

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55463; File No. SR-NASDAQ-2006-041)

March 13, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to Proposed Rule Change as Modified by Amendment No. 1 to Modify an Aspect of the Definition of Independent Director

I. Introduction

On October 3, 2006, 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 an aspect of Nasdaq’s definition of “independent director.” The proposed rule change was published for comment in the Federal Register on November 28, 2006.³ The Commission received no comment letters on the proposal as published. On March 2, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change. The Commission is publishing notice of Amendment No. 1 to the proposed rule change and granting approval to the proposed rule change as modified by Amendment No. 1 on an accelerated basis.

II. Description of the Proposed Rule Change

Under current Nasdaq Rule 4200(a)(15)(B), a director of a listed issuer is generally precluded from being considered independent if that director has received more than \$60,000 in compensation from the issuer during any period of twelve consecutive

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 54797 (November 20, 2006), 71 FR 68855 (“Notice”).

months within the three years preceding the determination of independence.⁴ The proposed rule change would raise this amount to \$100,000, the same figure specified by the New York Stock Exchange (“NYSE”) in its comparable independence standard.⁵

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to Nasdaq,⁶ and, in particular, with Section 6(b)(5) of the Act.⁷

The Commission believes that the proposed rule change is reasonable and would align Nasdaq’s “bright line” test with respect to a director’s receipt of compensation from the issuer more closely with the equivalent rule of the NYSE. The Commission notes that, under the proposed rule change, a Nasdaq listed issuer’s board would still have the responsibility to make an affirmative determination that an independent director has no relationship whatsoever with the issuer that would impair his or her independence, even when the director has passed the “bright line” test of the rule and has not accepted (and has no family member who has accepted) more than \$100,000 in compensation from the issuer during the relevant period.⁸

IV. Solicitation of Comments Concerning the Proposed Rule Change

⁴ See Nasdaq Rule 4200(a)(15)(b).

⁵ See Section 303A.02(b)(ii) of the NYSE Listed Company Manual. See also Amendment No. 1 to the proposed rule change.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ See Nasdaq Rule 4200(a)(15) and IM-4200 – “Definition of Independence.” See also Notice, supra note 3, at note 8.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change, 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, 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 Exchange. 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].

V. Accelerated Approval of the Proposed Rule Change

Nasdaq has requested that the Commission approve the proposed rule change as modified by Amendment No. 1 on an accelerated basis.⁹ Pursuant to Section 19(b)(2) of the Act,¹⁰ the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

The Commission hereby finds good cause to approve the proposed rule change as amended by Amendment No. 1 on an accelerated basis. The proposed rule change as published in the Notice would have raised the amount of compensation that precludes a director from being an “independent director” from \$60,000 to \$120,000. Amendment No. 1 established the compensation threshold at \$100,000. The Commission believes that this change raises no new regulatory issues and aligns Nasdaq’s rule with the equivalent rule of the NYSE. The Commission believes that no reasonable purpose would be served by delaying implementation of the proposal.

⁹ See Amendment No. 1.

¹⁰ 15 U.S.C. 78s(b)(2).

Accordingly, pursuant to Section 19(b)(2) of the Act,¹¹ the Commission finds good cause to approve the proposed rule change as modified by Amendment No. 1 prior to the 30th day after notice in the Federal Register.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (File No. SR-NASDAQ-2006-041), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹¹ Id.

¹² Id.

¹³ 17 CFR 200.30-3(a)(12).