

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57842; File No. SR-NASDAQ-2008-031)

May 20, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Rule 4350 Related to the Direct Registration Programs

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 April 1, 2008, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by Nasdaq. 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

Nasdaq proposes to modify the requirement for a foreign private issuer to be eligible to rely on an exception to the requirement to participate in a Direct Registration Program and to clarify the applicability of the requirement to book-entry-only securities. Nasdaq will implement the proposed change related to book-entry-only securities immediately upon approval and the proposed change affecting foreign private issuers on March 31, 2009.

The text of the proposed rule change is below. Proposed new language is in underlined; proposed deletions are in brackets.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Rule 4350. Qualitative Listing Requirements for Nasdaq Issuers Except for Limited Partnerships**(a) Applicability**

(1) **Foreign Private Issuers.** A foreign private issuer may follow its home country practice in lieu of the requirements of Rule 4350, provided, however, that such an issuer shall: comply with Rules 4350(b)(1)(B), 4350(j) and 4350(m), have an audit committee that satisfies Rule 4350(d)(3), and ensure that such audit committee's members meet the independence requirement in Rule 4350(d)(2)(A)(ii). In addition, a foreign private issuer must be eligible to participate in a Direct Registration Program, as required by Rule 4350(l), unless prohibited from complying by a law or regulation in its home country. A foreign private issuer that follows a home country practice in lieu of one or more provisions of Rule 4350 shall disclose in either its annual reports filed with the Commission or on its website each requirement of Rule 4350 that it does not follow and shall describe the home country practice followed by the issuer in lieu of such requirements. In addition, a foreign private issuer making its initial public offering or first U.S. listing on Nasdaq shall make the same disclosures in either its registration statement or on its website.

(2) – (5) No change.

(b) – (k) No change.

(l) Direct Registration Program

(1) All securities initially listing on Nasdaq on or after January 1, 2007, must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act. This provision does not extend to: (i) additional classes of securities of companies which already have securities listed on Nasdaq; (ii) companies which immediately prior to such

listing had securities listed on another registered securities exchange in the U.S; or, (iii) [non-equity] securities which are book-entry-only.

(2)(A) Except as indicated in paragraph (2)(B) below, on [On] and after March 31, 2008, all securities listed on Nasdaq (except [non-equity] securities which are book-entry-only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act.

(B) Until March 31, 2009, a foreign private issuer may follow its home country practice in lieu of the requirements of this Rule 4350(1), provided, however, that such an issuer must follow the requirements of Rule 4350(a) and IM-4350-6 for doing so. Thereafter, the listed securities of such issuers (except securities which are book-entry-only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act unless prohibited from complying by a law or regulation in its home country.

(3) No change.

(m) – (n) No change.

IM 4350-6 Applicability

1. **Foreign Private Issuer Exception and Disclosure.** A foreign private issuer (as defined in Rule 3b-4 under the Exchange Act) listed on Nasdaq may follow the practice in such issuer's home country (as defined in General Instruction F of Form 20-F) in lieu of some of the provisions of Rule 4350, subject to several important exceptions. First, such an issuer shall comply with Rule 4350(b)(1)(B) (Disclosure of Going Concern Opinion), Rule 4350(j) (Listing Agreement) and Rule 4350(m) (Notification of Material Noncompliance). Second, such an issuer shall have an audit

committee that satisfies Rule 4350(d)(3). Third, members of such audit committee shall meet the criteria for independence referenced in Rule 4350(d)(2)(A)(ii) (the criteria set forth in Rule 10A-3(b)(1), subject to the exemptions provided in Rule 10A-3(c) under the Exchange Act). Fourth, a foreign private issuer must comply with Rule 4350(l) (Direct Registration Program) unless prohibited from complying by a law or regulation in its home country. Finally, a foreign private issuer that elects to follow home country practice in lieu of a requirement of Rule 4350 shall submit to Nasdaq a written statement from an independent counsel in such issuer's home country certifying that the issuer's practices are not prohibited by the home country's laws and, in the case of a company prohibited from complying with Rule 4350(l), certifying that a law or regulation in the home country prohibits such compliance. In the case of new listings, this certification is required at the time of listing. For existing issuers, the certification is required at the time the company seeks to adopt its first non-compliant practice. In the interest of transparency, the rule requires a foreign private issuer to make appropriate disclosures in the issuer's annual filings with the Commission (typically Form 20-F or 40-F), and at the time of the issuer's original listing in the United States, if that listing is on Nasdaq, in its registration statement (typically Form F-1, 20-F, or 40-F); alternatively, the issuer may provide these disclosures in English on its website. The issuer shall disclose each requirement of Rule 4350 that it does not follow and include a brief statement of the home country practice the issuer follows in lieu of the requirements of Rule 4350. If the disclosure is only available on the website, the annual report and registration statement should so state and provide the web address at which the information may be obtained.

2. – 4. No change.

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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 these statements.⁴

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

(1) Purpose

Nasdaq proposes to modify the requirements related to its Direct Registration Program rule to provide that the requirement to be eligible to participate in a Direct Registration Program applies to a foreign private issuer, unless the law or regulations in the company's home country prohibit compliance with the requirement, and to clarify the application of the requirement to securities held in book-entry-only form.

Nasdaq's rule permits a foreign private issuer to follow its home country practice in lieu of certain requirements of Rule 4350, including the requirement that securities be eligible to participate in a Direct Registration Program. Nasdaq proposes to modify this requirement so that a foreign private issuer could only follow its home country practice with respect to the requirement that securities be eligible to participate in a Direct Registration Program if the issuer is prohibited from complying with this requirement by the laws or regulations in the issuer's home country. In order to assure that foreign private issuers have adequate time to take necessary actions to come into compliance with the proposed rule, Nasdaq proposes that until

⁴ The Commission has modified portions of the text of the summaries prepared by the Nasdaq.

March 31, 2009, such issuers can continue to rely on the prior version of the exception to this requirement.

In addition, Nasdaq's rule excludes from the requirement to be eligible to participate in a Direct Registration Program "non-equity securities which are book-entry-only." Nasdaq proposes to modify this requirement to exclude all book-entry-only securities because ownership of such securities is already recorded only on the books and records of the issuer and are not held in certificated form. As such, these securities would already avail themselves of the advantages that the Direct Registration Program is designed to promote. If a security ceases to be book-entry-only, that security would then be required to be eligible to participate in a Direct Registration Program.

(2) Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Section 6(b)(5) of the Act, in particular, in that the proposal is designed to, among other things, 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 perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.⁶ The proposed rule change modifies Nasdaq's rules relating to the Direct Registration Programs to require a foreign private issuer to comply with the Nasdaq's rules unless the foreign private issuer is prohibited from doing so and to exclude from the proposed

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

requirement securities that are book-entry-only and therefore already enjoy the same benefits of a Direct Registration System.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Nasdaq does not believe that the proposed rule change will impose 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 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 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-2008-031 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-2008-031. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of Nasdaq and on Nasdaq's Web site, www.nasdaq.com. 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-2008-031 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁷

Nancy M. Morris
Secretary

⁷ 17 CFR 200.30-3(a)(12).