees for such class of securities attributable to the months following the date of removal shall not be refunded, except such portion shall be applied to Nasdaq [National] *Global Market* fees for that calendar year.

(6) No change.

(7) Notwithstanding paragraph (6), for the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed on the Nasdaq [National] *Global Market* and the Nasdaq Capital Market, as shown in the issuer's most recent periodic reports required to be filed with the appropriate regulatory authority or in more recent information held by Nasdaq. The maximum annual fee applicable to a fund family shall not exceed \$75,000. For purposes of this rule, a "fund family" is defined as two or more Closed-End Funds that have a common investment adviser or have investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

(8) No change.

(d)-(e) No change.

4530. Other Securities

(a) Application Fee and Entry Fee.

(1) When an issuer submits an application to list any Other Security or SEEDS on the Nasdaq [National] *Global Market* qualified for listing under Rule 4420(f) or 4420(g), it shall pay a non-refundable Application Fee of \$1,000.

(2) When an issuer submits an application to list any Other Security or SEEDS on the Nasdaq [National] *Global Market* qualified for listing under Rule 4420(f) or 4420(g), it shall pay an Entry Fee calculated based on total shares outstanding according to the following schedule:

Up to 1 million shares	\$5,000
1+ to 2 million shares	10,000
2+ to 3 million shares	15,000
3+ to 4 million shares	17,500
4+ to 5 million shares	20,000

5+ to 6 million shares	22,500
6+ to 7 million shares	25,000
7+ to 8 million shares	27,500
8+ to 9 million shares	30,000
9+ to 10 million shares	32,500
10+ to 15 million shares	37,500
Over 15 million shares	45,000

The applicable Entry Fee shall be reduced by any Entry Fees paid previously in connection with the initial listing during the current calendar year of any of the issuer's Other Securities and SEEDS on the Nasdaq [National] *Global Market*.

(3) For the sole purpose of determining the Entry Fee, total shares outstanding means the aggregate of all classes of Other Securities and SEEDS of the issuer to be listed on the Nasdaq [National] *Global Market* in the current calendar year as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority.

(4)-(5) No change.

(b) Annual Fee

(1) The issuer of Other Securities or SEEDS qualified under Rule 4420(f) or 4420(g) for listing on the Nasdaq [National] *Global Market* shall pay to Nasdaq an Annual Fee calculated based on total shares outstanding according to the following schedule:

Up to 5 million shares	\$15,000
5+ to 10 million shares	17,500
10+ to 25 million shares	20,000
25+ to 50 million shares	22,500
Over 50 million shares	30,000

(2) No change.

(3) For the sole purpose of determining the Annual Fee, total shares outstanding means the aggregate of all classes of Other Securities and SEEDS of the issuer listed on the Nasdaq [National] *Global Market*, as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

4540. Portfolio Depository Receipts and Index Fund Shares

(a) Entry Fee

(1) When an issuer submits an application for listing a series of Portfolio Depository Receipts or Index Fund Shares on the Nasdaq [National] *Global Market*, it shall pay to Nasdaq a listing fee of \$5,000 (which shall include a \$1,000 non-refundable processing fee).

(2) The Nasdaq Board of Directors or its designee may, in its discretion, defer or waive all or any part of the entry fee prescribed herein.

(3) If the application is withdrawn or is not approved, the entry fee (less the non-refundable processing fee) shall be refunded.

(b) Annual Fee

(1) The issuer of a series of Portfolio Depository Receipts or Index Fund Shares listed on The Nasdaq [National] *Global Market* shall pay to Nasdaq an annual fee calculated on total shares outstanding according to the following schedule:

Up to 1 million shares	\$6,500
1+ to 2 million shares	7,000
2+ to 3 million shares	7,500
3+ to 4 million shares	8,000
4+ to 5 million shares	8,500
5+ to 6 million shares	9,000
6+ to 7 million shares	9,500
7+ to 8 million shares	10,000
8+ to 9 million shares	10,500
9+ to 10 million shares	11,000
10+ to 11 million shares	11,500
11+ to 12 million shares	12,000
12+ to 13 million shares	12,500
13+ to 14 million shares	13,000
14+ to 15 million shares	13,500
15+ to 16 million shares	14,000
Over 16 million shares	14,500

(2) Total shares outstanding means the aggregate number of shares in all series of Portfolio Depository Receipts or Index Fund Shares to be listed on The Nasdaq [National] *Global Market* as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

(3) No change.

4550. Written Interpretations of Nasdaq Listing Rules

(a) An issuer listed on the Nasdaq Capital Market or the Nasdaq [National] *Global Market* may request from Nasdaq a written interpretation of the Rules contained in the 4000 through 4500 Series. In connection with such a request, the issuer must submit to Nasdaq a non-refundable fee of \$2,000. A response to such a request generally will be provided within four weeks from the date Nasdaq receives all information necessary to respond to the request.

(b)-(e) No change.

4701. Definitions.

(a)-(ee) No change.

(ff) The term "UTP Exchange" shall mean any registered national securities exchange that elects to participate in the Nasdaq Market Center and that has unlisted trading privileges in Nasdaq [National] *Global Market* securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-

Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq UTP Plan").

(gg)-(vv) No change.

6120. System Functions.

(a) No change.

(b) The Nasdaq system will provide the following risk management capabilities to clearing brokers that have executed an agreement authorizing the use of the Nasdaq Risk Management service:

(1) No change.

(2) Gross Dollar Thresholds ("Super Caps") and Sizeable Limits Clearing brokers may establish, on an inter-day or intra-day basis, gross dollar thresholds (also known as "Super Caps") for purchases and sales for their correspondent executing brokers. When any of the correspondent's gross dollar thresholds are exceeded, notice will be furnished to the clearing broker and to Trade Reporting Facilities. In such event, Nasdaq Risk Management will automatically instruct Trade Reporting Facilities that any trade in excess of an applicable "sizeable limit" that is negotiated by the correspondent will be subject to review by the clearing broker until such time as the correspondent's trading activity no longer exceeds a gross dollar threshold. Specifically, the clearing broker will have 15 minutes from execution to review any single trade negotiated by the correspondent that equals or exceeds the applicable sizeable limit in order to decide to act as principal for the trade or to decline to act as principal. If the clearing broker does not affirmatively accept or decline the "sizeable trade," at the end of 15 minutes the system will instruct Trade Reporting Facilities to act in accordance with pre-established processing criteria, as described below.

(A) ACT Workstation Users

(i) Clearing brokers that use the ACT Workstation may establish gross dollar thresholds and sizeable limits for each of their correspondent executing brokers. They may establish different gross dollar thresholds and sizeable limits for each type of security (i.e., Nasdaq [National] *Global* Market, Nasdaq Capital Market, Consolidated Quotations Service, or OTC Bulletin Board), as well as an aggregate gross dollar threshold and sizeable limit for all types of securities.

(ii)-(iii) No change.

(B) Other Nasdaq Risk Management Users

(i) Clearing brokers that do not use the ACT Workstation may establish aggregate gross dollar thresholds for each of their correspondent executing

brokers, but may not establish gross dollar thresholds for each type of security (i.e., Nasdaq [National] *Global* Market, Nasdaq Capital Market, Consolidated Quotations Service, or OTC Bulletin Board).

(ii)-(iii) No change.

(3)-(5) No change.

(6) Single Trade Limit

Clearing brokers may request that the Nasdaq Risk Management service instruct Trade Reporting Facilities to provide 15 minutes from trade report input to review any single trade executed by their correspondent executing brokers that equals or exceeds a pre-established limit in order to decide to act as principal for the trade or to decline to act as principal. If, however, the clearing firm does not affirmatively accept or decline the trade at the end of 15 minutes the system will instruct Trade Reporting Facilities to act in accordance with pre-established processing criteria, as described below.

(A) ACT Workstation Users, Clearing brokers that use the ACT Workstation may establish single trade limits for each of their correspondent executing brokers, and may establish different limits for each type of security (i.e., Nasdaq [National] *Global* Market, Nasdaq Capital Market, Consolidated Quotations Service, or OTC Bulletin Board). Such clearing brokers may also establish the default processing criteria that will apply to trades that exceed the single trade limit after 15 minutes if the clearing broker does not affirmatively accept or decline the trade; the clearing broker may specify that the system will instruct Trade Reporting Facilities that such trades should be either automatically declined or automatically subjected to normal processing in which the clearing broker will act as principal to clear the trades.

(B) No change.

7024. Nasdaq Revenue Sharing Program

After Nasdaq earns total operating revenue sufficient to offset actual expenses and working capital needs, a percentage of all Market Participant Operating Revenue ("MPOR") shall be eligible for sharing with Nasdaq Quoting Market Participants (as defined in Rule 4701). MPOR is defined as operating revenue that is generated by Nasdaq quoting Market Participants. MPOR consists of transaction fees, technology fees, and market data revenue that is attributable to Nasdaq quoting Market Participant activity in Nasdaq [National] *Global* Market, and Capital Market securities. MPOR shall not include any investment income or regulatory monies. The sharing of MPOR shall be

based on each Nasdaq Quoting Market Participant's pro rata contribution to MPOR. In no event shall the amount of revenue shared with Nasdaq Quoting Market Participants exceed MPOR. To the extent market data revenue is subject to year-end adjustment, MPOR revenue may be adjusted accordingly.

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H. 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

Nasdaq proposes to rename the Nasdaq National Market as the Nasdaq Global Market to more accurately reflect the international reach and leadership of many of the companies listed on that market and the market itself.⁷

Nasdaq also proposes to create a new segment within the Nasdaq Global Market. This new segment will be known as the Nasdaq Global Select Market, and new, higher initial listing requirements will apply to companies listing on the Nasdaq Global Select Market.⁸ All listing and trading rules applicable to securities on the Nasdaq Global Market will also apply to the Nasdaq Global Select Market.

Listing Standards. As described below, issuers would be required to meet minimum liquidity measures and a financial test, as well as achieve a minimum bid price requirement.⁹

⁷ The Nasdaq Global Market, including the Nasdaq Global Select segment described below, will be the successor to the Nasdaq National Market. As such, Nasdaq believes that all securities listed on the Nasdaq Global Market, including those on the Nasdaq Global Select Market, will be "covered securities," as that term is defined in Section 18(b) of the Securities Act of 1933, 15 U.S.C. 77r(b).

⁸ As described below, given that the Nasdaq Global Select Market is a segment of the Nasdaq Global Market, Nasdaq will apply the same continued listing requirements as are applicable to other companies on the Nasdaq Global Market, which are the existing listing requirements for the Nasdaq National Market.

⁹ Nasdaq could deny listing to a company that meets these requirements based on public interest

Nasdaq believes that the creation of this segment will more clearly align Nasdaq's financial and liquidity listing standards with its corporate governance standards¹⁰ and its regulatory enforcement program, as well as its trading system. While Nasdaq believes its existing standards protect investors, Nasdaq also believes that, to the extent these higher initial listing standards help attract and maintain listings on Nasdaq and identify companies that meet these high listing standards, investors will benefit.

1. Liquidity Tests

In order to qualify for the Nasdaq Global Select Market, a company will be required to demonstrate either: (1) a minimum of 550 shareholders and an average monthly trading volume over the prior 12 months of at least 1,100,000 shares per month; or (2) a minimum of 2,200 shareholders.

Average monthly trading volume	>=1,100,00
AND	
Shareholders	>=550
OR	
Shareholders	>=2,200

In addition, a company must have at least 1,250,000 publicly held shares. In computing the number of publicly held shares, Nasdaq will not consider shares held by an officer, director, or 10% shareholder of the company.

Publicly Held Shares	>=1,250,000
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Finally, those publicly held shares must have a market value of at least \$110 million; provided, however, that if the market value of publicly held shares is at least \$100 million and the company has shareholders equity of at least \$110 million, the company will also qualify.

Market Value of Publicly Held Shares	>=\$110,000,000
OR	
Market Value of Publicly Held Shares	>=\$100,000,000
AND	
Shareholders Equity	>=\$110,000,000

2. Financial Tests

A company will also be required to meet one of these financial tests in order to qualify for listing on the Nasdaq Global Select Market. Specifically,

concerns, as described in existing Nasdaq Rule 4300 and Nasdaq IM-4300.

¹⁰ Companies on the Nasdaq Global Select Market will be required to meet the same rigorous corporate governance standards applicable to companies on the Nasdaq Capital and Nasdaq Global Markets. These standards require a majority independent board, an independent audit committee, and for independent directors to participate in compensation and nomination decisions. Shareholders are also required to approve significant transactions and the use of equity compensation.

companies will be required to demonstrate: (1) Aggregate pre-tax earnings of at least \$11 million over the prior three years, with all three years having positive pre-tax earnings and the two most recent years having at least \$2.2 million pre-tax earnings each; (2) aggregate cash flows of at least \$27.5 million over the prior three years with all three years having positive cash flows, an average market capitalization of at least \$550 million over the prior 12 months, and total revenue of at least \$110 million in the previous fiscal year; or (3) total revenue of at least \$90 million in the previous fiscal year and an average market capitalization of at least \$850 million over the prior 12 months. However, Nasdaq notes that the operating history requirements in Nasdaq Rule 4426(c)(1) and (c)(2), may be shortened to a lesser period if an issuer does not have three years of publicly reported financial data.¹¹

Three year aggregate pre-tax earnings	>=\$11,000,000
AND	
Pre-tax earnings in the two most recent years each	>=\$2,200,000
AND	
Third most recent year pre-tax earnings	>0
OR	
Three year aggregate cash flows	>=\$27,500,000
AND	
Three most recent years' cash flow each	>0
AND	
Average 12 month market capitalization	>=\$550,000,000
AND	
Total revenue	>=\$110,000,000
OR	
Total revenue	>=\$90,000,000
AND	
Average 12 month market capitalization	>=\$850,000,000

Nasdaq will determine compliance with the financial tests based on a company's publicly filed financial information. Thus, for example, as specified in proposed Nasdaq Rule 4427(b), pre-tax earnings will be the company's pre-tax income from continuing operations as filed with the Commission in the issuer's most recent periodic report and/or registration statement.

¹¹ The Commission notes that a period of less than three months shall not be considered a fiscal year. See Nasdaq Rule 4427(f). Telephone conversation between Arnold Golub, Associate Vice President, Nasdaq, Florence Harmon, Senior Special Counsel, and Mia Zur, Special Counsel, Division, on May 12, 2006.

3. Price Test

Any company newly listed on Nasdaq (both initial public offerings and seasoned companies) would be required to have a minimum \$5 bid price to list on the Nasdaq Global Select Market. Companies switching from the Nasdaq Global Market would have previously satisfied the bid price requirement in connection with their initial listing and therefore will not be required to meet this requirement again when transferring to the new segment.

4. Other Provisions

a company listing in connection with its emergence from a bankruptcy proceeding will be required to have 450 shareholders for listing, as will a company affiliated with another company listed on the Nasdaq Global Select Market. In these cases, Nasdaq believes that while the shareholder requirement is difficult to meet immediately upon listing because the stock is not initially widely distributed, shares are widely distributed following the initial listing. For similar reasons, the market value of publicly held shares requirement will be \$70 million in the case of a company listing in connection with its initial public offering, a company that is affiliated with, or a spinoff from, another company listed on the Nasdaq Global Select Market, and a closed-end management investment company.

Due to their unique nature, closed-end management investment companies will not be required to meet the financial requirements described above.¹² Further, Nasdaq has proposed different liquidity standards for closed-end funds. Finally, if the primary class of a company is included in the Nasdaq Global Select Market, any secondary class of that same company, such as a secondary classes of common or a preferred stock, that qualifies for listing on the Nasdaq Global Market shall also be included in the Nasdaq Global Select Market.

5. Continued Listing

Following initial listing on the Nasdaq Global Select Market, securities will be subject to the continued listing standards that are currently applicable to the Nasdaq Global Market. Thus, companies must satisfy one of the

¹² While Nasdaq plans to list closed-end funds on the Nasdaq Global Select Market, there are not separate listing standards for structured products, index-linked notes, trust issued receipts, SEEDs, units, commodity-backed products, or Exchange Traded Funds.

alternatives for continued listing contained in Nasdaq Rule 4450.¹³

Implementation. Prior to the planned July 1, 2006 launch of the new segment, Nasdaq will review all companies' qualifications and assign qualified Nasdaq Global Market companies to the new Nasdaq Global Select segment.¹⁴ In addition, qualified Nasdaq Capital Market companies will be given the opportunity to be included in the new segment.¹⁵ Thereafter, beginning in 2007, staff of the Nasdaq Listing Qualifications Department will review all Nasdaq Global Market companies' qualifications each October, and qualified Nasdaq Global Market companies will be automatically placed in the new segment the following January.¹⁶ While this review will occur automatically in October, a company may also apply to upgrade at any point. Companies transferring from Nasdaq Global market to the Nasdaq Global Select Market as part of this process will not be assessed entry or application fees. New Nasdaq Global Market listings will also be placed in the Nasdaq Global Select segment if they qualify, although they will be subject to the applicable entry and application fee schedule.

As part of both the initial transfer of companies to the Nasdaq Global Select Market and Nasdaq's ongoing review of companies' eligibility to be included in the Nasdaq Global Select Market, a company that is in a grace or compliance period with respect to

¹³ Note that for inclusion on the Nasdaq Global Select Market, an initial public offering must be able to satisfy one of the alternatives for continued listing on the Nasdaq Global Market as contained in Nasdaq Rule 4450, as well as the requirements for initial inclusion on the Nasdaq Global Select Market. As a result, the initial listing standards will, in all cases, exceed the criteria set forth in Rule 3a51-1(a)(2) of the Act, 17 CFR 240.3a51-1(a)(2).

¹⁴ As a result of this review, no company then on the Nasdaq Global Market would be adversely affected. Note that the fees for the Nasdaq Global Market and the Nasdaq Global Select Market will be the same. See Nasdaq Rule 4510. Fees for securities listed on the Nasdaq Capital Market will continue to differ. See Nasdaq Rule 4520. Any company not qualifying for the Nasdaq Global Select Market would remain on the Nasdaq Global Market.

¹⁵ See Nasdaq Rule 4425(d).

¹⁶ Nasdaq believes that the delay from October to January is necessary to assure adequate time to complete the required review and notify issuers and market participants about the change. Nonetheless, to assure that no company is disadvantaged by this delay, a company that qualifies the Nasdaq Global Select Market when it is reviewed in October will be placed in that segment even if it falls below one or more of the initial listing requirements in January when the actual transfer takes place. However, a company that no longer meets the continued listing requirements for the Nasdaq Global Market in January would not be transferred to the Nasdaq Global Select Market, nor would a company that is delinquent in filing its periodic reports at the time of the transfer or where staff has raised public interest concerns.

qualitative listing standard, such as the cure period allowed to companies that have a vacancy on their audit committee, will be allowed to transfer to the Nasdaq Global Select Market, subject to the continuation of that grace period. If a company is non-compliant with a qualitative listing requirement¹⁷ that does not provide for a grace period or if staff has raised a public interest concern, the company would not be permitted to transfer to the Nasdaq Global Select Market until the underlying deficiency is resolved. A company that is below a quantitative listing requirement even if the company has not been below the requirement for a sufficient period of time to be considered deficient,¹⁸ and a company in a grace or compliance period with respect to a quantitative listing requirement would not be allowed to transfer to the Nasdaq Global Select Market until the underlying deficiency is resolved, nor would any company before a Nasdaq Listing Qualifications Panel.

In connection with the initial transfer of companies to the Nasdaq Global Select Market, Nasdaq proposes to allow (but not require) any Nasdaq-listed company that meets the New York Stock Exchange LLC ("NYSE") initial listing standards as of July 1, 2006, but that does not then qualify for the new segment to be included in the Nasdaq Global Select Market, subject to an 18 month grace period, until January 1, 2008, to achieve compliance.¹⁹ During that grace period, these companies would have to achieve compliance with all applicable criteria for initial listing on the Nasdaq Global Select Market. Any company that has not achieved compliance with all listing criteria for the Nasdaq Global Select Market by January 2008 would be moved to the Nasdaq Global Market at that time.²⁰

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 6 of the Act,²¹ in general, and with Section

¹⁷ Qualitative listing requirements include those requirements contained in Nasdaq Rule 4350.

¹⁸ For example, a security with a closing bid price below \$1 is not considered deficient until the security has closed below \$1 for 30 consecutive business days. Nonetheless, no security with a closing bid price below \$1 would be permitted to list on the Nasdaq Global Select Market, even if it has closed above \$1 in the prior 30 business days.

¹⁹ Certain companies will qualify for the NYSE but not the Nasdaq Global Select Market.

²⁰ Of course if any such company fails to meet the continued listing standards for the Nasdaq Global Market at any point, staff would begin proceedings under the Nasdaq rule 4800 Series with respect to that company.

²¹ 15 U.S.C. 78o-3.

6(b)(6) of the Act,²² in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that changing the name of the Nasdaq National Market to the Nasdaq Global Market will more accurately reflect the international reach and leadership of many of the companies listed on that market and the market itself. Further, Nasdaq believes that the creation of a market segment within the Nasdaq Global Market with higher initial listing standards will protect investors and the public interest and will foster competition among exchange markets.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, is subject to Section 19(b)(3)(A)(iii) of the Act²³ and Rule 19b-4(f)(6) thereunder,²⁴ because the rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the day on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.²⁵

²² 15 U.S.C. 78o-3(b)(6).

²³ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ As required by Rule 19b-4(f)(6)(iii) of the Act, Nasdaq provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.²⁶

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-2006-007 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-2006-007. 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

prior to the date of the filing of the proposed rule change.

²⁶ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C). For the purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on May 8, 2006, the date Nasdaq filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

the principal office of 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-2006-007 and should be submitted on or before June 9, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06-4689 Filed 5-18-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53800; File No. SR-NYSE-2006-26]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Establishment of a NYSE TradeWorks Usage Fee

May 15, 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 April 20, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Exchange has designated this proposal as one establishing or changing a due, fee or other charge imposed by the Exchange under Section 19(b)(3)(A),³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to establish a fee to be paid by Member Organizations⁵ that wish to continue to use the Exchange's proprietary order

management system, NYSE TradeWorksSM ("TradeWorks"),⁶ for the period from the date of this filing (April 20, 2006) until December 31, 2006.

The text of the proposed rule change is available on the NYSE's Web site at <http://www.nyse.com>, the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. NYSE 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

According to the NYSE, it has provided TradeWorks to Member Organizations free of charge. The Exchange expects to be able to introduce a new order management system in place of TradeWorks at the beginning of 2007. In the interim, the Exchange had planned to discontinue TradeWorks as of the end of March 2006, and estimated that this would save it approximately \$2 million over the course of the nine months before the scheduled implementation of the new system. However, a number of Member Organizations expressed a desire to continue to use TradeWorks for the remainder of 2006. To accommodate this request, the Exchange will continue to provide TradeWorks to those Member Organizations who have agreed to bear a portion of the cost of maintaining the system for that period. The Exchange proposes that each Member Organization wishing to continue to use TradeWorks pay a portion of the costs

⁶ According to the Exchange, the NYSE TradeWorks is a messaging system, which enables Member Organizations' broker booths on the floor to communicate with their trading desks and floor brokers. TradeWorks is not used to send orders to the floor. Instead, TradeWorks is primarily used by the brokers' booth clerks to receive requests for "market looks" (quick evaluations of trading interest in a particular security) from the trading desk and route them to the floor brokers to respond to those requests. Telephone conversation between John Carey, Assistant General Counsel, NYSE, and Johnna B. Dumler, Attorney, Division of Market Regulation, Commission, on May 12, 2006.

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See NYSE Rule 2(b).