

align the Nasdaq rule with a corresponding rule of the New York Stock Exchange LLC ("NYSE") relating to corporate governance standards of listed issuers.<sup>7</sup> The proposal also would revise various other provisions of Nasdaq's corporate governance standards, including by amending several provisions to conform more closely with the NYSE's corporate governance standards for its listed issuers.<sup>8</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-NASDAQ-2006-021), as amended, be, and hereby is, approved.<sup>10</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson**

*Assistant Secretary.*

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\$60,000 from the company, rather than payments. Nasdaq believes that, based on its experience, a revised rule based on compensation rather than payments more directly bears upon a director's independence.

<sup>7</sup> See Section 303A.02(b)(ii) of the NYSE Listed Company Manual. Proposed changes to Nasdaq's IM-4200 would provide examples of non-compensatory payments, such as interest related to banking services, insurance proceeds, and non-preferential loans from financial institutions. At the same time, the proposed changes to IM-4200 would make clear that payments made by the company for the benefit of the director—such as political contributions to the campaign of a director or a family member and loans to a director or family member that are on terms not generally available to the public—could be considered indirect compensation so as to preclude a finding that the director was independent.

<sup>8</sup> See Notice, *supra* note 3. These other changes relate to: status of independent directors who served as interim officers for a maximum one-year period; the definition of "non-executive employee;" inclusion of parent and subsidiary within the meaning of "company;" and an exception in Nasdaq's standards relating to audit committees for certain issuers that have a listed parent, consistent with a similar exception contained in Rule 10A-3 under the Act, 17 CFR 240.10A-3.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> Nasdaq advised that it will implement the proposed rule change immediately upon approval by the Commission. Nasdaq represented that, to facilitate the transition to the new rules, any director that would be considered independent under the existing rules prior to the rule change, but that no longer would be considered independent under the new rules, would be permitted to continue to serve on the issuer's Board of Directors as an independent director until no later than 90 days after the approval of this rule filing. The Commission notes that this transition period does not affect an issuer's obligation to comply with the requirements of Rule 10A-3 under the Act relating to audit committees.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54581; File No. SR-NASDAQ-2006-039]

### Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Reporting Required When Nasdaq Lists the Security of an Affiliate

October 6, 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 September 28, 2006, the NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") 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. Pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> Nasdaq has designated this proposal as "non-controversial," which renders the proposed rule change 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 the Substance of the Proposed Rule Change

Nasdaq is proposing a proposed rule change to modify the reporting required when Nasdaq lists the security of an affiliate. The text of the proposed rule change is available on Nasdaq's Web site (<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 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.

<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).

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

##### 1. Purpose

Nasdaq is proposing to revise Rule 4370 to file on a quarterly basis, rather than on a monthly basis, the report detailing Nasdaq's monitoring of (1) the Nasdaq Affiliate's compliance with the provisions of Rule 4200, 4300 and 4400 Series (which include quantitative and qualitative listing requirements) and (2) the trading of the Affiliate Security, including summaries of all related surveillance alerts, complaints, regulatory referrals, busted or adjusted trades, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data.

The proposed rule change is similar to a recent New York Stock Exchange rule filing.<sup>5</sup> Additionally, Nasdaq notes that providing these reports on a quarterly rather than monthly basis will not affect the compliance monitoring done by Nasdaq and NASD, but will make the reporting less burdensome.<sup>6</sup> Further, by adopting a quarterly reporting cycle, the reports will be more closely aligned with the issuer's financial reporting cycle and NASD's review and surveillance cycle.

In addition, the proposed rule change would permit Nasdaq to file a report with the Commission within five business days of providing notice to the Nasdaq Affiliate of its non-compliance with Nasdaq's listing requirements rather than at the same time that Nasdaq notifies the Nasdaq Affiliate. This proposed change is also similar to language in the recent New York Stock Exchange rule filing referenced above.

Finally, the proposed rule change would clarify that the applicable provisions of the Rule 4200, 4300, and 4400 Series that are the subject of Nasdaq's reports are those related to the listing requirements.

Nasdaq will implement the proposed rule change 30 days after filing.

##### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act<sup>7</sup> in

<sup>5</sup> See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11270 (March 6, 2006) (SR-NYSE-2005-77), adopting NYSE Rule 497.

<sup>6</sup> The NASD performs regulatory services on behalf of Nasdaq pursuant to a regulatory services contract. Telephone conversation between Jonathan Cayne, Associate General Counsel, Nasdaq, and Rebekah Liu, Special Counsel, Division of Market Regulation, Commission, on October 6, 2006.

<sup>7</sup> 15 U.S.C. 78f.

general, and with Section 6(b)(5) of the Act<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

#### *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**

This proposed rule change is filed pursuant to paragraph (A) of Section 19(b)(3) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder. The proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Nasdaq provided the Commission written 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 the proposed rule change. 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>11</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-2006-039 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-2006-039. 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-2006-039 and should be submitted on or before November 6, 2006

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54566; File No. SR-NASD-2006-066]

### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Allow Certain Institutional Customers To Elect Not To Receive Account Statements**

October 3, 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 May 23, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On August 17, 2006, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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**

NASD is proposing to amend NASD Rule 2340 to relieve members from the requirement to send quarterly account statements to customer accounts that are carried solely for the purpose of execution on a delivery versus payment and receive versus payment ("DVP/RVP") basis, provided certain conditions are met.<sup>4</sup> Below is the text of the proposed rule change.<sup>5</sup> Proposed new language is in *italic*; proposed deletions are in [brackets].<sup>6</sup>

\* \* \* \* \*

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

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

<sup>3</sup> In Amendment No. 1, NASD proposed additional changes to the text of proposed amended Rule 2340, which are incorporated in the proposed rule text below.

<sup>4</sup> The proposed rule change is similar to a rule change proposed by the New York Stock Exchange, Inc. (now known as New York Stock Exchange LLC). See Securities Exchange Act Release No. 53826 (May 18, 2006), 71 FR 30211 (May 25, 2006).

<sup>5</sup> The text includes minor technical changes to proposed paragraph (b)(4) pursuant to a telephone conversation between Shirley Weiss, Associate General Counsel, NASD, and Brice Prince, Special Counsel, Division of Market Regulation, Commission, on October 3, 2006.

<sup>6</sup> The changes to Rule 2340 proposed in this rule filing are marked to the current version of the rule text as recently amended in SR-NASD-2004-171. See Securities Exchange Act Release No. 54411 (Sept. 7, 2006), 71 FR 54105 (Sept. 13, 2006).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> See 15 U.S.C. 78(b)(3)(C).

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