

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57981; File No. SR-NASDAQ-2008-037)

June 17, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change to Modify Certain of Nasdaq's Initial and Continued Listing Requirements to Replace the Round Lot Requirement in the Minimum Holder Requirements to Either Total or Public Shareholders

I. Introduction

On April 25, 2008, The NASDAQ Stock Market LLC ("Exchange" or "Nasdaq") 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 change the shareholder minimum holder requirements for Nasdaq's continued listing standards. The proposed rule change was published in the Federal Register on May 13, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Nasdaq initial and continued listing standards require a Nasdaq-listed company to meet and maintain, among other things, certain minimum number of round lot holders to demonstrate the security's liquidity. Nasdaq proposes to generally eliminate the requirement of round lot holders and replace it with different requirements, and to adopt new definitions with respect to these proposed changes.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57795 (May 7, 2008), 73 FR 27590.

A. Nasdaq Global Select Market and Nasdaq Global Market Continued Listing Standards – (1) First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts and (2) Preferred Stock and Secondary Classes of Common Stock

The current minimum requirement for continued listing under the Nasdaq Global Select Market and Nasdaq Global Market is 400 round lot shareholders for common stock and equivalent⁴ and 100 round lot shareholders for preferred stock and secondary classes of common stock.⁵ Nasdaq proposes to change these requirements to 400 “total” shareholders for common stock and equivalent⁶ and 100 “public” shareholders for preferred stock and secondary classes of common stock.⁷

B. Nasdaq Global Select Market Initial Listing Standards

The current minimum requirement for initial listing under the Nasdaq Global Select Market is (1) a minimum of 550 beneficial shareholders and average monthly trading volume over the previous 12 months of at least 1,100,000 shares per month; (2) a minimum of 2,200 beneficial shareholders; or (3) a minimum of 450 beneficial round lot shareholders.⁸ Nasdaq proposes to change these holder requirements to: (1) a minimum of 550 “total” shareholders and average monthly trading volume over the previous 12 months of at least 1,100,000 shares per

⁴ See Nasdaq Rule 4450(a).

⁵ See Nasdaq Rule 4450(h).

⁶ See proposed Nasdaq Rule 4450(a).

⁷ See proposed Nasdaq Rule 4450(h).

⁸ See Nasdaq Rule 4426(b)(1).

month; (2) a minimum of 2,200 “total” shareholders; or (3) a minimum of 450 “round lot” shareholders.⁹

C. Nasdaq Capital Market Continued Listing Standards – (1) Domestic and Canadian Securities and (2) Non-Canadian Foreign Securities and American Depositary Receipts

The current minimum requirement for continued listing for domestic and Canadian securities under the Nasdaq Capital Market is 300 round lot holders for common stock and 100 round lot holders for preferred stock and secondary classes of common stock.¹⁰ Nasdaq proposes to change these holder requirements to 300 public holders for common stock and 100 public holders for preferred stock and secondary classes of common stock.¹¹

The current minimum requirement for continued listing for non-Canadian foreign securities and American Depositary Receipts under the Nasdaq Capital Market is 300 round lot holders for common stock and 100 round lot holders for preferred stock and secondary classes of common stock.¹² Nasdaq proposes to change these holder requirements to 300 public holders for common stock and 100 public holders for preferred stock and secondary classes of common stock.¹³

D. Changes to Definitions

Nasdaq also proposes to add a new definition of “public holders” to include beneficial holders and holders of record and exclude any holder who is, either directly or indirectly, an

⁹ See proposed Nasdaq Rule 4426(b)(1).

¹⁰ See Nasdaq Rule 4310 (c)(6).

¹¹ See proposed Nasdaq Rule 4310 (c)(6).

¹² See Nasdaq Rule 4320 (e)(4).

¹³ See proposed Nasdaq Rule 4320 (e)(4).

executive officer, director, or the beneficial holder of more than 10% of the total shares outstanding.¹⁴ In addition, Nasdaq proposes to add a new definition of “total holders” to include beneficial holders and holders of record.¹⁵ Finally, Nasdaq proposes to amend the definition of “round lot holder” to clarify that beneficial holders would be considered in addition to holders of record.¹⁶

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁷ which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and to not permit unfair discrimination between customers, issuers, brokers, or dealers.¹⁸

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial

¹⁴ See proposed Nasdaq Rule 4200(a)(32).

¹⁵ See proposed Nasdaq Rule 4200(a)(38).

¹⁶ See proposed Nasdaq Rule 4200(a)(33).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ In approving this proposed rule change, the Commission notes that it has considered the proposed rules’ impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

markets and the investing public. Listing standards, among other things, serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have or, in the case of an IPO, will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

A. Nasdaq Global Select Market and Nasdaq Global Market Continued Listing Standards – (1) First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts and (2) Preferred Stock and Secondary Classes of Common Stock

Nasdaq proposes to change the continued listing standards of the Nasdaq Global Select Market and Nasdaq Global Market shareholder requirements from 400 round lot shareholders to 400 total shareholders, for common stock and equivalent, and from 100 round lot shareholders to 100 public shareholders, for preferred stock and secondary classes of common stock. The Commission believes that the proposal would continue to ensure that securities listed on Nasdaq Global Select and Global Markets would have sufficient liquidity to promote fair and orderly markets. The Commission notes that other listing markets utilize the concept of total shareholders and public shareholders. For example, the New York Stock Exchange (“NYSE”) requires, among other things, 400 total stockholders (record holders and beneficial holders) for continued listing of capital or common stock on NYSE.¹⁹ Further, the American Stock Exchange

¹⁹ See NYSE Listed Company Manual Section 802.01A.

(“Amex”) requires, among other things, 300 public shareholders for continued listing of common stock on its market.²⁰ Accordingly, the Commission finds the proposal is consistent with the requirements of the Act.

B. Nasdaq Global Select Market Initial Listing Standards

Nasdaq proposes to change the initial listing standards of the Nasdaq Global Select Market shareholder requirements from: (1) minimum of 550 beneficial shareholders and average monthly trading volume over the previous 12 months of at least 1,100,000 shares per month; (2) minimum of 2,200 beneficial shareholders; or (3) minimum of 450 beneficial round lot shareholders, to: (1) minimum of 550 “total” shareholders and average monthly trading volume over the previous 12 months of at least 1,100,000 shares per month; (2) minimum of 2,200 “total” shareholders; or (3) minimum of 450 “round lot” shareholders.

The Commission believes that the proposal would ensure that securities to be listed on Nasdaq Global Select Market would have sufficient liquidity to promote fair and orderly markets. The Commission notes that other listing markets utilize the concept of total shareholders and “round lot” shareholders and the changes are similar to certain NYSE requirements²¹ Based on the foregoing, the Commission finds the proposal is consistent with the requirements of the Act.

²⁰ See Amex Company Guide Section 100(b)(i).

²¹ See NYSE Listed Company Manual Section 102.01A. NYSE initial listing standards require, among other things: (1) 500 total stockholders and average monthly trading volume of 1,000,000 shares for most recent 12 months; or (2) 2,200 total stockholders and average monthly trading volume of 100,000 shares for most recent 6 months; or (3) 400 round lot holders and 1,100,000 shares of publicly held shares, for initial listing on NYSE.

C. Nasdaq Capital Market Continued Listing Standards – (1) Domestic and Canadian Securities and (2) Non-Canadian Foreign Securities and American Depositary Receipts

Nasdaq proposes to change the minimum requirement for continued listing for domestic and Canadian securities under the Nasdaq Capital Market from 300 round lot holders for common stock and 100 round lot holders for preferred stock and secondary classes of common stock, to 300 “public” holders for common stock and 100 “public” holders for preferred stock and secondary classes of common stock. In addition, Nasdaq proposes to change the minimum requirement for continued listing for non-Canadian foreign securities and American Depositary Receipts under the Nasdaq Capital Market from 300 round lot holders for common stock and 100 round lot holders for preferred stock and secondary classes of common stock to 300 “public” holders for common stock and 100 “public” holders for preferred stock and secondary classes of common stock.

The Commission finds the proposed change to the Nasdaq Capital Market common stock shareholder requirement is substantially similar to the Amex continued listing standards. Amex continued listing standards require, among other things, 300 public shareholders for continued listing.²²

The Commission also finds that the proposed change to the Nasdaq Capital Market preferred stock shareholder requirement is substantially similar to the Nasdaq Global Market preferred stock continued listing standards. Nasdaq Global Market continued listing standards require, among other things, a minimum of 100 round lot shareholders for preferred stock continued listing.²³ While the standards differ, the Commission believes that the proposed 100

²² See Amex Company Guide Section 1003(b)(i)(B).

²³ See Nasdaq Rules 4420(k) and 4450(h).

public shareholders requirement for preferred stock would continue to ensure, at a minimum, an adequate level of liquidity as the round lot shareholder standard.

D. Changes to Definitions

In connection with the proposed changes above, Nasdaq also proposes to add a new definition of “public holders” to include beneficial holders and holders of record and exclude any holder who is, either directly or indirectly, an executive officer, director, or the beneficial holder of more than 10% of the total shares outstanding. In addition, Nasdaq proposes to add a new definition of “total holders” to include beneficial holders and holders of record. Finally, Nasdaq proposes to amend the definition of “round lot holder” to clarify that beneficial holders would be considered in addition to holders of record. As noted earlier, these definitions are used by other exchanges and should help to ensure that Nasdaq’s holder requirements will continue to provide an adequate level of liquidity to develop and maintain fair and orderly markets. Accordingly, the Commission finds that the proposed changes are consistent with the requirements of the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-NASDAQ-2008-037) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Florence E. Harmon
Acting Secretary

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30–3(a)(12).