

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54732; File No. SR-NASDAQ-2006-044)

November 9, 2006

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

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 10, 2006, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has filed this proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder<sup>4</sup> which renders the proposal effective upon filing with the Commission. On November 2, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to modify the rules related to closed-end funds listed on the Nasdaq Global Select Market to clarify the treatment of business development companies. The text of

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> In Amendment No. 1, Nasdaq, among other things, added the requirement of \$80 million market value of listed securities for business development companies exempt from registration pursuant to the Investment Company Act of 1940.

the proposed rule change, as amended, is below. Proposed new language is underlined.<sup>6</sup>

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#### 4426. Nasdaq Global Select Market Listing Requirements

(a) No change.

(b) Liquidity Requirements

(1) – (2) No change.

(3) The publicly held shares must have either:

(A) – (B) No change.

(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 registered under the Investment Company Act of 1940 or exempt from registration as a business development company as defined in Section 2 of the Investment Company Act of 1940.

(c) – (d) No change.

(e) Closed End Management Investment Companies.

(1) – (2) No change.

(3) A closed end management investment company that is exempt from registration as a business development company as defined in Section 2 of the Investment Company Act of 1940 shall not be required to meet paragraph (c) of this Rule 4426 but must have a market value of listed securities of at least \$80 million.

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<sup>6</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at [www.complinet.com/nasdaq](http://www.complinet.com/nasdaq).

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. 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 recently amended the listing standards for the Nasdaq Global Select Market, in part, to clarify the treatment of closed-end management investment companies.<sup>7</sup> In that filing, Nasdaq inadvertently failed to describe the rules applicable to closed end management investment companies that elect to be treated as business development companies. This filing clarifies that, like other closed-end funds, business development companies do not have to meet the financial requirements of Nasdaq Rule 4426(c). However, such companies must have a market value of listed securities of at least \$80 million to be eligible for initial listing.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to

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<sup>7</sup> See Securities Exchange Act Release No. 54274 (August 3, 2006), 71 FR 45878 (August 10, 2006) (SR-NASDAQ-2006-020).

<sup>8</sup> 15 U.S.C. 78f.

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

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. Nasdaq believes that the proposed rule change, as amended, clarifies Nasdaq's rules.

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

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

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

Written comments were neither solicited nor received.

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

Because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). 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 prior to the date of the filing of the proposed rule change.

Nasdaq requests that the Commission waive the 30-day operative period under Rule 19b-4(f)(6)(iii).<sup>12</sup> The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay,<sup>13</sup> because the proposal is consistent with the treatment afforded business development companies by other markets.<sup>14</sup>

At any time within 60 days of the filing of such proposed rule change, as amended, 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.<sup>15</sup>

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2006-044 on the subject line.

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<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> See Section 102.04 of the New York Stock Exchange Listed Company Manual.

<sup>15</sup> For 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 the period to commence on November 2, 2006, the date Nasdaq filed Amendment No. 1 to the proposed rule change. See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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-2006-044. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All 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-2006-044 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Nancy M. Morris  
Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).