

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55052; File No. SR-NASDAQ-2006-047]

### Self-Regulatory Organization; the NASDAQ Stock Market LLC; Order Approving Proposed Rule Change To Modify Its Listing Rules in the Case of a Reverse Merger

January 5, 2007.

On November 13, 2006, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to clarify the process an issuer must follow when applying for initial listing in connection with a reverse merger. The proposed rule change was published for comment in the **Federal Register** on December 6, 2006.<sup>3</sup> The Commission received no comments regarding the proposal.

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.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>5</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national securities system, and, in general, to protect investors and the public interest.

Nasdaq proposes to amend Nasdaq Rule 4340(a) and related interpretive material to state that an issuer must apply for initial listing prior to consummating a transaction whereby the issuer combines with an entity that is not listed on Nasdaq, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a "backdoor listing" on Nasdaq ("Reverse Merger").

Current Nasdaq Rule 4340(a) states that an issuer must apply for initial listing "following" a Reverse Merger. Nasdaq proposes to replace the word "following" with the phrase "in connection with" and require the issuer

to "submit an application for the post-transaction entity with sufficient time to allow Nasdaq to complete its review before the transaction is completed." Because the entity resulting from the Reverse Merger could be substantially different from the one originally approved for Nasdaq listing, it is reasonable and consistent with the Act for Nasdaq to conduct a de novo listing review of the new entity and, for the new entity to keep the listing, to require sufficient time to complete the review before the Reverse Merger is completed. The Commission believes that this proposal is reasonably designed to enhance the transparency and integrity of the listing process.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-NASDAQ-2006-047) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Nancy M. Morris,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55042; File No. SR-NASDAQ-2006-055]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change as Amended by Amendment No. 1 To Temporarily Adjust Tier Volume Limits

January 4, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 15, 2006, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. On December 21, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change. The 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 Substance of the Proposed Rule Change

Nasdaq proposes to reduce, for the month of November 2006, the average daily volume tiers in Nasdaq-listed securities contained in Nasdaq Rule 7018(a) to qualify for certain fee and rebate levels. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and [http://nasdaq.complinet.com/file\\_store/pdf/rulebooks/SR-NASDAQ-2006-055.pdf](http://nasdaq.complinet.com/file_store/pdf/rulebooks/SR-NASDAQ-2006-055.pdf).

#### 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 is proposing to reduce, for the month of November 2006, the average daily volume tiers for trading and routing in Nasdaq-listed securities contained in Nasdaq Rule 7018(a) to qualify for certain fee and rebate levels. Currently, in order to qualify for a per-share execution fee of \$0.0028, members must have an average daily volume through Nasdaq facilities in all securities during a particular month of (i) more than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity accessed and/or routed. For the month of November 2006, Nasdaq is proposing to reduce those qualification volume tiers to 27 million shares and 47 million shares, respectively. In addition, Nasdaq is also reducing for the month of November 2006 the monthly average daily volume tier required to obtain the \$0.0025 credit rebate from its current 30 million share level to 27 million shares. For routed orders, to qualify for a fee of the greater of (a) \$0.0028 per share executed or (b) a pass-through of all applicable access fees charged by electronic communications networks that charge

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 54825 (November 28, 2006), 71 FR 70818.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

more than \$0.003 per share executed, a firm must have an average daily volume through Nasdaq facilities in all securities during the month of (y) more than 30 million shares of liquidity provided, and (z) more than 50 million shares of liquidity access and/or routed.

For the month of November 2006, Nasdaq is proposing to reduce the 30 million fee qualification volume tiers described above to 27 million shares, and the 50 million fee qualification volume tiers described above to 47 million shares. In addition, Nasdaq is also reducing for the month of November 2006, the monthly average daily volume tier required to obtain the \$0.0025 credit rebate from its current 30 million share level to 27 million shares.

The reduction is designed to respond to certain processing issues associated with Nasdaq's implementation of its new single-book execution facility that can result in inhibiting the ability of users to submit orders to the system and thus not reach their usual levels of participation that would historically entitle them to the most competitive fee and rebate levels. Nasdaq believes that a temporary reduction of the qualification tiers is appropriate while both Nasdaq and its users gain more familiarity with the new single-book trading environment. Nasdaq notes that a similar reduction in tier levels is currently in effect for the month of December 2006,<sup>3</sup> and this filing merely makes the December tier levels retroactive to November 2006.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(4) of the Act,<sup>5</sup> in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

### *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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2006-055 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-2006-055. 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-2006-055 and should be submitted on or before February 2, 2007.

## IV. Commission's Finding and Order Granting Accelerated Approval of the 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.<sup>6</sup> Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 6(b)(4)<sup>7</sup> of the Act because the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using the facilities of Nasdaq.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice in the **Federal Register**. Nasdaq stated that the reduction is intended to address processing issues related to Nasdaq's implementation of its single-book trading environment. The Commission notes that the proposal represents a fee reduction for system users and also notes that the proposal is limited in duration. Therefore, the Commission finds that accelerated approval of the proposal is appropriate and should permit Nasdaq to extend the benefits of the reduction to its users for the month of November.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASDAQ-2006-055) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>3</sup> See Securities Exchange Act Release No. 54933 (Dec. 13, 2006), 71 FR 76404 (Dec. 20, 2006) (SR-NASDAQ-2006-051).

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).