

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54797; File No. SR-NASDAQ-2006-041)

November 20, 2006

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify an Aspect of the Definition of Independent Director

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 October 3, 2006, The NASDAQ Stock Market LLC (“Nasdaq”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to amend its Rules 4200(a)(15)(B) and IM-4200 to modify an aspect of Nasdaq’s definition of “independent director.” Nasdaq will implement the proposed rule upon approval by the Commission.

The text of the proposed rule change is available on Nasdaq’s Web site at <http://www.nasdaq.com>, at Nasdaq’s principal office, 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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The purpose of the proposed rule change is to modify the definition of an “independent director” in Nasdaq’s rules to reflect recent changes made to Commission rules. The definition of “independent director” is relevant to Nasdaq’s corporate governance standards for listed companies.³

Current Nasdaq Rule 4200(a)(15) and IM-4200 generally preclude a director of a listed company from being considered independent if the director has received more than \$60,000 in compensation from the issuer. Nasdaq states that this threshold was originally based on the disclosure threshold set by the Commission in Regulation S-K, Item 404.⁴ Since the Commission recently adopted a proposal to raise this threshold to \$120,000,⁵ Nasdaq believes that it would be appropriate to raise its independence threshold to the same amount.

When the \$60,000 threshold in the definition of independent director was first adopted in 1999, the proposal to implement the rule stated that “... Nasdaq believes that a compensation threshold of \$60,000 is appropriate as it corresponds to the de minimis threshold for disclosure of relationships that may affect the independent judgment of

³ See Nasdaq Rule 4350(c)-(d).

⁴ 17 CFR 229.404.

⁵ See Securities Exchange Act Release No. 54302A (August 29, 2006), 71 FR 53158 (September 8, 2006).

directors set forth in SEC Regulation S-K, Item 404.”⁶ Nasdaq states that the disclosure amount from Item 404 was chosen for the independence test in Nasdaq’s rules because it was transparent and straightforward for issuers to understand and apply.⁷ Moreover, Nasdaq believes that using this disclosure threshold greatly simplifies its proxy review process for assessing compliance with the independent director requirements. In that regard, with the Commission’s disclosure threshold set at \$120,000, issuers will not be required to disclose lower amounts between \$60,000 and \$120,000, and therefore, in the absence of the proposed rule change, it would be difficult for Nasdaq to monitor the independent director requirement.⁸

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general and with Section 6(b)(5) of the Act,¹⁰ in particular. Section 6(b)(5) requires, among other things, that Nasdaq’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles

⁶ See Securities Exchange Act Release No. 41982 (October 6, 1999), 64 FR 55510 (October 13, 1999).

⁷ Telephone conference among Ira Brandriss and Kristie Diemer, Special Counsels, Commission, and Erika Moore, Assistant General Counsel, Nasdaq, on November 8, 2006 (“Telephone conference with Nasdaq”).

⁸ Nasdaq also notes that while the existing Nasdaq rule prohibits an independent director from receiving payments in excess of \$60,000, the comparable rule of the New York Stock Exchange LLC (“NYSE”) prohibits compensation in excess of \$100,000. See Section 303A.02(b)(ii) of the NYSE Listed Company Manual.

It should be noted that even when an individual has passed the “bright line” test of independence amended by this proposal, a board of directors could still determine on its own that the individual should not be considered independent, depending upon the amount of the compensation and the surrounding circumstances. See Nasdaq Rule 4200(a)(15) and IM-4200. Telephone conference with Nasdaq.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

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. Nasdaq states that the proposed change is consistent with these requirements because it will conform Nasdaq rules to Commission rules and provide a standard that is clear, straightforward and uniform for issuers to understand and apply.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-2006-041 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-2006-041. 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 the

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-2006-041 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.¹¹

Nancy M. Morris
Secretary

¹¹ 17 CFR 200.30-3(a)(12).