

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54854; File No. SR-NASDAQ-2006-046)

December 1, 2006

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Guidance for Adjudicating Clearly Erroneous Transactions under Rule 11890

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 November 7, 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 filed the proposal as a “non-controversial” rule change 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. 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 is providing guidance regarding factors it generally considers in adjudicating clearly erroneous transactions under Nasdaq Rule 11890.

The text of the proposed rule change is below. Proposed new language is underlined.

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**IM-11890-4. Clearly Erroneous Transaction Guidance for Filings under Rule 11890(a) and Single Stock Events under Rule 11890(b)**

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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).

Nasdaq is providing the following guidance on how it generally considers:

- all complaints filed by market participants under Rule 11890(a); and
- many events involving a single security considered on Nasdaq's own motion pursuant to Rule 11890(b).

Nasdaq generally considers a transaction to be clearly erroneous when the print is substantially inconsistent with the market price at the time of execution. In making such a determination, Nasdaq takes into account the circumstances at the time of the transaction, the maintenance of a fair and orderly market, and the protection of investors and the public interest. Participants in Nasdaq are responsible for ensuring that the appropriate price and type of order are entered into Nasdaq's systems. Simple assertion by a firm that it made a mistake in entering an order or a quote, or that it failed to pay attention or to update a quote, may not be sufficient to establish that a transaction was clearly erroneous.

**Numerical factors for review**

Nasdaq primarily considers the execution price of a trade in determining whether it is clearly erroneous.

<b><u>Execution Price</u></b>	<b><u>Range Away From Reference Price</u></b>
<u>\$1.75 and under</u>	<u>Equal to or greater than the minimum threshold required for adjudication under Rule 11890(a)(2)(C)(ii)</u>
<u>Over \$1.75 and up to \$25</u>	<u>10%</u>
<u>Over \$25 and up to \$50</u>	<u>5%</u>

<u>Over \$50</u>	<u>3%</u>
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Nasdaq uses different Reference Prices based on the time of the trade and the listing venue of the security in order to establish an appropriate comparison point. These Reference Prices are detailed below. In unusual circumstances, however, Nasdaq may use a different Reference Price.

<b><u>Time of Trade and Listing Venue</u></b>	<b><u>Reference Price</u></b>
<u>Nasdaq-listed securities for trades executed between 9:30am and 4:00 pm Eastern Time (“Regular Session”)</u>	<u>The best bid (best offer) (“BBO”) in Nasdaq at the time of execution of first share of the disputed order</u>
<u>Non-Nasdaq-listed securities for trades executed during Regular Session and after primary market has posted first two-sided quote</u>	<u>The national BBO at the time of execution of first share of the disputed order</u>
<u>Non-Nasdaq-listed securities for trades executed during Regular Session and before primary market has posted first two-sided quote</u>	<u>The national BBO at the time of execution of first share of the disputed order. If national BBO does not appear substantially related to market, Nasdaq may consider other Reference Prices including the opening trade, indication of interest and first two-sided quote in the primary market (which may occur after the execution) and the closing price for the prior Regular</u>

	<u>Session for the security's primary market.</u>
<u>Nasdaq-listed and non-Nasdaq-listed securities for trades executed after 4:00 pm and before 9:30 am Eastern Time</u>	<u>Closing price of security for the last Regular Session on the security's primary market.</u>

### **Additional Factors**

In occasional circumstances, Nasdaq may consider additional factors in determining whether a transaction is clearly erroneous. These include:

- Material news released for the security
- Suspicious trading activity
- System malfunctions or disruptions
- Locked or crossed markets
- Trading in the security was recently halted/resumed
- The security is an initial public offering
- Volume and volatility for the security
- Stock-split, reorganization or other corporate action
- Validity of consolidated tape trades and quotes and Nasdaq BBO comparison to national BBO
- General volatility of market conditions
- Reason for the error

## **Additional Information Concerning Rule 11890(b)**

Nasdaq may on its own motion review transactions in any security in the event of:

- A disruption or malfunction in the use or operation of any quotation, execution, communication, or trade reporting system owned or operated by Nasdaq and approved by the SEC;
- Extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest.

Consequently, Rule 11890(b) is focused on systemic problems that involve large numbers of parties or trades, or market conditions where it would not be in the best interests of the market to proceed under the processes set forth in Rule 11890(a). Sometimes events involving a single security will meet the standards of Rule 11890(b). However, market participants should not assume that Rule 11890(b) will be available where, for example, they failed to file a complaint within the time periods specified in Rule 11890(a). The rule could be available, however, in cases where a trade not eligible for adjudication under Rule 11890(a) nevertheless could present systemic risks if permitted to stand.

The guidance set forth in IM-11890-4 applies to many events involving a single security adjudicated pursuant to Rule 11890(b). However, Nasdaq may apply the guidance set forth in IM 11890-5 to some events involving a single security, such as some situations where trading activity occurs in multiple market centers and Nasdaq is acting in consultation with other markets.

**IM-11890-5. Clearly Erroneous Transaction Guidance for Multi-Stock Events under Rule**

## **11890(b)**

Nasdaq is providing the following guidance on how it generally considers multi-stock events adjudicated on Nasdaq's own motion pursuant to Rule 11890(b).

Nasdaq generally considers a transaction to be clearly erroneous when the print is substantially inconsistent with the market price at the time of execution. In making such a determination, Nasdaq takes into account the circumstances at the time of the transaction, the maintenance of a fair and orderly market, and the protection of investors and the public interest. Participants in Nasdaq are responsible for ensuring that the appropriate price and type of order are entered into Nasdaq's systems. Simple assertion by a firm that it made a mistake in entering an order or a quote, or that it failed to pay attention or to update a quote, may not be sufficient to establish that a transaction was clearly erroneous.

Nasdaq may on its own motion review transactions in any security in the event of:

- A disruption or malfunction in the use or operation of any quotation, execution, communication, or trade reporting system owned or operated by Nasdaq and approved by the SEC; or
- Extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest.

Consequently, Rule 11890(b) is focused on systemic problems that involve large numbers of parties or trades, or market conditions where it would not be in the best interests of the market to proceed under the processes set forth in Rule 11890(a). Even in cases involving multiple securities, however, market participants should not assume that Rule 11890(b) will be available

where, for example, they failed to file a complaint within the time periods specified in Rule 11890(a). The rule could be available, however, in cases where a trade not eligible for adjudication under Rule 11890(a) nevertheless could present systemic risks if permitted to stand. The determination of whether to adjudicate an event under Rule 11890(b) is made by Nasdaq in its sole discretion pursuant to the terms of the rule.

**Numerical factors for review**

Nasdaq primarily considers the execution prices of the trades in question in determining whether trades should be nullified in a multi-stock event pursuant to Rule 11890(b). Generally all trades more than 10% away from the Reference Price would be clearly erroneous.

NASDAQ uses different Reference Prices based on time of the trade in order to establish an appropriate comparison point. These Reference Prices are detailed below. In unusual circumstances, however, Nasdaq may use a different Reference Price.

<b><u>Time of Trade</u></b>	<b><u>Reference Price</u></b>
<u>All trades executed after the opening of trading during regular market hours and until the end of regular market hours</u>	<u>For Nasdaq-listed securities, the best bid (best offer) (“BBO”) in Nasdaq at the time of execution of first share of the disputed order</u>  <u>For Non-Nasdaq-listed securities, the national BBO at the time of execution of first share of the disputed order</u>
<u>All securities for trades executed:</u>	<u>The closing price of the security for regular</u>

<ul style="list-style-type: none"> <li>• <u>after 4:00 p.m., Eastern Time (ET)</u></li> <li>• <u>before 9:30 a.m., ET</u></li> <li>• <u>during the market opening process</u> <u>for regular market hours</u></li> </ul>	<u>market hours on the security's primary</u> <u>market.</u>
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In occasional circumstances, Nasdaq may consider additional factors in determining whether the transactions are clearly erroneous. These include:

- Material news released for individual securities
- Suspicious trading activity

Nasdaq may also apply the guidance set forth in IM 11890-5 to some events involving a single security, such as some situations where trading activity occurs in multiple market centers and Nasdaq is acting in consultation with other markets.

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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 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 is adopting Interpretive Material under Nasdaq Rule 11890 to provide guidance with regard to its consideration of transactions that may be clearly erroneous. Paragraph (a) of Nasdaq Rule 11890 allows market participants to petition Nasdaq to nullify or modify trades that they allege to be clearly erroneous. Paragraph (b) allows Nasdaq to nullify or modify trades on its own motion in the event of a disruption or malfunction in the use or operation of Nasdaq systems or extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. Nasdaq is providing one set of Interpretive Material relating to Nasdaq Rule 11890(a) and many events involving a single stock under Rule 11890(b), and a second set of Interpretive Material relating to events involving multiple stocks under Nasdaq Rule 11890(b). In each case, the Interpretive Material is intended to provide market participants with insights into the factors generally considered by Nasdaq in determining whether to nullify or modify trades under the rule.<sup>5</sup>

At its basic level, Nasdaq Rule 11890 is intended to allow Nasdaq to adjudicate disputes between firms as to the status of a trade, with a goal of preventing unjust enrichment of one market participant at the expense of another in circumstances where the terms of a trade are

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<sup>5</sup> The Interpretive Material includes language relating to trades in non-Nasdaq securities. Although Nasdaq is not yet operative as an exchange in these securities, Nasdaq is filing this language in anticipation of an operational date for these securities in the near future. Because Nasdaq’s parent company, The Nasdaq Stock Market, Inc. (“Nasdaq Inc.”), currently trades non-Nasdaq securities pursuant to authority delegated by the National Association of Securities Dealers, Inc. (“NASD”) and administers NASD Rule 11890 with respect to these securities pursuant to that delegation, Nasdaq Inc. is also filing a version of the Interpretive Material as an NASD Rule. See SR-NASD-2006-123 (November 7, 2006).

clearly out of line with objective market conditions for a security. Thus, Nasdaq Rule 11890(a) allows the party that believes it made a significant error to petition for an adjudication, and in appropriate circumstances, to be relieved of the obligation to settle the trade. The rule may not be used as an insurance policy against trades that merely lose money, however. Accordingly, the NASD's predecessor rule was amended in 2005<sup>6</sup> to establish a conclusive presumption that a trade is not eligible for review under Nasdaq Rule 11890(a) unless its price deviates from the inside market for the security by an amount in excess of certain bright-line numerical thresholds. This aspect of the rule reflects the view that it is preferable to promote market certainty and accountability by market participants by allowing all trades close to the inside market to stand, even if a particular trade may arguably have been caused by a market participant error.

Nevertheless, in an environment of continual increases in the scope and speed of electronic trading, Nasdaq Rule 11890(b) provides an important safeguard against market disruptions caused by trader errors or system malfunctions that result in executions affecting multiple market participants and/or securities. Thus, Nasdaq Rule 11890(b) mitigates systemic risk by providing a mechanism to break erroneous trades that may have a serious detrimental effect on one or more market participants. Nasdaq Rule 11890(b) has been used both with respect to events affecting a single stock, as where an erroneous order causes a large number of trades involving multiple market participants to execute, and events affecting multiple stocks, as where a system malfunction results in a more widespread problem. Because of its focus on system malfunctions and overall market integrity, market participants should not assume that Nasdaq Rule 11890(b) will be used where, for example, they failed to file a complaint within the time periods specified in Nasdaq Rule 11890(a). However, the rule could be available in cases

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<sup>6</sup> See Securities Exchange Act Release No. 52141 (July 27, 2005), 70 FR 44709 (August 3, 2005) (SR-NASD-2004-009).

where a trade not eligible for adjudication under Nasdaq Rule 11890(a) nevertheless could present systemic risks if permitted to stand. Thus, for example, if a firm's erroneous trades had the potential to cause a firm's insolvency but its petition was untimely, Nasdaq might consider using Nasdaq Rule 11890(b)(ii) to prevent the insolvency.<sup>7</sup>

Thus, under both parts of the rule, Nasdaq strives to strike a balance between certainty and flexibility, to ensure that (i) similar situations are addressed in a similar manner, (ii) market participants do not attempt to use the rule to attain unfair advantage, and (iii) the rule is not written or construed in a way that may prevent action necessary to protect market quality or prevent systemic problems and thereby maintain a fair and orderly market and protect investors and the public interest. With these considerations in mind, Nasdaq believes that the Interpretive Material allows market participants to achieve a better understanding of Nasdaq's application of the rule without limiting its adaptability. In effect, the Interpretive Material describes Nasdaq's understanding of the precedents that have emerged through years of adjudications under the rule; as with judicial precedents, they serve as a guide to future cases without constricting adaptability to new or unique fact patterns.

Both sets of Interpretive Material reflect that Nasdaq generally considers a transaction to be clearly erroneous when the print is substantially inconsistent with the market price at the time of execution. In making such a determination, Nasdaq takes into account the circumstances at the time of the transaction, the maintenance of a fair and orderly market, and the protection of investors and the public interest. The Interpretive Material also stresses that participants in Nasdaq are responsible for ensuring that the appropriate price and type of order are entered into

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<sup>7</sup> As is the case in all instances where a firm's erroneous trades raise questions as to the adequacy of its internal controls, Nasdaq would also refer the firm for investigation by the NASD in its capacity as Nasdaq's regulatory services provider.

Nasdaq’s systems. Simple assertion by a firm that it made a mistake in entering an order or a quote, or that it failed to pay attention or to update a quote, may not be sufficient to establish that a transaction was clearly erroneous.

IM-11890-4 concerns all complaints filed by market participants under Nasdaq Rule 11890(a), as well as many events involving a single security considered on Nasdaq’s own motion pursuant to Nasdaq Rule 11890(b). Nasdaq primarily considers the execution price of a trade in determining whether it is clearly erroneous. Specifically, Nasdaq generally uses the following guidelines:<sup>8</sup>

<b>Execution Price</b>	<b>Range Away From Reference Price</b>
\$1.75 and under	Equal to or greater than the minimum threshold required for adjudication under Rule 11890(a)(2)(C)(ii)
Over \$1.75 and up to \$25	10%
Over \$25 and up to \$50	5%
Over \$50	3%

Thus, the degree of deviation from a specified reference price needed for a trade to be declared clearly erroneous depends on the execution price: securities trading at lower prices require a higher percentage deviation before they will be considered clearly erroneous, since the normal daily trading ranges for these securities generally involve larger percentage movements. In the case of securities priced at \$1.75 or below, a trade will generally be considered clearly erroneous

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<sup>8</sup> Nasdaq stated that at all execution prices, the guidelines are equal to or greater than the minimum threshold required for adjudication under Rule 11890(a)(2)(C)(ii). Telephone conversation by and between John Yetter, Senior Associate General Counsel, Nasdaq,

if it is eligible for adjudication at all under the minimum thresholds under Nasdaq Rule 11890(a)(2)(C)(ii), since these thresholds require significant percentage deviation before a low-priced trade is eligible.

Nasdaq uses different Reference Prices based on time of the trade and the listing venue of the security in order to establish an appropriate comparison point. These Reference Prices are detailed below. In unusual circumstances, however, Nasdaq may use a Reference Price not specifically described in the Interpretive Material. For example, in a case where material news about a security was released after market close for the security and a trade occurring after 4:00 p.m. and before 9:30 a.m. is at issue, it may be more appropriate to use a Reference Price derived from after-hours trading activity than to use the closing price of the security. Similarly, in the case of several large orders that execute at multiple prices, a Reference Price based on a weighted average of the BBO at relevant times may be more appropriate than a Reference Price based solely on the BBO immediately prior to the execution of the first share of the order.

<b>Time of Trade and Listing Venue</b>	<b>Reference Price</b>
Nasdaq-listed securities for trades executed between 9:30am and 4:00 pm Eastern Time (“Regular Session”)	The best bid (best offer) (“BBO”) in Nasdaq at the time of execution of first share of the disputed order
Non-Nasdaq-listed securities for trades executed during Regular Session and after primary market has posted first two-sided quote	The national BBO at the time of execution of first share of the disputed order

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and Terri Evans, Special Counsel and David Hsu, Special Counsel, Division of Market Regulation, Commission, on November 17, 2006.

<p>Non-Nasdaq-listed securities for trades executed during Regular Session and before primary market has posted first two-sided quote</p>	<p>The national BBO at the time of execution of first share of the disputed order. If national BBO does not appear substantially related to market, Nasdaq may consider other Reference Prices including the opening trade, indication of interest and first two-sided quote in the primary market (which may occur after the execution) and the closing price for the prior Regular Session for the security's primary market.</p>
<p>Nasdaq-listed and non-Nasdaq-listed securities for trades executed after 4:00 pm and before 9:30 am Eastern Time</p>	<p>Closing price of security for the last Regular Session on the security's primary market.</p>

In occasional circumstances, Nasdaq may consider additional factors in determining whether a transaction is clearly erroneous. These include:

- Material news released for the security
- Suspicious trading activity
- System malfunctions or disruptions
- Locked or crossed markets
- Trading in the security was recently halted/resumed
- The security is an initial public offering
- Volume and volatility for the security

- Stock-split, reorganization or other corporate action
- Validity of consolidated tape trades and quotes and Nasdaq BBO comparison to national BBO
- General volatility of market conditions
- Reason for the error

IM-11890-5 concerns multi-stock events adjudicated on Nasdaq’s own motion pursuant to Nasdaq Rule 11890(b). In such cases, Nasdaq primarily considers the numerical factors of the execution prices in determining whether trades should be nullified. Generally all trades more than 10% away from the Reference Price would be clearly erroneous.<sup>9</sup>

Nasdaq uses different Reference Prices based on time of the trade in order to establish an appropriate comparison point. These Reference Prices are detailed below. In unusual circumstances, however, Nasdaq may use a different Reference Price.

<b>Time of Trade</b>	<b>Reference Price</b>
All trades executed after the opening of trading during regular market hours and until the end of regular market hours	For Nasdaq-listed securities, the best bid (best offer) (“BBO”) in Nasdaq at the time of execution of first share of the disputed order  For Non-Nasdaq-listed securities, the national BBO at the time of execution of

<sup>9</sup> Nasdaq generally uses 10% threshold in these cases, in contrast to the sliding scale of percentages described in IM-11890-4, because multi-stock events adjudicated under Rule 11890(b) generally require coordination with other venues trading the stock in order to ensure consistent treatment of trades across all venues affected by the event. Nasdaq has found that the 10% threshold is generally used by other venues and therefore facilitates a coordinated and timely response.

	first share of the disputed order
<p>All securities for trades executed:</p> <ul style="list-style-type: none"> <li>• after 4:00 p.m., Eastern Time (ET)</li> <li>• before 9:30 a.m., ET</li> <li>• during the market opening process for regular market hours</li> </ul>	The closing price of the security for regular market hours on the security's primary market.

In occasional circumstances, Nasdaq may consider additional factors in determining whether the transactions in a multi-stock event are clearly erroneous, including material news released for individual securities or suspicious trading activity.

The guidance set forth in IM-11890-4 will apply to many events involving a single security adjudicated pursuant to Nasdaq Rule 11890(b). However, Nasdaq may apply the guidance set forth in IM-11890-5 to some events involving a single security, such as some situations where trading activity occurs in multiple market centers and Nasdaq is acting in consultation with other markets.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>10</sup> in general, and with Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. The Interpretive Materials will promote market participants' understanding of Nasdaq's application of Nasdaq Rule 11890,

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).



thereby promoting greater certainty and accountability.

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.

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 is subject to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder<sup>13</sup> because the proposal: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

Nasdaq provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the filing promotes market participants' understanding of Nasdaq's

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

application of Nasdaq Rule 11890, thereby promoting greater certainty with regard to the administration of the rule. For these reasons, the Commission designates the proposal to be effective upon filing with the Commission.<sup>14</sup>

At any time within 60 days of the filing of the 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.<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 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-2006-046 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.

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<sup>14</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

All submissions should refer to File Number SR-NASDAQ-2006-046. 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-2006-046 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>

Florence E. Harmon  
Deputy Secretary

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