SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60374; File No. SR–NASDAQ–2009–069]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Temporary Suspension of the Continued Listing Requirements Related to Bid Price and Market Value of Publicly Held Shares for Listing on the Nasdaq Stock Market Through July 31, 2009

July 23, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 13, 2009, 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 prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to extend the temporary suspension of the application of the continued inclusion bid price and market value of publicly held shares requirements for listing on the Nasdaq Stock Market through Friday, July 31, 2009.

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. 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

On October 16, 2008, Nasdaq filed a proposed rule change, which was immediately effective, to temporarily suspend the bid price [5] and market value of publicly held shares [6] continued listing requirements otherwise applicable to issuers of common stock, preferred stock, secondary classes of common stock, shares or certificates of beneficial interest of trusts, limited partnership interests, American Depositary Receipts, and their equivalents.[7] This suspension was designed to provide temporary relief to companies from the application of these requirements during a period in which the financial markets face almost unprecedented turmoil, resulting in a crisis in investor confidence and concerns about the proper functioning of the securities markets.[8] On December 18, 2008 and March 18, 2009, Nasdaq filed proposed rule changes to extend this suspension until April 19, 2009 and July 19, 2009, respectively.[9]

Nasdaq believes that a further extension of the suspension is appropriate to allow some additional time for market conditions to return to normal and for deficient companies to develop a plan to regain compliance with the continued listing requirements. Therefore, Nasdaq has determined to continue the temporary suspension of the bid price and market value of publicly held shares requirements for approximately two additional weeks, until Friday, July 31, 2009. Under this proposal, companies would not be cited for new bid price or market value of publicly held shares deficiencies during the suspension period, and the time allowed to companies already in a compliance period or in the hearings process for bid price or market value of publicly held shares deficiencies would remain suspended with respect to those requirements.[10] Following the temporary suspension, any new deficiencies with the bid price or market value of publicly held shares requirements would be determined using data starting on Monday, August 3, 2009.[11] When the suspension expires, companies that were in a compliance period as of October 16, 2008, when the suspension first began, would receive the balance of any pending compliance periods in effect at the time of the initial suspension.[12] Similarly, companies that

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq's continued listing requirements relating to bid price are set forth in Rules 5450(a)(1), 5460(a)(3), 5550(a)(2) and 5555(a)(1) and the related compliance periods are set forth in Rule 5810(c)(3)(A). Under these rules, a security is considered deficient if it fails to achieve at least a $1 closing bid price for a period of 30 consecutive business days. Once deficient, Capital Market issuers are provided one automatic 180-day period to regain compliance. Thereafter, these issuers can receive an additional 180-day compliance period if they comply with all Capital Market initial inclusion requirements except bid price. Global Market issuers are also provided one automatic 180-day period to regain compliance, after which they can transfer to the Capital Market, if they comply with all Capital Market initial inclusion requirements except bid price, to take advantage of the second 180-day compliance period. A company can regain compliance by achieving a $1 closing bid price for a minimum of ten consecutive business days.

[6] Nasdaq's continued listing requirements relating to market value of publicly held shares are set forth in Rules 5450(b)(1)(C), 5450(b)(2)(C), 5450(b)(3)(C), 5460(a)(2), 5550(a)(5) and 5555(a)(4) and the related compliance periods are set forth in Rule 5810(c)(3)(D). Under these rules, a security is considered deficient if it fails to achieve the minimum market value of publicly held shares requirement for a period of 30 consecutive business days. Thereafter, companies have a compliance period of 90 calendar days to achieve compliance by meeting the applicable standard for a minimum of ten consecutive business days.

[7] Securities Exchange Act Release No. 58809 (October 17, 2008), 73 FR 63222 (October 23, 2008) (SR–NASDAQ–2008–082). One comment was submitted on this proposal by Alan F. Eisenberg, Executive Vice President, the Biotechnology Industry Organization. This comment supported the suspension and ''any efforts by the Commission and NASDAQ to extend [the suspension], as necessary, beyond the termination date of January 16, 2009.''

[8] *See, e.g.,* Securities Exchange Act Release No. 58588 (September 18, 2008), 73 FR 55174 (September 24, 2008) (''The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Given the importance of confidence in our financial markets as a whole, we have also become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.'')

[9] Securities Exchange Act Release No. 59219 (January 8, 2009), 74 FR 2640 (January 15, 2009) (SR–NASDAQ–2008–099). Securities Exchange Act Release No. 59661 (March 31, 2009), 74 FR 15561 (April 6, 2009) (SR–NASDAQ–2009–026).

[10] Nasdaq would continue to identify on its Web site and in its daily data feed to vendors those companies in a compliance period or in the hearings process as not satisfying the continued listing standards, unless the company regains compliance during the suspension. A company would continue to be subject to delisting for failure to comply with other listing requirements.

[11] Nasdaq would not consider the bid price or market value of publicly held shares for the period before or during the suspension with respect to a company that was not yet non-compliant with those requirements at the start of the suspension.

[12] For example, if a company was 120 days into its first 180-day compliance period for a bid price deficiency when the suspension first started and the company does not regain compliance during the suspension, the company would have sixty days

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were in the Hearings process prior to October 16, 2008, would resume in that process at the same stage they were in when the suspension first went into effect. Nasdaq will continue to monitor securities to determine if they regain compliance during the temporary suspension.

Based on discussions with the Commission Staff, Nasdaq does not expect a further extension of the suspension beyond July 31, 2009.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general and with Section 6(b)(5) of the Act,[14] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 is designed to allow some additional time for market conditions to return to normal and for deficient companies to develop a plan to regain compliance with the continued listing requirements, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market.

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

While written comments were not solicited about the proposed extension, there was one comment submitted by the Biotechnology Industry Organization on the original suspension of the bid price and market value of publicly held shares requirements, which supported the extension. That comment is described in footnote 7, above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[17] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow Nasdaq to extend, through July 31, 2009, the temporary suspension of its bid price and market value of publicly held shares continued listing requirements. The Commission notes that the extension of the temporary suspension will continue to provide certain companies with temporary relief from receiving a deficiency or delisting notification, or from being delisted, and will provide some additional time to allow companies to regain compliance after the market volatility and conditions experienced earlier this year and last fall. The Commission notes that this action is temporary in nature, and that following the suspension, companies currently in the compliance period will resume at the same stage and receive the remaining balance of its compliance period if they remain non-compliant with these standards. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–2009–069 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–069. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal

remaining, starting on Monday, August 3, 2009, to regain compliance. The company may be eligible for the second 180-day compliance period if it satisfies the conditions for the second compliance period at the conclusion of the first compliance period.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–2009–069 and should be submitted on or before August 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60371; File No. SR–NASDAQ–2009–070]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend NASDAQ Rule 4751 To Provide System Functionality That Will Cancel Any Portion of Most Types of Unpriced Orders

July 23, 2009.

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 July 20, 2009, The NASDAQ Stock Market LLC (the ''NASDAQ Exchange'') [3] filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NASDAQ Exchange. The NASDAQ Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The NASDAQ Exchange is proposing a rule change with the Securities and Exchange Commission [sic] to amend NASDAQ Rule 4751 to provide system functionality that will cancel any portion of most types of unpriced orders (also known as market orders) submitted to the Exchange that would execute at a price that is more than $0.25 or 5 percent worse than the national best bid and offer at the time the order initially reaches the Exchange, whichever is greater. This would apply both to orders executing on NASDAQ and the portion of any order routed to another market center.

(a) The text of the proposed rule change is below. Proposed new language is underlined; deletions are bracketed.[sic] [5]

* * * * *

Rule 4751. Definitions

(a)–(e) No change.

(f)(1)–(11) No change.

(12) ''Unpriced Orders'' are any order types permitted by the System to buy or sell shares of a security at the national best bid (best offer) (''NBBO'') at the time when the order reaches the System.

(13) ''Collared Orders'' are all Unpriced Orders except: (1) Market On Open Orders as defined in Rule 4752; (2) Market On Close Orders as defined in Rule 4754; (3) Unpriced Orders included by the System in any Nasdaq Halt Cross or Nasdaq Imbalance Cross, each as defined in Rule 4753; or (4) Unpriced Orders that are Reference Price Cross Orders as defined in Rule 4770. Any portion of a Collared Order that would execute (either on NASDAQ or when routed to another market center) at a price more than $0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.

(g)–(i) 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, the NASDAQ Exchange 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 NASDAQ 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

The purpose of the proposed rule change is to protect market participants by reducing the risk that unpriced orders, also known as market orders, will execute at prices that are significantly worse than the national best bid and offer (''NBBO'') at the time the Exchange receives the order. NASDAQ believes that most market participants expect that their order will be executed at its full size at a price reasonably related to the prevailing market. However, participants may not be aware that there is insufficient liquidity at or near the NBBO to fill the entire order, particularly for more thinly-traded securities. These unpriced orders can disrupt both on [sic] NASDAQ and other markets to which all or a portion of these orders are routed.

NASDAQ is proposing to implement new functionality in its trading and routing systems that would cancel any portion of most unpriced orders that would execute either on NASDAQ or when routed to another market center at a price that is the greater of $0.25 or 5 percent worse than the NBBO at the time NASDAQ receives the order. Unpriced orders that would be subject to this calculation and potential cancellation are defined as ''Collared Orders.''

The following example illustrates how the Collared Order process would work. A market participant submits a SCAN Order (routable order) to buy 500 shares.[6] A SCAN order executes within NASDAQ to the extent liquidity is available at the NBBO and then routes to other market centers. The NBBO is $6.00 bid by $6.05 offer, with 100 shares available on each side. Both sides of the NBBO are set by another market center (''Away Market''), but NASDAQ has 100 shares available at the $6.05 to sell at the offer price and also has reserve orders to sell 100 shares at $6.32 and 400 shares at $6.40. No other market center is publishing offers to sell the security in between $6.05 and $6.40.

In this example, the Collared Order would be executed in the following manner:

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that The NASDAQ Stock Market LLC refers to itself in a variety of ways throughout this notice.

[4] 17 CFR 240.19b–4(f)(6).

[5] Changes are marked to the rules of The NASDAQ Stock Market LLC found at *http://nasdaqomx.cchwallstreet.com/.*

[6] If the order were a NASDAQ-only unpriced order that is not eligible for routing, NASDAQ would execute against the liquidity available on NASDAQ up to the Collared Order thresholds and cancel the remainder of the order, provided, however, that a NASDAQ-only order will never trade through a protected quote on another market center.