

settlement credits. When a netting member has not satisfied its clearing fund deficiency payment by approximately 9:50 a.m., GSD must remove that member from the automated NSS process and settle with them manually outside the NSS system. Such manual processing results in administrative burdens for FICC staff and undermines the efficiencies FICC sought to achieve by using the NSS system.

For this reason, FICC proposes to change the timing of GSD clearing fund deficiency calls to 9:30 a.m. from 10:30 a.m.<sup>5</sup> Doing so would enable GSD to resolve any unsatisfied deficiencies with netting members well in advance of the 10 a.m. funds-only settlement process that takes place through NSS and would allow GSD to better utilize the automated NSS process. GSD intends to implement the new timeframe for clearing fund deficiency calls on January 1, 2007.

As is currently the case in its rules, FICC will reserve the right to extend this deadline on days on which there are operational or systems difficulties that would reasonably prevent members from satisfying a deficiency call by 9:30 a.m.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>6</sup> and the rules and regulations thereunder because it will improve the efficiency of FICC's margining and settlement processes and therefore will help FICC to safeguard securities and funds in its possession or for which it is responsible.

#### *A. Self-Regulatory Organization's Statement on Burden on Competition*

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

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

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission of any written comments it receives.

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

Within thirty-five 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 ninety 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 the self-regulatory organization 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, 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 No. SR-FICC-2006-17 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 No. SR-FICC-2006-17. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at FICC's principal office and on FICC's Web site at <http://ficc.com/gov/gov.docs.jsp?NS-query=#rf>. 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 submission should refer to File No. SR-FICC-2006-17 and should be submitted on or before December 27, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-20658 Filed 12-5-06; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54825; File No. SR-NASDAQ-2006-047]

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Clarify the Process Surrounding a Reverse Merger**

November 28, 2006.

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 13, 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 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 clarify the process an issuer must follow when applying for initial listing in connection with a transaction that is a reverse merger. Nasdaq would implement the proposed rule immediately upon approval. The text of the proposed rule change is below. Proposed new language is in *italic*; proposed deletions are in [brackets].<sup>3</sup>

\* \* \* \* \*

#### **4340. Application for Re-Listing by Listed Issuers**

(a) Reverse Mergers. An issuer must apply for initial listing [following] *in*

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://www.complinet.com/nasdaq>.

<sup>5</sup> This rule filing does not affect a netting member's obligation to make its funds-only settlement payment to FICC on time.

<sup>6</sup> 15 U.S.C. 78q-1.

connection with a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of this rule, such a transaction is referred to as a "Reverse Merger"). In determining whether a Reverse Merger has occurred, Nasdaq shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. Nasdaq shall also consider the nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity. *The issuer must submit an application for the post-transaction entity with sufficient time to allow Nasdaq to complete its review before the transaction is completed. If the issuer's application for initial listing has not been approved prior to consummation of the transaction, Nasdaq will issue a Staff Determination Letter as set forth in Rule 4804 and begin delisting proceedings pursuant to the Rule 4800 Series.*

(b) No change.

\* \* \* \* \*

#### IM-4350-1. Interpretive Material Regarding Future Priced Securities

##### Summary

No change.

##### How the Rules Apply Shareholder Approval

No change.

##### Voting Rights

No change.

##### The Bid Price Requirement

No change.

##### Listing of Additional Shares

No change.

##### Public Interest Concerns

No change.

##### Reverse Merger

Rule 4340(a) provides:

An issuer must apply for initial listing [following] *in connection with* a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of this rule, such a transaction is referred to as a "Reverse Merger"). In determining whether a Reverse Merger has occurred, Nasdaq shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. Nasdaq shall also consider the nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity. *The*

*issuer must submit an application for the post-transaction entity with sufficient time to allow Nasdaq to complete its review before the transaction is completed. If the issuer's application for initial listing has not been approved prior to consummation of the transaction, Nasdaq will issue a Staff Determination Letter as set forth in Rule 4804 and begin delisting proceedings pursuant to the Rule 4800 Series.*

This provision, which applies regardless of whether the issuer obtains shareholder approval for the transaction, requires issuers to qualify under the initial listing standards [following] in connection with a Reverse Merger.<sup>4</sup> It is important for issuers to realize that in certain instances, the conversion of a Future Priced Security may implicate this provision. For example, if there is no limit on the number of common shares issuable upon conversion, or if the limit is set high enough, the exercise of conversion rights under a Future Priced Security could result in a Reverse Merger with the holders of the Future Priced Securities. In such event, an issuer may be required to re-apply for initial listing and satisfy all initial listing requirements.

Footnotes to IM-4350-1: No change.

\* \* \* \* \*

## 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 Rule 4340(a) requires that an issuer must apply for initial listing following a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of the rule,

such a transaction is referred to as a "Reverse Merger"). Nasdaq originally adopted this rule in 1993 to address concerns associated with non-Nasdaq entities seeking a "backdoor listing" on Nasdaq through a business combination involving a Nasdaq issuer.<sup>4</sup> In these combinations, a non-Nasdaq entity purchased a Nasdaq issuer in a transaction that resulted in the non-Nasdaq entity obtaining a Nasdaq listing without qualifying for initial listing or being subject to the background checks and scrutiny normally applied to issuers seeking initial listing. The rule was amended in 2001 to define "Reverse Merger" and to provide clarification regarding the factors used by Nasdaq staff to determine if a transaction should be considered a Reverse Merger.<sup>5</sup>

Among other things, the Reverse Merger rule is intended to allow Nasdaq staff to review the post-transaction entity before the Reverse Merger transaction is consummated, thereby allowing staff to confirm that the post-transaction entity will meet all initial criteria at the time it begins trading. While Nasdaq has historically taken the position that the rule requires companies to comply with the initial listing requirements prior to the consummation of a Reverse Merger, the rule is not clear in that regard. To avoid issuer confusion, simplify compliance, and provide additional transparency, Nasdaq proposes to amend Nasdaq Rule 4340(a) to state that an issuer must apply for initial listing prior to consummating a Reverse Merger transaction. Nasdaq also proposes to make conforming changes to Nasdaq IM-4350-1, which discusses the Reverse Merger rules.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act<sup>6</sup> in general and with Sections 6(b)(5) of the Act<sup>7</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 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. The

<sup>4</sup> See Securities Exchange Act Release No. 44067 (March 13, 2001), 66 FR 15515 (March 19, 2001) (SR-NASD-01-01).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>4</sup> See Securities Exchange Act Release No. 32264 (May 4, 1993), 58 FR 27760 (May 11, 2006) (SR-NASD-93-7).

proposed rule change would clarify Nasdaq's listing requirements related to Reverse Mergers and thereby provide additional transparency to the rules. This proposed clarification is designed to protect investors and the public interest by allowing Nasdaq to confirm that the post-transaction entity will meet all initial criteria at the time it begins trading.

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

Nasdaq does not believe that the proposed rule change 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**

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 the self-regulatory organization 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2006-047 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-2006-047. 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-2006-047 and should be submitted on or before December 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Nancy M. Morris,**  
*Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54822; File No. SR-NSCC-2006-11]

#### **Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend its Rules and Procedures With Respect to Clearing Fund Collateral**

November 28, 2006.

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 3, 2006, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change seeks to modify NSCC's Rules with respect to Clearing Fund collateral in order to improve liquidity and to minimize risk for NSCC and its members. NSCC has also made certain technical corrections to the text of Rule 4 to conform the rule to actual practice.<sup>3</sup>

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>4</sup>

##### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Under NSCC's Rules,<sup>5</sup> members are required to make deposits to the Clearing Fund. The amount of each member's required deposit ("Required Deposit") is fixed by NSCC in accordance with one or more formulas. A member's Required Deposit may be satisfied with a cash deposit, and a portion of a member's Required Deposit may be evidenced by an open account indebtedness secured by Qualifying Bonds and/or one or more irrevocable letters of credit issued under certain guidelines established within NSCC's Rules.<sup>6</sup> NSCC haircuts the value that Qualifying Bonds receive when used to

<sup>3</sup> For example, the reference in Rule 4, Section 1 to the "market value" of Qualifying Bonds has been corrected to accurately reference the "collateral value" of Eligible Clearing Fund Securities.

<sup>4</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>5</sup> Rule 4 (Clearing Fund), Procedure XV (Clearing Fund Formula and Other Matters), and Annex 1 (Version 2 of Procedure XV—Limited Applicability).

<sup>6</sup> Mutual Fund/Insurance Service Members are not permitted to use Qualifying Bonds or irrevocable letters of credit to satisfy their Required Deposits.