

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57290; File No. SR-NASDAQ-2007-090)

February 7, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Accept Financial Statements Prepared in Accordance with International Financial Reporting Standards, as Issued by the International Accounting Standards Board, for Certain Foreign Private Issuers

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 November 16, 2007, The NASDAQ Stock Market LLC (“Nasdaq”) 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. Nasdaq filed Amendment No. 1 to the proposed rule change on February 6, 2008. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to determine compliance with its listing standards based on financial statements prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board, for companies that are permitted to file financial statements using those standards with the Commission.

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

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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>.

4320. Listing Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for listing on Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b), and (e) of this Rule. Issuers that meet these requirements, but that are not listed on the Nasdaq Global Market, are listed on the Nasdaq Capital Market.

(a) – (d) No change.

(e) In addition to the requirements contained in paragraphs (a) and (b), the security shall satisfy the criteria set out in this subsection for listing on Nasdaq. In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued listing on Nasdaq.

(1) No change.

(2) (A) – (B) No change.

(C) An issuer's qualifications will be determined on the basis of financial statements that are either: (i) prepared in accordance with U.S. generally accepted accounting principles; or (ii) [those accompanied by detailed schedules quantifying the differences between] reconciled to U.S. generally accepted accounting principles as required by the Commission's rules [and those of the issuer's country of domicile]; or (iii) prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board, for companies that are permitted to file financial statements using those standards consistent with the Commission's rules.

(D) – (E) No change.

(3) – (26) No change.

(f) 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Under current Commission rules, a foreign private issuer⁴ that files financial statements with the Commission that are prepared on a basis other than U.S. generally accepted accounting principals (“U.S. GAAP”) is required to include a reconciliation to U.S. GAAP. Similarly, Nasdaq’s rules require a foreign private issuer to evidence compliance with the listing standards based on financial measures prepared in accordance with U.S. GAAP or reconciled to U.S. GAAP.⁵

⁴ A “foreign private issuer” is an issuer, other than a foreign government, that is incorporated in a foreign country and either: (i) has a majority of its voting securities held other than by United States residents, or (ii) a majority of its executives are not United States citizens/residents, a majority of its assets are located outside of the United States and its business is principally administered outside the United States. See Securities Exchange Act Rule 3b-4(c), 17 CFR 240.3b-4(c).

⁵ Nasdaq Rule 4320(e)(2)(C).

The Commission has recently approved a rule change to eliminate the requirement for a U.S. GAAP reconciliation for foreign private issuers that file financial statements prepared in accordance with International Financial Reporting Standards (“IFRS”), as issued by the International Accounting Standards Board (“IASB”).⁶ These changes apply only to foreign private issuers that file on Form 20-F, regardless of whether the issuer complies with IFRS as issued by the IASB voluntarily or in accordance with the requirements of the issuer’s home country regulator or the exchange on which its securities are listed.⁷ A foreign private issuer will continue to be required to provide a reconciliation to U.S. GAAP if its financial statements include deviations from IFRS as issued by the IASB, if it does not state unreservedly and explicitly that its financial statements are in compliance with IFRS as issued by the IASB, if the auditor does not opine on compliance with IFRS as issued by the IASB, or if the auditor’s report contains any qualification relating to compliance with IFRS as issued by the IASB.⁸ The Commission’s rules are applicable to annual financial statements for financial years ending after

⁶ See Securities Exchange Act Release No. 57026 (December 21, 2007), 73 FR 986 (January 4, 2008) (the “IFRS/IASB Adopting Release”). See also Securities Exchange Act Release No. 55998 (July 2, 2007), 72 FR 37962 (July 11, 2007) (the “IFRS/IASB Proposing Release”). The Commission is also considering whether to allow U.S. issuers to satisfy their reporting requirements through the provision of financial statements prepared in accordance with IFRS instead of U.S. GAAP. See Securities Exchange Act Release No. 56217 (August 7, 2007), 72 FR 45600 (August 14, 2007). This proposed Nasdaq rule change would be applicable only to foreign private issuers and would not apply to domestic U.S. companies.

⁷ IFRS/IASB Adopting Release at 992.

⁸ Id. at 993. A foreign private issuer using a jurisdictional or other variation of IFRS will be able to rely on the amendments if that issuer also is able to state compliance with both IFRS as issued by the IASB and a jurisdictional variation of IFRS (and does so state), and its auditor opines that the financial statements comply with both IFRS as issued by the IASB and the jurisdictional variation, as long as the statement relating to the former is unreserved and explicit. Id.

November 15, 2007, and to interim periods within those years, that are contained in filings made after March 4, 2008.⁹

To allow foreign private issuers to take full advantage of this development, Nasdaq proposes changes to allow such issuers to evidence compliance with Nasdaq's listing requirements on the same basis as permitted by the Commission.

Nasdaq believes that requiring companies to provide a U.S. GAAP reconciliation in order to obtain and maintain a listing on Nasdaq when they are no longer required to do so under Commission rules may result in issuers choosing not to list in the U.S. and so deny U.S. investors the ability to easily invest in such issuers. The proposed rule change would be compatible with the Commission's stated goal "to facilitate cross-border capital formation while ensuring adequate disclosure for the protection of investors and the promotion of fair, orderly and efficient markets."¹⁰

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹¹ in general, and with Section 6(b)(5) of the Act,¹² in particular. Section 6(b)(5) requires that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change is consistent with these requirements in that modifying the U.S. GAAP reconciliation requirements will ease the burden

⁹ Id. at 994.

¹⁰ See the IFRS/IASB Proposing Release at 37965. See also IFRS/IASB Adopting Release at 1006 (noting that moving towards a single set of globally accepted accounting standards will have positive effects on investors).

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

of compliance on foreign private issuers, in a manner consistent with proposed changes to the federal securities laws, and will not adversely affect investors.

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

Within 35 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 90 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-2007-090 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-2007-090. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2007-090 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).