SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58335; File No. SR-NASDAQ-2008-053)

August 8, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change to Modify the Definition of "Independent Director"

On June 6, 2008, The NASDAQ Stock Market LLC ("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 modify Nasdaq's definition of "independent director." The proposed rule change was published for comment in the Federal Register on July 2, 2008.[3] The Commission received no comments on the proposal.

Currently, Nasdaq Rule 4200(a)(15)(B) provides that a director of a listed company who accepted, or has a family member who accepted, any compensation from the company in excess of $100,000 during any period of twelve months within the preceding three years cannot be deemed an independent director (with certain exceptions). The proposed rule change would change this threshold amount to $120,000.

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 with Section 6(b)(5) of the Act.[4] The Commission notes that Regulation S-K,

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1 15 U.S.C. 78s(b)(l).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 58029 (June 26, 2008), 73 FR 38016.

4 15 U.S.C. 78f(b)(5). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Item 404, under the Act,[5] which requires public companies to disclose certain material information regarding the independence of directors (among other "related persons" associated with the company), establishes $120,000 as the amount above which financial transactions and relationships involving a company and its directors must be disclosed.[6] The Commission believes that it is appropriate for Nasdaq to use this same threshold amount with regard to its definition of "independent director" in Nasdaq Rule 4200(a)(15) as a "bright line" test to determine whether a director of a listed company would be precluded from being considered independent. The Commission further notes that even if a director (or a family member) received less than $120,000 in compensation from the listed company, the company's board still would have to make an affirmative determination that the director has no relationship with the listed company that, in the board's opinion, would interfere with the exercise of his or her independent judgment in carrying out the responsibilities of a director.[7]

5 17 CFR 229.404 and 17 CFR 228.404.

6 See Securities Exchange Act Release No. 54302A (August 29, 2006), 71 FR 53158 (September 8, 2006).

7 See Nasdaq Rule 4200(a)(15) and IM-4200.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR-NASDAQ-2008-053) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon
Acting Secretary

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8 15 U.S.C. 78s(b)(2).

9 17 CFR 200.30-3(a)(12).