

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53913; File No. SR-NASDAQ-2006-008)

May 31, 2006

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The NASDAQ Stock Market LLC to Require Securities be Eligible for a Direct Registration System

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 27, 2006, 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 require securities to be eligible for a Direct Registration System (“DRS”).³ The text of the proposed rule change is below. Proposed new language is in italics, and proposed deletions are in brackets.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Nasdaq refers to a Direct Registration System as a Direct Registration Program. For purposes of clarity and consistency with other related filings referred to below, the term Direct Registration System or DRS will be used in place of Direct Registration Program or DRP in this notice.

⁴ Changes are marked to the rules of The NASDAQ Stock Market LLC found at www.nasdaqtrader.com. These rules will become effective when Nasdaq fulfills certain conditions and commences operations as a national securities exchange, which became effective April 17, 2006, but has not yet been published. See Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) [File No. 10-131]. Nasdaq modified the title to Rule 4350. This filing reflects the revised title.

Rule 4350. Qualitative Listing Requirements for Nasdaq Issuers Except for Limited Partnerships

(a) – (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) On and after January 1, 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.

(3) If an issuer establishes or maintains a Direct Registration Program for its shareholders, the issuer shall, directly or through its transfer agent, participate in an electronic link with a [securities depository] clearing agency registered under Section 17A of the Exchange Act to facilitate the electronic transfer of securities held pursuant to such program.

(m) – (n) 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.⁵

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

⁵ The Commission has modified portions of the text of the summaries prepared by the Nasdaq.

(1) Purpose

Nasdaq Rule 4350(l) currently allows an issuer to establish a DRS for its shareholders provided the issuer, directly or through its transfer agent, participates in an electronic link with a clearing agency registered under Section 17A of the Exchange Act. DRS permits an investor's ownership position to be recorded and maintained in book-entry form on the records of the issuer or its transfer agent. Because ownership positions are recorded in book-entry form, investors receive an account statement from the issuer or its transfer agent as evidence of ownership instead of receiving a physical certificate. Brokerage firms and transfer agents are linked through an electronic system administered by The Depository Trust Company ("DTC") thereby permitting securities positions to be electronically transferred between a broker-dealer and a transfer agent without the need to transfer for physical certificates.⁶

Nasdaq believes that DRS will be an important step in reducing the use of physical certificates which will facilitate efficiencies and reduced risks in securities transactions and could eventually lead to lower costs for issuers and investors.⁷ As such, to encourage the use of DRS, Nasdaq is proposing to amend its rules to require that all listed securities be eligible to participate

⁶ Currently, the only registered clearing agency operating a DRS is DTC. For a description of DRS and the DRS facilities administered by DTC, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR-DTC-96-15] (order granting approval to establish DRS) and 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR-DTC-99-16] (order approving implementation of the Profile Modification System).

⁷ In March 2004, the Commission published a concept release that discussed, among other things, whether more should be done to reduce the use of physical certificates by individual investors. The Commission noted that the use of physical certificates increases the costs and risks of clearing and settling securities transactions, costs that most often are ultimately born by investors. Securities Exchange Act Release 8398 (March 11, 2004), 69 FR 12922 (March 18, 2004) [File No. S7-13-04] (Securities Transaction Settlement concept release).

in DRS.⁸ While this proposed rule change would require that issuers' securities be eligible for DRS, it would not require issuers to participate in DRS and would not mandate the elimination of physical certificates. As a result, subject to applicable state law and the company's governing documents, an investor could still elect to receive a certificate if the issuer chose to make certificates available.

Because currently the only DRS operated by a registered clearing agency is that of DTC, in order for a security to be eligible to participate in DRS, the issuer is required to use a transfer agent that meets DTC's insurance and connectivity requirements. As a result, some transfer agents acting for Nasdaq issuers may have to make changes to comply with these requirements, and some issuers may choose to change transfer agents. Certain issuers may also have to make amendments to their governing documents, such as their by-laws, to be eligible to issue securities that are not represented by certificates. To allow sufficient time for any of these changes that need to take place, Nasdaq proposes to implement the proposed rule change January 1, 2008, for the securities of issuers with securities already listed on Nasdaq or another listed marketplace at the time the proposed rule change is approved. Companies listing for the first time should have greater flexibility to adopt any changes required to have their securities DRS eligible and therefore, the proposed rule change requirement would be applicable to new listings beginning January 1, 2007. In addition, Nasdaq proposes that the requirement not apply to non-equity securities that are held in book-entry-only form.

(2) Statutory Basis

⁸ The New York Stock Exchange LLC and the American Stock Exchange LLC have also filed proposed rule changes with the Commission that would require certain listed companies securities DRS eligible. Securities Exchange Act Release Nos.53912 (May 31, 2006) [File No. SR-NYSE-2006-29] and 53911 (May 31, 2006) [File No. SR-Amex-2006-40].

The statutory basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act, which requires, among other things, that the rules of an exchange are 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 perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.⁹ Nasdaq believes that requiring securities to be eligible for DRS will ease the trading of securities in book-entry form, which will facilitate transactions in securities.

(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.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

On March 7, 2005, Nasdaq solicited comment from issuers on the impact of a rule requiring securities to be eligible for DRS. Nasdaq received nine responses to this solicitation, all from representatives of issuers. Eight responses, including five participants in DRS, were supportive citing factors such as cost savings, shareholder service, and efficiency. One respondent was opposed because of the associated costs and perceived negative response of shareholders. Nasdaq notes, however, that the concerns expressed by this commenter may not be

⁹ 15 U.S.C. 78f(b)(5).

applicable to this proposed rule change because this proposal would not mandate the use of DRS.¹⁰

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-2006-008 in 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.

¹⁰ Nasdaq's solicitation and the comments received are attached as Exhibit 2 to this proposed rule change, which can be found at www.nasdaq.com.

All submissions should refer to File Number SR-NASDAQ-2006-008. 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 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-2006-008 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris
Secretary

¹¹ 17 CFR 200.30-3(a)(12).