

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55822; File No. SR-NASDAQ-2007-022)

May 29, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto to Change the Conflicts of Interest Rule

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 March 7, 2007, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. On April 26, 2007, Nasdaq submitted Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as modified by Amendment No. 1 and approves the proposed rule change, as amended, on an accelerated basis.

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

Nasdaq proposes to modify Nasdaq’s conflicts of interest rule to eliminate the requirement that related party transactions be approved by a listed company’s audit committee or another independent body of the board of directors. 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 Nasdaq’s proposed changes are marked to the rule text that appears in Nasdaq’s electronic manual found at (www.nasdaq.complinet.com).

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

(a) – (g) No change.

(h) Conflicts of Interest

Each issuer shall conduct [an] appropriate review and oversight of all related party transactions for potential conflict of interest situations on an ongoing basis[and all such transactions must be approved] by the company's audit committee or another independent body of the board of directors. For purposes of this rule, the term "related party transaction" shall refer to transactions required to be disclosed pursuant to SEC Regulation S-K, Item 404. However, in the case of small business issuers (as that term is defined in SEC Rule 12b-2), the term "related party transactions" shall refer to transactions required to be disclosed pursuant to SEC Regulation S-B, Item 404, and in the case of non-U.S. issuers, the term "related party transactions" shall refer to transactions required to be disclosed pursuant to Form 20-F, Item 7.B.

(i) – (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 III below. Nasdaq 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

Nasdaq proposes to modify its rule governing the review and approval of related party transactions by listed companies. Specifically, Nasdaq proposes to eliminate the requirement in Nasdaq Rule 4350(h) that related party transactions be approved by a listed company’s audit committee or another independent body of the board of directors. The existing rule requires both an appropriate review of related party transactions on an ongoing basis and approval of those transactions by the company’s audit committee or another independent body of the board of directors. The rule, as proposed, would continue to require ongoing review of related party transactions by a company’s audit committee or another independent body of the board of directors. In addition, the proposed rule text would clarify that the issuer’s audit committee or other independent body of the board must provide appropriate oversight of related party transactions.⁴ For the purposes of the rule, the term “related party transaction” generally is defined as a transaction that is required to be disclosed in Regulation S-K under the Securities Act of 1933.⁵

The growing focus on internal controls over the past few years has led more companies to look closely at related party transactions. Also, Nasdaq notes that within the past year, the Commission has adopted significant revisions to its rules regarding

⁴ See Amendment No. 1 to the proposed rule change.

⁵ 17 CFR 229.404. For small business issuers, the relevant definition of “related party transaction” is those transactions required to be disclosed by SEC Regulation S-B, Item 404, 17 CFR 228.404. For non-U.S. issuers, the term “related party transactions” refers to transactions required to be disclosed pursuant to Form 20-F, Item 7.B.

related party transactions.⁶ In addition to adopting a principles-based disclosure requirement, the new rules require disclosure regarding a company's policies and procedures for the review, approval, or ratification of related party transactions. Nasdaq believes that this disclosure requirement would further advance the trend toward obtaining approval of related party transactions as a corporate governance best practice, thereby reducing the need for Nasdaq to impose an approval requirement in its corporate governance listing standards.

Nasdaq also notes that the comparable rules of the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange LLC ("Amex") do not include an approval requirement.⁷ Accordingly, the proposed rule change would conform Nasdaq's rule to the NYSE's and Amex's rules, creating more uniformity across market centers with respect to the review and oversight of related party transactions by listed companies and reducing questions of compliance for issuers that move their listing to a different market.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general and with Section 6(b)(5) of the Act,⁹ in particular. Section 6(b)(5) requires, among other things, that Nasdaq's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles

⁶ See Securities Exchange Act Release No. 54302 (August 29, 2006), 71 FR 53158 (September 8, 2006) (File No. S7-03-06) (relating to executive compensation and related person disclosure).

⁷ See Section 307.00 of the NYSE Listed Company Manual; Section 120 of the Amex Company Guide.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change will benefit issuers by providing additional clarity and transparency to Nasdaq's requirements relating to related party transactions and promoting greater uniformity with existing standards of the NYSE and Amex. The additional clarity, transparency and greater uniformity will reduce administrative costs associated with compliance with Nasdaq's rules on conflicts of interest.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2007-022 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-2007-022. 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. 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-2007-022 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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.¹⁰ The Commission notes that the proposed rule change would align Nasdaq's corporate governance listing standards regarding related party transactions with comparable provisions of other exchanges.

The Commission finds good cause pursuant to Section 19(b)(2) of the Act¹¹ to approve the proposed rule change prior to the thirtieth day after publication for comment in the Federal Register. As noted above, the proposed rule change would amend Nasdaq's corporate governance listing standards regarding related party transactions by conforming these standards with comparable provisions of other exchanges, and thus the proposed rule change does not present any new regulatory issues. Accelerating approval of the proposed rule change would promote greater uniformity among the exchanges' corporate governance rules for listed issuers.

¹⁰ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78s(b)(2).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASDAQ-2007-022), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.¹²

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).