

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56092; File No. SR-NASDAQ-2007-042)

July 18, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto to Modify the Entry and Annual Fees Paid by a Company that Lists on Nasdaq upon Emerging from Bankruptcy

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 13, 2007, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) 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 substantially prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on June 28, 2007. The Commission is publishing this notice to solicit comment 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 modify the entry and annual fees paid by a company that lists on Nasdaq upon emerging from bankruptcy. Nasdaq will implement the proposed rule as of the date it filed this proposed change.

The text of the proposed rule change is set forth below. Proposed new language is underlined.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

IM-4500-6. Waiver of Fees for Companies Emerging from Bankruptcy

(a) Entry Fees. Any company that lists on Nasdaq upon emerging from bankruptcy is not required to pay the entry fee (including the application fee) set forth in Rules 4510(a) and 4520(a).

(b) Annual Fees.

(1) The annual fee for any company that lists on the Nasdaq Global Market (including the Nasdaq Global Select Market) upon emerging from bankruptcy will be the minimum annual listing fee specified in Rule 4510(c)(1) for the first (pro rated) year that such a company is listed and for each of the subsequent two full years.

(2) Any company listing on Nasdaq upon emerging from bankruptcy that relists during the same year that it had previously paid an annual fee will not be subject to a second annual fee in that year.

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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

Nasdaq proposes to modify the fees charged to companies that list upon emerging from bankruptcy. Specifically, Nasdaq proposes to waive the entry fee (which includes a \$5,000 non-refundable application fee) that such companies would otherwise be required to pay. In addition, for companies listing on the NASDAQ Global Market (including the NASDAQ Global Select Market), Nasdaq proposes to charge the company the minimum annual listing fee applicable to companies on that market (currently \$30,000) for the first (prorated) year that such a company is listed³ and for each of the subsequent two full calendar years.⁴ Finally, Nasdaq proposes that a company that emerges from bankruptcy and relists during the same year that it has previously paid an annual fee will not be required to pay a second annual fee for that year.

Nasdaq believes that the proposed fees are justified by the unique circumstances faced by companies emerging from bankruptcy. These companies typically are not raising any new capital at the time of listing, so the payment of initial listing fees is more burdensome than for companies that are listing upon an initial public offering. Also, because of the desire in bankruptcy proceedings to ensure that creditors are paid as much as possible, these companies are much more sensitive to both the initial and continued costs associated with listing. As such, Nasdaq believes the proposed fees are reasonable and equitably allocated.

The proposed rule change will not affect Nasdaq's commitment of resources to its regulatory oversight of the listing process or its other regulatory programs. Specifically, Nasdaq

³ Nasdaq prorates the annual fee for the year a company lists, based on the month in which the company lists.

⁴ All domestic companies on the NASDAQ Capital Market pay the same annual fee.

historically has not listed a large number of companies emerging from bankruptcy in any given year.⁵ Further, Nasdaq will still conduct a complete review of these companies for compliance with Nasdaq listing standards in the same manner as any other company applying for listing on Nasdaq. The company must successfully complete that review process and demonstrate compliance with the initial listing requirements prior to being approved for listing.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act⁶ in general, and with Section 6(b)(4) of the Act⁷ in particular, which requires that Nasdaq's rules provide for the equitable allocation of reasonable dues, fees, and other charges among its issuers. Nasdaq believes that the proposed waivers are equitable and reasonable in light of the unique circumstances faced by companies emerging from bankruptcy.

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 on the proposed rule change 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

⁵ Nasdaq listed four companies upon their emergence from bankruptcy from January 1, 2006, through March 31, 2007.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve the 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-2007-042 on 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.

All submissions should refer to File Number SR-Nasdaq-2007-042. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2007-042 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.⁸

Florence E. Harmon
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).