SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57447; File No. SR-NASDAQ-2007-096)

March 6, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change to Modify the Allocation of the Maximum Time an Adjudicatory Body May Grant a Company to Regain Compliance with the Listing Requirements without Modifying the Maximum Time Available Under Nasdaq Rule 4802

I. Introduction

On December 4, 2007, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to modify the allocation of the maximum time an adjudicatory body may grant an issuer to regain compliance with the listing requirements. The proposed rule change was published for comment in the Federal Register on February 1, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Nasdaq Rule 4800 Series sets forth the procedures for review of a Nasdaq listing determination. Rule 4802(b) provides that an issuer may file a written request for an exception to any of the standards set forth in the Rule 4000 Series at any time during the pendency of a proceeding under the Rule 4800 Series and sets forth the time periods that an adjudicatory body may grant an issuer to regain compliance with the listing requirements ("Exception Period") before they are delisted. Under the current rules, the Listing Qualifications Panel ("Panel") can

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 57214 (January 28, 2008), 73 FR 6228.

grant a maximum Exception Period that is the lesser of 180 days from the date that Nasdaq staff sends a delisting letter ("Staff Determination") or 90 days from the date of the Panel's decision in the matter. Similarly, the Nasdaq Listing and Hearing Review Council ("Listing Council"), when reviewing a Panel decision, can grant a maximum Exception Period that is the lesser of 180 days from the date of the Panel decision on review or 60 days from the date of the Listing Council's decision in the matter. As a result, while the maximum cumulative exception these bodies can grant under these provisions is 360 days from the date of the Staff Determination, Nasdaq notes in its filing that the actual amount of time can vary from issuer to issuer based on how quickly the issuer is scheduled for a hearing and the speed with which the Panel and Listing Council decisions are prepared. The Exchange believes that this variability may create uncertainty for Nasdaq-listed companies and their investors regarding the maximum amount of time available under an exception.

Nasdaq therefore proposes to modify the computation of the maximum Exception Period permitted under Rule 4802(b). The proposed rule change would not, however, increase the maximum time available under the process. The Exchange proposes that the maximum Exception Period that a Panel could provide would be 180 days from the date of the Staff Determination, and the maximum Exception Period that the Listing Council could provide would be 360 days from the date of the Staff Determination. As under the current rules, these adjudicatory bodies would continue to be able to grant an issuer a shorter Exception Period, or no Exception Period at all, based on their analysis of the applicable facts and circumstances.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,[4] 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.[5] The Commission also finds that the proposal is consistent with Section 6(b)(7) of the Act,[6] in that it provides a fair procedure for the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange.

The Commission believes that it is essential for a national securities exchange to have an efficient and fair delisting process for issuers that are not in compliance with Exchange rules and/or the Act. The Commission believes that the proposed rule change has the effect of providing for a maximum Exception Period that is consistent for all issuers and not dependent on the timing of the adjudicatory decision, while at the same time does not extend the overall maximum time allotted for a non-compliant issuer to go through the Nasdaq's current delisting process. Specifically, under the proposal, rather than being dependent on variable events, such as how quickly an issuer is scheduled for a hearing and how promptly the Panel and Listing Counsel

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4 15 U.S.C. 78f(b)(5).

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

6 15 U.S.C. 78f(b)(7).

issue their decisions, the maximum allowable Exception Period will, in all cases, be based on the date of the Staff Determination.

The Commission recognizes that certain individual issuers that have already gone through the Exchange delisting process might have been granted a longer Exception Period had they gone through the process under the proposed new rules. Nevertheless, the Commission emphasizes that the proposed rules do not in any way increase the maximum time that could potentially be available to issuers under Nasdaq's existing delisting process. Further, the Commission believes the proposed rule change should help to ensure fair application of the rule to all issuers, consistent with Section 6(b)(7) of the Act,[7] and should eliminate some uncertainty for issuers regarding the maximum time that may be available under an Exception Period.

Finally, the Commission notes that the new rules provide that the Panel and Listing Counsel can allow an Exception Period not to exceed 180 days or 360 days from the Staff Determination, respectively. Thus, there may still be variation in the Exception Periods that are granted to issuers, because the Panel and Listing Counsel retain the authority to grant an issuer a shorter Exception Period than the maximum allowable period or no Exception Period at all. In this regard, the Commission expects the Panel and Listing Counsel to only grant an Exception Period to those issuers who are likely to regain compliance within the time frame allotted and notes that there is no particular right under Nasdaq rules for issuers to be allotted any particular Exception Period. The Commission expects Nasdaq to continue to delist issuers, who are not

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[7] 15 U.S.C. 78f(b)(7).

meeting Nasdaq continued listing standards, or complying with Nasdaq rules and/or the Act, in a prompt, efficient and fair manner in furtherance of Sections 6(b)(5) and 6(b)(7) of the Act.[8]

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR-NASDAQ-2007-096) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon
Deputy Secretary

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8 15 U.S.C. 78f(b)(5), 78f(b)(7).

9 15 U.S.C. 78s(b)(2).

10 17 CFR 200.30-3(a)(12).