

thereunder,<sup>2</sup> to withdraw its common stock, \$.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

On September 8, 2005, the Board of Directors ("Board") of the Issuer approved resolutions to withdraw the Security from listing and registration on Amex. The Issuer stated the following reasons, among others, factored into the Board's decision to withdraw the Security from Amex. First, the ongoing costs and expenses, both direct and indirect, associated with the preparation and filing of the Issuer's periodic reports with the Commission. The Issuer expects to save each year approximately the equivalent of the current quarterly dividend in out-of-pocket accounting, legal, and other costs. Second, the substantial increase in costs and expenses that the Issuer expects to incur in 2006, and thereafter as a public company in light of the Sarbanes-Oxley Act of 2002, particularly in complying with Section 404 of such act. Third, going private will enable management to focus more time on running the business rather than on Commission compliance. Fourth, liquidity of the Security on Amex has been limited, and volatility has been greater than the Issuer believes is warranted.

The Issuer stated that it has met the requirements of Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration by complying with all the applicable laws in effect in Delaware, the State in which it is incorporated, and by providing Amex with the required documents for withdrawal from Amex.

The Issuer's application relates solely to the withdrawal of the Security from listing on Amex and from registration under Section 12(b) of the Act,<sup>3</sup> and shall not affect its obligation to be registered under Section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before October 28, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/delist.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include the File Number 1-31514 or;

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number 1-31514. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**  
*Secretary.*

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**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-52559; File No. 10-131]**

### **The Nasdaq Stock Market Inc., Notice of Filing of Amendment Nos. 4 and 5 to Its Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934**

October 4, 2005.

On August 15, 2005, The Nasdaq Stock Market Inc. ("Nasdaq") submitted to the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 4<sup>1</sup> to its application for registration as a national securities exchange ("Form 1") under Section 6<sup>2</sup>

<sup>5</sup> 17 CFR 200.30-3(a)(1).

<sup>1</sup> See Letter to Robert L.D. Colby, Deputy Director, Division of Market Regulation ("Division"), SEC, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated August 15, 2005 ("Amendment No. 4").

<sup>2</sup> 15 U.S.C. 78(f).

of the Securities Exchange Act of 1934 ("Exchange Act"). Nasdaq's Amendment No. 4 supersedes and replaces Nasdaq's original filing and intervening amendments. On September 23, 2005, Nasdaq filed Amendment No. 5 to its Form 1.<sup>3</sup> The Commission is publishing this notice to solicit comments on Nasdaq's Form 1 as amended by Amendment Nos. 4 and 5.<sup>4</sup>

#### **I. Background**

Nasdaq originally submitted its Form 1 on March 15, 2001, which the Commission published for comment in the **Federal Register** on June 13, 2001.<sup>5</sup> Nasdaq subsequently amended its Form 1 three times.<sup>6</sup> In response to Nasdaq's Form 1 and its amendments, the Commission has received 82 comment letters.<sup>7</sup>

Nasdaq currently is exempt from the definition of an "exchange" under Rule 3a1-1 because it is operated by the National Association of Securities Dealers, Inc. ("NASD").<sup>8</sup> In order for NASD to relinquish regulatory control of Nasdaq, Nasdaq must register as a national securities exchange.<sup>9</sup> Accordingly, Nasdaq has filed a completely new Form 1, including all of

<sup>3</sup> See Letter to Robert L.D. Colby, Deputy Director, Division, SEC, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated September 23, 2005 ("Amendment No. 5"). In Amendment No. 5, Nasdaq corrected typographical errors that were submitted in Amendment No. 4.

<sup>4</sup> Complete copies of Nasdaq's Amendment Nos. 4 and 5 to its Form 1 are available in the Commission's Public Reference Room, File No. 10-131. Portions of Nasdaq's Form 1 as amended by Amendment Nos. 4 and 5, including Nasdaq's rules, are available on the Commission's Internet Web site (<http://www.sec.gov>).

<sup>5</sup> See Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 ("Original Notice"). The Commission extended the comment period for Nasdaq's Original Notice for 30 days. See Exchange Act Release No. 44625 (July 31, 2001), 66 FR 41056 (August 6, 2001).

<sup>6</sup> See Letters from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Annette Nazareth, Director, Division, SEC, dated November 13, 2001 ("Amendment No. 1"); Jonathan G. Katz, Secretary, SEC, dated December 5, 2001 ("Amendment No. 2"); and Annette Nazareth, Director, Division, SEC, dated January 8, 2002 ("Amendment No. 3").

<sup>7</sup> The comment letters are available in the Commission's Public Reference Room and some of these comment letters are available on the Commission's Internet Web site (<http://www.sec.gov>).

<sup>8</sup> Pursuant to Rule 3a1-1, an organization, association, or group of persons shall be exempt from the definition of "exchange" if it is operated by a national securities association. Unless another exemption from the definition of "exchange" applies, such organization, association, or group of persons that otherwise meets the definition of an "exchange" must register as such with the Commission. 17 CFR 240.3a1-1.

<sup>9</sup> For a complete description of NASD's current ownership in Nasdaq see Exhibit K to the Form 1.

<sup>2</sup> 17 CFR 240.12d2-2(d).

<sup>3</sup> 15 U.S.C. 781(b).

<sup>4</sup> 15 U.S.C. 781(g).

the required exhibits, to register as a national securities exchange.

## II. Nasdaq's Amended Exchange Registration

Nasdaq filed Amendment No. 4 to, among other things, address concerns raised by its original application.<sup>10</sup> Specifically, Amendment No. 4 would limit the ambit of Nasdaq's proposed exchange to those transactions that occur in the Nasdaq Market Center, formerly known as SuperMontage, and Brut.<sup>11</sup> Nasdaq also has proposed that all transactions on the Nasdaq Market Center be executed in price/time priority.<sup>12</sup> Trades that are executed in the internal systems of NASD members would be reported under NASD rules to NASD's Alternative Display Facility ("ADF") or a proposed new NASD facility. This new facility would be jointly owned by Nasdaq and NASD but would be a facility of NASD and thus would be subject to NASD's exclusive regulatory control.<sup>13</sup>

Nasdaq proposes to require its members to comply with NASD's Order Audit Trail ("OATS") requirements. To do so, Nasdaq has carried over certain OATS rules into its own rulebook and has incorporated by reference other

NASD OATS requirements.<sup>14</sup> In addition, Nasdaq members would be required to append an identifier to all orders entered into Nasdaq for purposes of tracking the order in OATS.<sup>15</sup> Because Nasdaq will require its members to report order information to OATS, Nasdaq will have access to certain OATS data for regulatory purposes. The Commission requests comment on the extent to which Nasdaq should be able to use OATS data for non-regulatory purposes. The Commission further requests comment on whether Nasdaq should have access to OATS data regarding: (1) all orders its members receive, including those orders that are routed to markets other than Nasdaq; and (2) reports of executions by its members that are reported to the new NASD trade reporting facility.<sup>16</sup>

To oversee the performance of its regulatory obligations, Nasdaq has proposed to create a fully-independent committee of the exchange's Board of Directors, the Regulatory Oversight Committee ("ROC").<sup>17</sup> This committee will consist of three Public Directors that satisfy the definition "independent director" set forth in proposed Nasdaq Rule 4200. The ROC would, among other things, be responsible for monitoring the adequacy and effectiveness of Nasdaq's regulatory program. In addition, the ROC would oversee the Chief Regulatory Officer ("CRO") by periodically meeting with the CRO in executive session to consider regulatory issues. The ROC also would be informed about the compensation of the CRO, and his promotion or termination (including reasons). Finally, the regulatory budget would be presented to the ROC so that its members may monitor the adequacy of resources available for Nasdaq's regulatory program.

Nasdaq proposes that its CRO have general supervision of the regulation of the exchange, including overseeing the proposed exchange's surveillance, examination, and enforcement functions, and administering a regulatory services agreement.<sup>18</sup> The CRO would be an executive vice president or senior vice president that reports to the Chief Executive Officer, and could also serve as Nasdaq's General Counsel.

The Commission requests comment on whether Nasdaq's proposed regulatory structure, including the ROC and CRO, is consistent with Section 6(b)(1) of the Exchange Act,<sup>19</sup> which requires an exchange to be so organized and have the capacity to carry out the purposes of the Exchange Act and comply, and enforce compliance by its members and persons associated with its members, with the Exchange Act, the rules thereunder, and the exchange's rules. Specifically, does Nasdaq's proposed structure insulate its regulatory function from its market and other commercial operations so that it may carry out its regulatory obligations under the Exchange Act?

The Form 1 provides detailed information about Nasdaq and how it proposes to satisfy the requirements of the Exchange Act. The Commission shall grant such registration if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to Nasdaq are satisfied.<sup>20</sup> In addition to the issues discussed above, there are a number of implications to Nasdaq's separation from NASD and its application to register and operate as an exchange. For example, while Section 10(a) of the Exchange Act<sup>21</sup> does not apply to the trading of Nasdaq stocks, if the Commission approves Nasdaq's registration as an exchange, Section 10(a) will apply to such trading, absent an exemption. In addition, if Nasdaq becomes an exchange, its members would be subject to Section 11 of the Exchange Act.<sup>22</sup> Moreover, Nasdaq must demonstrate that it can satisfy its obligations under Section 11A of the Exchange Act.<sup>23</sup>

Nasdaq's application to register as a national securities exchange also has implications for NASD, which, as a national securities association, will continue to be required to collect bids, offers, quotation sizes and transaction reports from those entities that wish to trade listed securities, including Nasdaq securities, otherwise than on a national securities exchange.<sup>24</sup> Under Section 15A of the Exchange Act, NASD must have a quotation reporting facility for non-Nasdaq exchange-listed securities.<sup>25</sup>

<sup>10</sup> In December 2004, Nasdaq filed with the Commission a proposed rule change to amend the rules that govern how executions occur in the Nasdaq Market Center to eliminate the rules that permit executions to occur outside of price/time priority. See Exchange Act Release No. 50845 (December 13, 2004), 69 FR 76022 (December 20, 2004) ("December Proposal"). Specifically, Nasdaq proposed to eliminate the execution algorithm that requires orders to be internalized in the Nasdaq Market Center, the Directed Order process, and the use of preferenced orders. The Commission published this proposal and Nasdaq has asked the Commission to consider approval of this proposal in connection with its application to register as a national securities exchange. Subsequent to the December Proposal, Nasdaq filed another proposed rule change to eliminate immediately the Directed Order Process, which the Commission approved on July 28, 2005. See Exchange Act Release No. 52148, 70 FR 44711 (August 3, 2005). These changes to the rules that govern the execution of orders in the Nasdaq Market Center are reflected in Amendment No. 4. In addition, the Over-the-Counter Bulletin Board is no longer part of Nasdaq's exchange application and will remain with NASD. See NASD Proposal, *infra* note 13.

<sup>11</sup> Nasdaq acquired Brut in September 2004 and the rules governing the execution of transactions on Brut were approved by the Commission in March 2005. See Exchange Act Release No. 51326 (March 7, 2005), 70 FR 12521 (March 14, 2005). Nasdaq has included the rules governing transactions executed in the Brut system as part of Amendment No. 4 to its Form 1. The Commission notes that Nasdaq has entered into an agreement to purchase Instinet, which will result in Nasdaq's ownership of Inet. This transaction has not closed and thus, Nasdaq has not submitted the rules governing the operation of Inet with this latest amendment.

<sup>12</sup> See December Proposal, *supra* note 10.

<sup>13</sup> See Exchange Act Release No. 52049 (July 15, 2005), 70 FR 42398 (July 22, 2005) ("NASD Proposal").

<sup>14</sup> See proposed Nasdaq Rule 6950 Series.

<sup>15</sup> See proposed Nasdaq Rule 6954(c). NASD has proposed a corresponding change to its OATS rules. See NASD Proposal, *supra* note 13.

<sup>16</sup> See NASD Proposal, *supra* note 13.

<sup>17</sup> See proposed Article III, Section 5(e) of the Nasdaq Exchange By-Laws.

<sup>18</sup> See proposed Article IV, Section 7 of the Nasdaq Exchange By-Laws.

<sup>19</sup> 15 U.S.C. 78f(b)(1).

<sup>20</sup> 15 U.S.C. 78s(a).

<sup>21</sup> 15 U.S.C. 78j(a).

<sup>22</sup> 15 U.S.C. 78k.

<sup>23</sup> 15 U.S.C. 78k-1.

<sup>24</sup> 17 CFR 242.602(a)(1)(ii), Rule 242.601.

<sup>25</sup> 15 U.S.C. 78o-3.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Nasdaq's Amendment Nos. 4 and 5 to its Form 1 are 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](mailto:rule-comments@sec.gov). Please include File Number 10-131 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number 10-131. 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/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to Nasdaq's Form 1 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. 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. The Commission requests that commenters focus on issues raised in Nasdaq's Form 1, File No. 10-131, when submitting comments on this notice. All submissions should refer to File Number 10-131 and should be submitted on or before November 10, 2005.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 05-20314 Filed 10-7-05; 8:45 am]

BILLING CODE 8010-01-P

### SECURITIES AND EXCHANGE COMMISSION

[File No. 1-10382]

#### **Issuer Delisting; Notice of Application of Valley Forge Scientific Corp. To Withdraw Its Common Stock, No Par Value, From Listing and Registration on the Boston Stock Exchange, Inc.**

October 4, 2005.

On September 16, 2005, Valley Forge Scientific, Corp., a Pennsylvania corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its common stock, no par value ("Security"), from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The Board of Directors ("the Board") of the Issuer approved resolutions on September 12, 2005 to withdraw the Security from listing on BSE. The Issuer stated that the Board decided to withdraw the Security from BSE for the following reasons: (i) The Security has been, and expects to continue to be, traded on The Nasdaq SmallCap Market ("Nasdaq"); and (ii) additionally, the Security has not been actively traded on BSE during the last ten years. Therefore, the Board determined to delist the Security from BSE for administrative efficiency.

The Issuer stated in its application that it has complied with applicable rules of BSE by complying with all applicable laws in the Commonwealth of Pennsylvania, the State in which the Issuer is incorporated, and by providing BSE with the required documents governing the withdrawal of securities from listing and registration on BSE. The Issuer's application relates solely to the withdrawal of the Security from listing on BSE and from registration under Section 12(b) of the Act,<sup>3</sup> and shall not affect its obligation to be registered under Section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before October 28, 2005 comment on the facts bearing upon whether the application has been made in accordance with the rules of BSE, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

<sup>1</sup> 15 U.S.C. 78l(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

<sup>3</sup> 15 U.S.C. 78l(b).

<sup>4</sup> 15 U.S.C. 78l(g).

#### *Electronic Comments*

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include the File Number 1-10382 or;

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number 1-10382. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5-5559 Filed 10-7-05; 8:45 am]

BILLING CODE 8010-01-P

### SECURITIES AND EXCHANGE COMMISSION

#### **Sunshine Act Meeting**

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [To be published].

**STATUS:** Closed meeting.

**PLACE:** 100 F Street, NE., Washington, DC.

**ANNOUNCEMENT OF ADDITIONAL MEETING:** Additional meeting.

An additional Closed Meeting has been scheduled for Wednesday, October 12, 2005 at 9 a.m.

Commissioners and certain staff members who have an interest in the matter will attend the closed meeting.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5

<sup>5</sup> 17 CFR 200.30-3(a)(1).