

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2006-35 and should be submitted on or before July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-54071; File No. SR-NASD-2006-068)

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1, 2, 3 and 4 Thereto To Create the Nasdaq Global Select Market and Rename the Nasdaq National Market

June 29, 2006.

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 May 30, 2006, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("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 filed this proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. On June 9, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.⁵ Nasdaq filed Amendment No. 2 on June 15, 2006, Amendment No. 3 on June 27, 2006, and Amendment No. 4 on June 29, 2006.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Amendment No. 1 replaced the original filing in its entirety.

⁶ In Amendments No. 2, 3 and 4, Nasdaq made certain technical corrections and clarifications to its rule text.

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

Nasdaq proposes to rename the Nasdaq National Market as the Nasdaq Global Market and to create the Nasdaq Global Select Market, a new tier within the Nasdaq Global Market with higher initial listing standards. Nasdaq would implement the proposed rule change on July 1, 2006. Nasdaq previously filed substantially identical changes to the rules of the NASDAQ Stock Market LLC ("Nasdaq LLC").⁷ This rule filing incorporates these changes into the rules of the NASD because Nasdaq LLC will not commence operations as a national securities exchange prior to the planned July 1, 2006, launch date for the Nasdaq Global Select Market.⁸

The text of the proposed rule change is available on Nasdaq's Web site (<http://www.nasdaq.com>), at Nasdaq's principal office, and at the Commission's Public Reference Room. The text of the proposed rule change is included below. Proposed new language is *italicized*; deletions are [bracketed].

* * * * *

IM-2310-2. Fair Dealing With Customers

(a)-(d) No change.

(e) Fair Dealing With Customers with Regard to Derivative Products or New Financial Products.

(1)-(2) No change.

(3) Hybrid Securities and Selected Equity-Linked Debt Securities ("SEEDS") Designated as Nasdaq [National] *Global Market Securities* Pursuant to the Rule 4400 Series.

No change.

* * * * *

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) No change.

(b) (1)-(6) No change.

(7) Offerings Exempt from Filing.

Notwithstanding the provisions of subparagraph (1) above, documents and information related to the following public offerings need not be filed with NASD for review, unless subject to the provisions of Rule 2720. However, it shall be deemed a violation of this Rule or Rule 2810, for a member to participate in any way in such public offerings if the underwriting or other arrangements in connection with the offering are not in compliance with this Rule or Rule 2810, as applicable:

⁷ See Securities Exchange Act Release No. 53799 (May 12, 2006), 71 FR 29195 (May 19, 2006) (SR-NASDAQ-2006-007).

⁸ See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

(A)-(E) No change.

(F) Exchange offers of securities where:

(i) The securities to be issued or the securities of the company being acquired are listed on The Nasdaq [National] *Global Market*, the New York Stock Exchange, or the American Stock Exchange; or

(ii) No change.

(G) No change.

(8)-(11) No change.

(c)-(j) No change.

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2790. Restrictions on the Purchase and Sale of Initial Equity Public Offerings

(a)-(b) No change.

(c) General Exemptions.

The general prohibitions in paragraph (a) of this rule shall not apply to sales to and purchases by the following accounts or persons, whether directly or through accounts in which such persons have a beneficial interest:

(1)-(4) No change.

(5) A publicly traded entity (other than a broker/dealer or an affiliate of a broker/dealer where such broker/dealer is authorized to engage in the public offering of new issues either as a selling group member or underwriter) that:

(A) No change.

(B) Is traded on the Nasdaq [National] *Global Market*; or

(C) Is a foreign issuer whose securities meet the quantitative designation criteria for listing on a national securities exchange or trading on the Nasdaq [National] *Global Market*;

(6)-(10) No change.

(d)-(h) No change.

(i) Definitions.

(1)-(9) No change.

(10) "Restricted person" means:

(A)-(D) No change.

(E) Persons Owning a Broker/Dealer.

(i)-(iii) No change.

(iv) Any person that directly or indirectly owns 10% or more of a public reporting company listed, or required to be listed, in Schedule A of a Form BD (other than a reporting company that is listed on a national securities exchange or is traded on the Nasdaq [National] *Global Market*, or other than with respect to a limited business broker/dealer);

(v) Any person that directly or indirectly owns 25% or more of a public reporting company listed, or required to be listed, in Schedule B of a Form BD (other than a reporting company that is listed on a national securities exchange or is traded on the Nasdaq [National] *Global Market*, or other than with respect to a limited business broker/dealer);

(vi) No change.

(j) No change.

* * * * *

3350. Short Sale Rule

(a)(1) With respect to trades executed on or reported to the ADF, no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq [National] *Global* Market security at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid in the security.

(2) With respect to trades executed on or reported to Nasdaq, no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq [National] *Global* Market security at or below the current best (inside) bid displayed in the Nasdaq Market Center when the current best (inside) bid is below the preceding best (inside) bid in the security.

(b)–(g) No change.

(h)(1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of an options market maker that would otherwise be in contravention of this Rule, if:

(A) The options market maker is registered with a qualified options exchange as a qualified options market maker in a stock options class on a Nasdaq [National] *Global* Market security or an options class on a qualified stock index; and

(B) No change.

(2) For purposes of this paragraph:

(A)(i) An “exempt hedge transaction,” in the context of qualified options market makers in stock options classes, shall mean a short sale in a Nasdaq [National] *Global* Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting options position or an offsetting options position that was created in a transaction(s) contemporaneous with the short sale,* provided that when establishing the short position the options market maker is eligible to receive(s) good faith margin pursuant to Section 220.12 of Regulation T under the Act for that transaction.

(ii) An “exempt hedge transaction,” in the context of qualified options market makers in stock index options classes, shall mean a short sale in a Nasdaq [National] *Global* Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting stock index options position or an offsetting stock index options position that was created in a transaction(s) contemporaneous with the short sale, provided that:

a.–c. No change.

(iii) No change.

(B) A “qualified options market maker” shall mean an options market maker who has received an appointment as a “qualified options market maker” for certain classes of stock options on Nasdaq [National] *Global* Market securities and/or index options on qualified stock indexes pursuant to the rules of a qualified options exchange.

(C) No change.

(D) A “qualified stock index” shall mean any stock index that includes one or more Nasdaq [National] *Global* Market securities, provided that more than 10% of the weight of the index is accounted for by Nasdaq [National] *Global* Market securities and provided further that the qualification of an index as a qualified stock index shall be reviewed as of the end of each calendar quarter, and the index shall cease to qualify if the value of the index represented by one or more Nasdaq [National] *Global* Market securities is less than 8% at the end of any subsequent calendar quarter.

(E)–(F) No change.

(i)(1) No change.

(2) For purposes of this paragraph, an “exempt hedge transaction” shall mean a short sale in a Nasdaq [National] *Global* Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting warrant position or an offsetting warrant position that was created in a transaction(s) contemporaneous with the short sale.* Notwithstanding any other provision of this paragraph, any transaction unrelated to normal warrant market making activity, such as index arbitrage or risk arbitrage that in either case is independent of a warrant market maker’s market making functions, will not be considered an “exempt hedge transaction.”

(3)–(4) No change.

(j)–(1) No change.

IM–3350. Short Sale Rule

(a)(1) In developing a Short Sale Rule for Nasdaq [National] *Global* Market securities, NASD adopted an exemption to the Rule for certain market making activity. This exemption was deemed an essential component of the Rule because bona fide market making activity is necessary and appropriate to maintain continuous, liquid markets in Nasdaq [National] *Global* Market securities. Rule 3350(c)(1) states that short selling prohibitions shall not apply to sales by qualified Nasdaq market makers or

* The phrase contemporaneously established includes transactions occurring simultaneously as well as transactions occurring within the same brief period of time.

registered ADF market makers in connection with bona fide market making activity and specifies that transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member’s market making functions, will not be considered as bona fide market making. Thus two standards are to be applied: One must be a “qualified” Nasdaq market maker or a registered ADF market maker and one must engage in “bona fide” market making activity to take advantage of this exemption. With this interpretation, NASD wishes to clarify for members some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and therefore would not be exempted from the Rule’s application.

(2)–(3) No change.

(b)(1) With respect to trades executed on or reported to the ADF, Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq [National] *Global* Market security at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid in the security. NASD has determined that in order to effect a “legal” short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least \$0.01 above the current inside bid when the current inside spread is \$0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least \$0.01.

(2) With respect to trades executed on or reported to Nasdaq, Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq [National] *Global* Market security at or below the current best (inside) bid displayed in the Nasdaq Market Center when the current best (inside) bid is below the preceding best (inside) bid in the security. Nasdaq has determined that in order to effect a “legal” short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least \$0.01 above the current inside bid when the current inside spread is \$0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least \$0.01.

(c)–(d) No change.

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4200. DEFINITIONS

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)–(24) No change.

(25) [“Nasdaq National Market” or “NNM” is a distinct tier of The Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq National Market security.] “Nasdaq Global Market” or “NGM” is a distinct tier of Nasdaq comprised of two segments: the Nasdaq Global Market and the Nasdaq Global Select Market. The Nasdaq Global Market is the successor to the Nasdaq National Market.

(26) “Nasdaq [National] Global Market security” or “[NNM] NGM security” means any authorized security in the Nasdaq [National] Global Market which (1) satisfies all applicable requirements of the Rule 4300 Series and substantially meets the criteria set forth in the Rule 4400 Series and is subject therefore to a transaction reporting plan approved by the Commission; (2) is a right to purchase such security; (3) is a warrant to subscribe to such security; or (4) is an index warrant which substantially meets the criteria set forth in Rule 4420, and has been designated therefore as a national market system security pursuant to [SEC Rule 11Aa2–1] Rule 600 of SEC Regulation NMS.

(27) No change.

(28) “Nasdaq Capital Market security” means any authorized security in The Nasdaq Capital Market which (1) satisfies all applicable requirements of the Rule 4300 Series other than a Nasdaq [National] Global Market security; (2) is a right to purchase such security; or (3) is a warrant to subscribe to such security.

(29) “The Nasdaq Stock Market” or “Nasdaq” is an electronic securities market comprised of competing market makers whose trading is supported by a communications network linking them to quotation dissemination, trade reporting, and order execution systems. This market also provides specialized automation services for screen-based negotiations of transactions, on-line comparison of transactions, and a range of informational services tailored to the needs of the securities industry, investors and issuers. [The Nasdaq Stock Market consists of two distinct market tiers: the “Nasdaq National Market” or “NNM,” and “The Nasdaq Capital Market”.] The Nasdaq Stock Market is operated by The Nasdaq Stock Market, Inc., a wholly-owned subsidiary of the Association.

(30) [Reserved.]

(a) “Nasdaq Global Select Market” or “NGSM” is a segment of the Nasdaq

Global Market comprised of NGM securities that met the requirements for initial inclusion contained in Rules 4425, 4426 and 4427.

(b) “Nasdaq Global Select Market security” or “NGSM security” means any security listed on Nasdaq and included in the Nasdaq Global Select segment of the Nasdaq Global Market.

(31)–(39) No change.

(b) No change.

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4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a)–(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(8) No change.

(9)(A)–(B) No change.

(C) In the case of index warrants, the criteria established in the Rule 4400 Series for Nasdaq [National] Global Market securities shall apply.

(10)–(30) No change.

(d) No change.

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4350. Qualitative Listing Requirements for Nasdaq [National Market and Nasdaq Capital Market] Issuers Except for Limited Partnerships

No change.

4350–1 Qualitative Listing Requirements for Nasdaq (National Market and Nasdaq Capital Market] Issuers Except for Limited Partnerships

No change.

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4400. Nasdaq [National] Global Market—Issuer Designation Requirements

No change.

IM–4400. Impact of Non-Designation of Dually Listed Securities

To foster competition among markets and further the development of the national market system following the repeal of NYSE Rule 500, Nasdaq shall permit issuers whose securities are listed on the New York Stock Exchange to apply also to list those securities on the Nasdaq [National] Global Market ([“NNM”] “NGM”). Nasdaq shall make an independent determination of whether such issuers satisfy all applicable listing requirements and

shall require issuers to enter into a dual listing agreement with Nasdaq.

While Nasdaq shall certify such dually listed securities for listing on the [NNM] NGM, Nasdaq shall not exercise its authority under the NASD Rule 4400 Series separately to designate or register such dually listed securities as Nasdaq national market system securities within the meaning of Section 11A of the Securities Exchange Act of 1934 or the rules thereunder. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation Service (“CQS”) and Consolidated Tape Association national market system plans (“CQ and CTA Plans”), shall remain subject to those plans and shall not become subject to the Nasdaq UTP Plan, the national market system plan governing securities designated by the Nasdaq Stock Market. For purposes of the national market system, such securities shall continue to trade under their current one, two, or three-character ticker symbol. Nasdaq shall continue to send all quotations and transaction reports in such securities to the processor for the CTA Plan. In addition, dually listed issues that are currently eligible for trading via the Intermarket Trading System (“ITS”) shall remain so and continue to trade on the Nasdaq Intermarket trading platform as they do today.

Through this interpretation, Nasdaq also resolves any potential conflicts that arise under NASD rules as a result of a single security being both a CQS security, which is subject to one set of rules, and a listed [NNM] NGM security, which is subject to a different set of rules. Specifically, dually listed securities shall be Nasdaq securities for purposes of rules related to listing and delisting, and shall remain as CQS securities under all other NASD rules. Treating dually listed securities as CQS securities under NASD rules is consistent with their continuing status as CQS securities under the CTA, CQ, and ITS national market system, as described above. This interpretation also preserves the status quo and avoids creating potential confusion for investors and market participants that currently trade these securities on the Nasdaq InterMarket.

For example, Nasdaq shall continue to honor the trade halt authority of the primary market under the CQ and CT Plans. NASD Rule 4120(a)(2) and (3) governing CQS securities shall apply to dually listed securities, whereas NASD Rule 4120(a)(1), (4), (5), (6), and (7) shall not. SEC Rule 10a–1 governing short sales of CQS securities shall continue to apply to dually listed securities, rather

than NASD Rule 3350 governing short sales of Nasdaq listed securities. Market makers in dually listed securities shall retain all obligations imposed by the NASD Rule 5200, 6300, and 6400 Series regarding quoting, trading, and transaction reporting of CQS securities rather than assuming the obligations appurtenant to quoting, trading, and transaction reporting of Nasdaq listed securities. The fees applicable to CQS securities set forth in NASD Rule 7010 shall continue to apply to dually listed issues.

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4420. Quantitative Designation Criteria

In order to be designated for the Nasdaq [National] *Global Market*, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) or (m) below. Initial Public Offerings substantially meeting such criteria are eligible for immediate inclusion in the Nasdaq [National] *Global Market* upon prior application and with the written consent of the managing underwriter that immediate inclusion is desired. All other qualifying issues, excepting special situations, are included on the next inclusion date established by Nasdaq.

(a)–(e) No change.

(f) Other Securities.

(1) No change.

(2) Issuers of securities designated pursuant to this paragraph [(e)] (f) must be listed on the Nasdaq [National] *Global Market* or the New York Stock Exchange (NYSE) or be an affiliate of a company listed on the Nasdaq [National] *Global Market* or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of “other” securities on a case-by-case basis.

(3) No change.

(g) Nasdaq will consider designating as Nasdaq [National] *Global Market* securities Selected Equity-linked Debt Securities (SEEDS) that generally meet the criteria of this paragraph (g). SEEDS are limited-term, non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of another issuer’s common stock or non-convertible preferred stock (or sponsored American Depositary Receipts (ADRs) overlying such equity securities).

(1) Issuer Listing Standards.

(A) The issuer of a SEEDS must be an entity that:

(i) Is listed on the Nasdaq [National] *Global Market* or the New York Stock Exchange (NYSE) or is an affiliate of a company listed on the Nasdaq [National] *Global Market* or the NYSE;

provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of SEEDS on a case-by-case basis; and

(ii) No change.

(B) In addition, the market value of a SEEDS offering, when combined with the market value of all other SEEDS offerings previously completed by the issuer and traded on the Nasdaq [National] *Global Market* or a national securities exchange, may not be greater than 25 percent of the issuer’s net worth at the time of issuance.

(2) No change.

(3) Minimum Standards Applicable to the Linked Security.

An equity security on which the value of the SEEDS is based must:

(A) No change.

(B) Be issued by a company that has a continuous reporting obligation under the Act, and the security must be listed on the Nasdaq [National] *Global Market* or a national securities exchange and be subject to last sale reporting; and

(C) No change.

(4)–(5) No change.

(h) Units.

(1) Initial and Continued Inclusion Requirements.

(a) No change.

(b) All debt components of a unit, if any, shall meet the following requirements:

(i) No change.

(ii) The issuer of the debt security must have equity securities listed on the Nasdaq [National] *Global Market*; and

(iii) No change.

(c) No change.

(2) No change.

(3) Disclosure Requirements for Units.

Each Nasdaq [National] *Global Market* issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations promulgated thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period. The issuer of a unit shall further provide information regarding the terms and conditions of the components of the unit (including information with respect to any original issue discount or other significant tax attributes of any component) and the ratio of the components comprising the unit. An issuer shall also disclose when a component of the unit is separately listed on Nasdaq.

These disclosures shall be made on the issuer’s website, or if it does not maintain a website, in its annual report provided to unit holders. An issuer shall

also immediately publicize through, at a minimum, a public announcement through the news media, any change in the terms of the unit, such as changes to the terms and conditions of any of the components (including changes with respect to any original issue discount or other significant tax attributes of any component), or to the ratio of the components within the unit. Such public notification shall be made as soon as practicable in relation to the effective date of the change.

(i)–(m) No change.

4425. Nasdaq Global Select Market

(a) An issuer that applies for listing on the Nasdaq *Global Market* and meets the requirements for initial listing contained in Rule 4426 shall be listed on the Nasdaq *Global Select Market*.

(b) Each October, beginning in October 2007, Nasdaq will review the qualifications of all securities listed on the Nasdaq *Global Market* that are not included in the Nasdaq *Global Select Market*. Any security that meets the requirements for initial listing on the Nasdaq *Global Select Market* contained in Rule 4426 at the time of this review will be transferred to the *Global Select Market* the following January, provided it meets the continued listing criteria at that time. An issuer will not owe any application or entry fees in connection with such a transfer.

(c) At any time, an issuer may apply to transfer a security listed on the Nasdaq *Global Market* to the Nasdaq *Global Select Market*. Such an application will be approved and effected as soon as practicable if the security meets the requirements for initial listing contained in Rule 4426. An issuer will not owe any application or entry fees in connection with such a transfer.

(d) At any time, an issuer may apply to transfer a security listed on the Nasdaq *Capital Market* to the Nasdaq *Global Select Market*. Such an application will be approved and effected as soon as practicable if the security meets the requirements for initial listing contained in Rule 4426. An issuer transferring from the Nasdaq *Capital Market* to the Nasdaq *Global Select Market* will be required to pay the applicable fees contained in Rule 4510.

(e) After initial inclusion on the Nasdaq *Global Select Market*, an issuer will remain on the Nasdaq *Global Select Market* provided it continues to meet the applicable requirements of the Rule 4300 and 4400 Series, including the qualitative requirements of Rule 4350 and IM-4300.

(f) Notwithstanding any provision to the contrary, the securities of any issuer

that is non-compliant with a qualitative listing requirement that does not provide for a grace period, or where Nasdaq staff has raised a public interest concern, will not be permitted to transfer to the Global Select Market until the underlying deficiency is resolved. In addition, any security that is below a quantitative continued listing requirement for the Nasdaq Global Market, even if the issuer has not been below the requirement for a sufficient period of time to be considered non-compliant, and any issuer in a grace or compliance period with respect to a quantitative listing requirement, will not be allowed to transfer from the Nasdaq Global or Capital Markets to the Nasdaq Global Select Market until the underlying deficiency is resolved. Nor will any issuer before a Nasdaq Listing Qualifications Panel be allowed to transfer to the Global Select Market until the underlying deficiency is resolved. An issuer that is in a grace or compliance period with respect to a qualitative listing standard, such as the cure period for filling an audit committee vacancy, will be allowed to transfer to the Global Select Market, subject to the continuation of that grace period.

IM-4425 Launch of the Nasdaq Global Select Market

In connection with the initial launch of the Nasdaq Global Select Market in July 2006, Nasdaq will review all issuers' qualifications and assign qualified Global Market companies to the new Global Select segment. In addition, qualified Capital Market companies will be given the opportunity to be included in the new segment. In connection with this initial transfer to the Global Select Market, Nasdaq will begin to make its assessment using the most recent financial data filed as of April 28, 2006, and market data as of April 28, 2006. Nasdaq will treat as an IPO any company that initially listed as an IPO since May 1, 2005 for purposes of the liquidity tests, because these companies would have insufficient market data to establish a 12-month trading history and may have had insufficient time to satisfy the market value of public float requirement applicable to other companies. Similarly, for purposes of the market capitalization requirements of Rules 4426(c)(2) and (c)(3), any company that initially listed as an IPO since May 1, 2005 must have the applicable average market capitalization from the date of listing. Nasdaq also notes that certain Nasdaq-listed issuers that qualify to initially list on the New York Stock Exchange (NYSE) will not be eligible to

list on the Global Select Market. Nasdaq will allow (but not require) any Nasdaq-listed issuer that meets the NYSE initial listing standards as of July 2006 but that does not qualify for the Global Select segment when it is adopted to be included in the Global Select Market, subject to a grace period until January 1, 2008 to achieve compliance with all listing criteria for the Global Select Market. Any issuer that avails itself of this grace period that has not achieved compliance with all listing criteria for the Global Select Market by January 1, 2008 will be moved to the Nasdaq Global Market. In addition, any issuer that avails itself of this grace period will remain subject to delisting in the event it fails to satisfy any of the continued listing requirements for the Nasdaq Global Market.

4426. Nasdaq Global Select Market Listing Requirements

(a) For inclusion in the Nasdaq Global Select Market, an issuer must meet the requirements of paragraphs (b), (c), and (d) of this rule, and all applicable requirements of the Rule 4300 and 4400 Series, including the qualitative requirements of Rule 4350 and IM-4300. Rule 4427 provides guidance about computations made under this Rule 4426.

(b) Liquidity Requirements.

(1) The security must demonstrate either:

- (i) A minimum of 550 beneficial shareholders, and
- (ii) An average monthly trading volume over the prior 12 months of at least 1,100,000 shares per month; or

(B) A minimum of 2,200 beneficial shareholders; or

(C) A minimum of 450 beneficial shareholders, in the case of: (i) an issuer listing in connection with its emergence from a bankruptcy or reorganization proceeding; or (ii) an issuer that is affiliated with another company listed on the Global Select Market.

(2) The security must have at least 1,250,000 publicly held shares; and

(3) The publicly held shares must have either:

(A) A market value of at least \$110 million; or

(B) A market value of at least \$100 million, if the issuer has stockholders' equity of at least \$110 million; or

(C) A market value of at least \$70 million in the case of: (i) an issuer listing in connection with its initial public offering; (ii) an issuer that is affiliated with, or a spin-off from, another company listed on the Global Select Market; and (iii) a closed end management investment company

registered under the Investment Company Act of 1940.

(c) Financial Requirements. An issuer, other than a closed end management investment company, must meet the requirements of one of subparagraphs (1), (2) or (3) of this paragraph.

(1) The issuer must have:

(A) Aggregate income from continuing operations before income taxes of at least \$11 million over the prior three fiscal years;

(B) Positive income from continuing operations before income taxes in each of the prior three fiscal years; and

(C) At least \$2.2 million income from continuing operations before income taxes in each of the two most recent fiscal years; or

(2) The issuer must have:

(A) Aggregate cash flows of at least \$27.5 million over the prior three fiscal years;

(B) Positive cash flows in each of the prior three fiscal years; and

(C) Both:

(i) Average market capitalization of at least \$550 million over the prior 12 months; and

(ii) Total revenue of at least \$110 million in the previous fiscal year; or

(3) The issuer must have both:

(A) Average market capitalization of at least \$850 million over the prior 12 months; and

(B) Total revenue of at least \$90 million in the previous fiscal year.

(d) Price. For inclusion in the Nasdaq Global Select Market, an issuer not listed on the Nasdaq Global Market shall have a minimum bid price of \$5 per share.

(e) Closed End Management Investment Companies.

(1) A closed end management investment company registered under the Investment Company Act of 1940 shall not be required to meet paragraph (c) of this Rule 4426.

(2) In lieu of the requirement in paragraph (b)(3) of this Rule 4426, a closed end management investment company that is listed concurrently with other closed end management investment companies that have a common investment adviser or whose investment advisers are "affiliated persons," as defined in the Investment Company Act of 1940 (a "Fund Family") shall be eligible if: (A) the total market value of publicly held shares in such Fund Family is at least \$220 million; (B) the average market value of publicly held shares for all funds in the Fund Family is \$50 million; and (C) each fund in the Fund Family has a market value of publicly held shares of at least \$35 million.

(f) Other Classes of Securities. If the common stock of an issuer is included

in the Nasdaq Global Select Market, any other security of that same issuer, such as other classes of common or preferred stock, that qualify for listing on the Nasdaq Global Market shall also be included in the Global Select Market.

Rule 4427. Computations and Definitions

(a) In computing the number of publicly held shares for purposes of Rule 4426(b), Nasdaq will not consider shares held by an officer, director or 10% shareholder of the issuer.

(b) In calculating income from continuing operations before income taxes for purposes of Rule 4426(c)(1), Nasdaq will rely on an issuer's financial information as filed with the Commission in the issuer's most recent periodic report and/or registration statement.

(c) In calculating cash flows for purposes of Rule 4426(c)(2), Nasdaq will rely on the net cash provided by operating activities, as reported in the issuer's financial information as filed with the Commission in the issuer's most recent periodic report and/or registration statement, excluding changes in working capital or in operating assets and liabilities.

(d) If an issuer does not have three years of publicly reported financial data, it may qualify under Rule 4426(c)(1) if it has:

(1) Reported aggregate income from continuing operations before income taxes of at least \$11 million and

(2) Positive income from continuing operations before income taxes in each of the reported fiscal years.

(e) If an issuer does not have three years of publicly reported financial data, it may qualify under Rule 4426(c)(2) if it has:

(1) Reported aggregate cash flows of at least \$27.5 million and

(2) Positive cash flows in each of the reported fiscal years.

(f) A period of less than three months shall not be considered a fiscal year, even if reported as a stub period in the issuer's publicly reported financial statements.

(g) For purposes of Rule 4426, an issuer is affiliated with another company if that other company, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of the issuer. Control, for these purposes, means having the ability to exercise significant influence. Ability to exercise significant influence will be presumed to exist where the parent or affiliated company directly or indirectly owns 20% or more of the other company's voting securities, and also can be

indicated by representation on the board of directors, participation in policy making processes, material intercompany transactions, interchange of managerial personnel, or technological dependency.

(h) In the case of an issuer listing in connection with its initial public offering, compliance with the market capitalization requirements of Rules 4426(c)(2) and (c)(3) will be based on the company's market capitalization at the time of listing.

4430. Limited Partnership Rollup Designation Criteria

In addition to meeting the quantitative criteria for Nasdaq [National] Global Market inclusion, an issuer that is formed as a result of a limited partnership rollup transaction, as defined in Rule 4200, must meet the criteria set forth below in order to be designated:

(a)-(b) No change.

4440. Registration Standards

(a) In addition to meeting the quantitative criteria and the limited partnership rollup criteria, if applicable, for Nasdaq [National market] Global Market inclusion, the issue must also be:

(1)-(4) No Change

(5) Registered under Section 12(b) of the Act and listed on a national securities exchange, or admitted to unlisted trading privileges on an exchange, provided that:

(A) No change.

(B) Such exchange shall permit Nasdaq market makers telephone access to exchange trading facilities with respect to transactions in [NNM] NGM securities to the same extent that exchange market makers are permitted access to Nasdaq market makers; and

(C) No change.

(b) Foreign securities and American Depositary Receipts where either the issuer is required to file reports pursuant to Section 15(d) of the Act or the security is exempt from registration under Section 12(g) of the Act by reason of the applicability of SEC Rule 12g3-2(b) are not eligible for designation in the Nasdaq [National] Global Market.

4450. Quantitative Maintenance Criteria

After designation as a Nasdaq [National] Global Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e), (f), (g), (h) or (i) below to continue to be designated as a national market system security. A security maintaining its designation under paragraph (b) need not also be in compliance with the quantitative

maintenance criteria in the Rule 4300 series.

(a)-(h) No change.

(i) Transfers between The Nasdaq [National] Global and Capital Markets For Bid Price Deficient Issuers

(1) If a [National] Global Market issuer has not been deemed in compliance prior to the expiration of the compliance period for bid price provided in Rule 4450(e)(2), it may transfer to The Nasdaq Capital Market, provided that it meets all applicable requirements for initial inclusion on the Capital Market set forth in Rule 4310(c) or Rule 4320(e), as applicable, other than the minimum bid price requirement. A Nasdaq [National] Global Market issuer transferring to The Nasdaq Capital Market must pay the entry fee set forth in Rule 4520(a). The issuer may also request a hearing to remain on The Nasdaq National Market pursuant to the Rule 4800 Series.

(2) Following a transfer to The Nasdaq Capital Market pursuant to paragraph (1), a Nasdaq [National] Global Market issuer will be afforded the remainder of any compliance period set forth in Rule 4310(c)(8)(D) or Rule 4320(e)(2)(E)(ii) as if the issuer had been listed on The Nasdaq Capital Market. The compliance periods afforded by this rule and any time spent in the hearing process will be deducted in determining the length of the remaining applicable compliance periods on The Nasdaq Capital Market.

* * * * *

4510. The Nasdaq [National] Global Market

(a) Entry Fee

(1) An issuer that submits an application for inclusion of any class of its securities (not otherwise identified in this Rule 4500 series) in The Nasdaq [National] Global Market, shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, according to the following schedule. This fee will be assessed on the date of entry in The Nasdaq [National] Global Market, except for \$5,000 which represents a non-refundable, application fee, and which must be submitted with the issuer's application.

Up to 30 million shares	\$100,000
30+ to 50 million shares	125,000
Over 50 million shares	150,000

(2) Total shares outstanding means the aggregate of all classes of equity securities to be included in The Nasdaq [National] Global Market as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate

regulatory authority. In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.

(3) A closed-end management investment company registered under the Investment Company Act of 1940, as amended (a "Closed-End Fund"), that submits an application for inclusion of a class of securities in The Nasdaq [National] *Global* Market shall pay to the Nasdaq Stock Market, Inc. an entry fee of \$5,000 (of which \$1,000 represents a non-refundable, application fee).

(4) An issuer that submits an application for inclusion of any class of rights in The Nasdaq [National] *Global* Market, shall pay, at the time of its application, a non-refundable application fee of \$1,000 to The Nasdaq Stock Market, Inc.

(5)–(6) No change.

(7) The fees described in this Rule 4510(a) shall not be applicable with respect to any securities that (i) are listed on a national securities exchange but not listed on Nasdaq, if the issuer of such securities transfers their listing exclusively to the Nasdaq [National] *Global* Market; or (ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities ceases to maintain their listing on the New York Stock Exchange and the securities instead are designated as national market securities under the Rule 4400 Series.

(8) No change.

(9) An issuer that transfers its listing from The Nasdaq Capital Market to The Nasdaq [National] *Global* Market shall pay the entry fee described in this Rule 4510(a) less the entry fee that was previously paid by the issuer to Nasdaq in connection with listing on The Nasdaq Capital Market. Such issuer is not required to pay the application fee described in Rule 4510(a) in connection with the application to transfer listing.

(10) An issuer that submits an application for listing on The Nasdaq Capital Market, but prior to listing revises its application to seek listing on The Nasdaq [National] *Global* Market, is not required to pay the application fee described in Rule 4510(a) in connection with the revised application.

(b) Additional Shares.

No change.

(c) Annual Fee—Domestic and Foreign Issues.

(1) The issuer of each class of securities (not otherwise identified in this Rule 4500 series) that is a domestic or foreign issue listed in The Nasdaq [National] *Global* Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on total shares

outstanding according to the following schedule:

Up to 10 million shares	\$24,500
10+ to 25 million shares	30,500
25+ to 50 million shares	34,500
50+ to 75 million shares	44,500
75+ to 100 million shares	61,750
Over 100 million shares	75,000

(2) No change.

(3) If a class of securities is removed from the Nasdaq [National] *Global* Market that portion of the annual fees for such class of securities attributable to the months following the date of removal shall not be refunded, [expect] *except* such portion shall be applied to The Nasdaq Capital Market fees for that calendar year.

(4) Total shares outstanding means the aggregate of all classes of equity securities included in the Nasdaq [National] *Global* Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq. In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.

(5) No change.

(d) Annual Fee—American Depositary Receipts (ADRs) and Closed-End Funds.

(1) The issuer of each class of securities that is an ADR listed in The Nasdaq [National] *Global* Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on ADRs outstanding according to the following schedule not to exceed \$30,000 per issuer:

Up to 10 million ADRs	\$21,225
10+ to 25 million ADRs	26,500
25+ to 50 million ADRs	29,820
Over 50 million ADRs	30,000

(2) ADRs outstanding means the aggregate of all classes of ADRs included in The Nasdaq [National] *Global* Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

(3) A Closed-End Fund listed in The Nasdaq [National] *Global* Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated based on total shares outstanding according to the following schedule:

Up to 5 million shares	\$15,000
5+ to 10 million shares	17,500
10+ to 25 million shares	20,000
25+ to 50 million shares	22,500
50+ to 100 million shares	30,000
100+ to 250 million shares	50,000
Over 250 million shares	75,000

(4) For the purpose of determining the total shares outstanding, fund sponsors

may aggregate shares outstanding of all Closed-End Funds in the same fund family listed in The Nasdaq [National] *Global* Market or The Nasdaq Small Cap Market, as shown in the issuer's most recent periodic reports required to be filed with the appropriate regulatory authority or in more recent information held by Nasdaq. The maximum annual fee applicable to a fund family shall not exceed \$75,000. For purposes of this rule, a "fund family" is defined as two or more Closed-End Funds that have a common investment adviser or have investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

(5) No change.

(6) If a class of securities is removed from the Nasdaq [National] *Global* Market, that portion of the annual fees for such class of securities attributable to the months following the date of removal shall not be refunded, *except* such portion shall be applied to The Nasdaq Capital Market fees for that calendar year.

(e)–(f) No change.

4520. The Nasdaq Capital Market

(a) Entry Fee

(1)–(6) No change.

(7) The fees described in this Rule 4520(a) shall not be applicable with respect to any securities that (i) are listed on a national securities exchange but not listed on Nasdaq, if the issuer of such securities transfers their listing exclusively to the Nasdaq [National] *Capital* Market; or (ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities ceases to maintain their listing on the New York Stock Exchange and the securities instead are designated under the plan applicable to Nasdaq Capital Market securities.

(8) No change.

(9) An issuer that submits an application for listing on The Nasdaq [National] *Global* Market, but prior to listing revises its application to seek listing on The Nasdaq Capital Market, is not required to pay the application fee described in Rule 4520(a) in connection with the revised application.

(b) No change.

(c) Annual Fee.

(1)–(4) No change.

(5) If a class of securities is removed from The Nasdaq Capital Market, that portion of the annual fees for such class of securities attributable to the months following the date of removal shall not be refunded, *except* such portion shall be applied to Nasdaq [National] *Global* Market fees for that calendar year.

(6) No change.

(7) Notwithstanding paragraph (6), for the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed in The Nasdaq [National] Global Market or The Nasdaq Capital Market, as shown in the issuer's most recent periodic reports required to be filed with the appropriate regulatory authority or in more recent information held by Nasdaq. The maximum, annual fee applicable to a fund family shall not exceed \$75,000. For purposes of this rule, a "fund family" is defined as two or more Closed-End Funds that have a common investment adviser or have investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

(8) No change.

(d)-(e) No change.

4530. Other Securities

(a) Application Fee and Entry Fee.

(1) When an issuer submits an application for inclusion of any Other Security or SEEDS in the Nasdaq [National] Global Market qualified for listing under Rule 4420(f) or 4420(g), it shall pay a non-refundable Application Fee of \$1,000.

(2) When an issuer submits an application for inclusion of any Other Security or SEEDS in the Nasdaq [National] Global Market qualified for listing under Rule 4420(f) or 4420(g), it shall pay an Entry Fee calculated based on total shares outstanding according to the following schedule:

Up to 1 million shares	\$5,000
1+ to 2 million shares	10,000
2+ to 3 million shares	15,000
3+ to 4 million shares	17,500
4+ to 5 million shares	20,000
5+ to 6 million shares	22,500
6+ to 7 million shares	25,000
7+ to 8 million shares	27,500
8+ to 9 million shares	30,000
9+ to 10 million shares	32,500
10+ to 15 million shares	37,500
Over 15 million shares	45,000

The applicable Entry Fee shall be reduced by any Entry Fees paid previously in connection with the initial inclusion during the current calendar year of any of the issuer's Other Securities and SEEDS in the Nasdaq [National] Global Market.

(3) For the sole purpose of determining the Entry Fee, total shares outstanding means the aggregate of all classes of Other Securities and SEEDS of the issuer to be included in the Nasdaq [National] Global Market in the current calendar year as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in

the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority.

(4)-(5) No change.

(b) Annual Fee.

(1) The issuer of Other Securities or SEEDS qualified under Rule 4420(f) or 4420(g) for listing on the Nasdaq [National] Global Market shall pay to The Nasdaq Stock Market, Inc. an Annual Fee calculated based on total shares outstanding according to the following schedule:

Up to 5 million shares	\$15,000
5+ to 10 million shares	17,500
10+ to 25 million shares	20,000
25+ to 50 million shares	22,500
Over 50 million shares	30,000

(2) No change.

(3) For the sole purpose of determining the Annual Fee, total shares outstanding means the aggregate of all classes of Other Securities and SEEDS of the issuer included in the Nasdaq [National] Global Market, as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

4540. Portfolio Depository Receipts and Index Fund Shares

(a) Entry Fee.

(1) When an issuer submits an application for listing a series of Portfolio Depository Receipts or Index Fund Shares in The Nasdaq [National] Global Market, it shall pay to The Nasdaq Stock Market, Inc. a listing fee of \$5,000 (which shall include a \$1,000 non-refundable processing fee).

(2)-(3) No change.

(b) Annual Fee.

(1) The issuer of a series of Portfolio Depository Receipts or Index Fund Shares listed on The Nasdaq [National] Global Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on total shares outstanding according to the following schedule:

Up to 1 million shares	\$6,500
1+ to 2 million shares	7,000
2+ to 3 million shares	7,500
3+ to 4 million shares	8,000
4+ to 5 million shares	8,500
5+ to 6 million shares	9,000
6+ to 7 million shares	9,500
7+ to 8 million shares	10,000
8+ to 9 million shares	10,500
9+ to 10 million shares	11,000
10+ to 11 million shares	11,500
11+ to 12 million shares	12,000
12+ to 13 million shares	12,500
13+ to 14 million shares	13,000
14+ to 15 million shares	13,500
15+ to 16 million shares	14,000
Over 16 million shares	14,500

(2) Total shares outstanding means the aggregate number of shares in all series of Portfolio Depository Receipts or Index Fund Shares to be included in The Nasdaq [National] Global Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

(3) No change.

4550. Written Interpretations of Nasdaq Listing Rules

(a) An issuer listed on The Nasdaq Capital Market or The Nasdaq [National] Global Market may request from Nasdaq a written interpretation of the Rules contained in the 4000 through 4500 Series. In connection with such a request, the issuer must submit to The Nasdaq Stock Market, Inc. a non-refundable fee of \$2,000. A response to such a request generally will be provided within four weeks from the date Nasdaq receives all information necessary to respond to the request.

(b)-(e) No change.

* * * * *

4612. Primary Nasdaq Market Maker Standards

(a) A member registered as a Nasdaq market maker pursuant to Rule 4611 may be deemed to be a Primary Nasdaq Market Maker in Nasdaq [National] Global Market securities if the market maker complies with threshold standards (as established and published by the Association from time to time) in the following qualification criteria:

(1)-(3) No change.

(b) A market maker for a Nasdaq [National] Global Market security must satisfy the threshold standards in at least two of the criteria in paragraph (a) in order to be designated a Primary Nasdaq Market Maker in that security; provided however, that if a market maker satisfies only one of the criteria, it may qualify as a Primary Nasdaq Market Maker if it also accounts for a threshold level of proportionate volume in the security (as established and published by the Association from time to time). **

(c)-(f) No change.

(g) In registration situations:

(1) To register and immediately become a Primary Nasdaq Market Maker in a Nasdaq [National] Global Market security, a member must be a Primary Nasdaq Market Maker in 80% of the securities in which it has registered. If the market maker is not a Primary Nasdaq Market Maker in 80% of its stocks, it may qualify as a Primary

**No change.

Nasdaq Market Maker in that stock if the market maker registers in the stock as a regular Nasdaq market maker and satisfies the qualification criteria for the next review period.

(2) Notwithstanding paragraph (g)(1) above, after an offering in a stock has been publicly announced or a registration statement has been filed, no market maker may register in the stock as a Primary Nasdaq Market Maker unless it meets the requirements set forth below:

- (A) For secondary offerings:
(i) The secondary offering has become effective and the market maker has satisfied the qualification criteria in the time period between registering in the security and the offering becoming effective; provided, however, that if the member is a manager or co-manager for the underwriting syndicate for the secondary offering and it is a PMM in 80% or more of the Nasdaq [National] Global Market securities in which it is registered, the member is eligible to become a PMM in the issue prior to the effective date of the secondary offering regardless of whether the member was a registered market maker in the stock before the announcement of the secondary offering; or
(ii) No change.
(B)–(C) No change.
(3) No change.
(h) No change.

4613. Character of Quotations

(a) Quotation Requirements and Obligations.

(1) Two-Sided Quote Obligation. For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain a two-sided quotation ("Principal Quote"), which is attributed to the market maker by a special maker participant identifier ("MPID") and is displayed in the Nasdaq Quotation Montage at all times, subject to the procedures for excused withdrawal set forth in Rule 4619.

- (A) No change.
(B) Minimum Price Variation—The minimum quotation increment for Nasdaq [National] Global Market and Capital Market securities shall be \$0.01 for quotations priced at or above \$1.00 per share and \$0.0001 for quotations priced below \$1.00 per share; provided, however, that if the Securities and Exchange Commission ("SEC") permits, with respect to any security, the display, rank or acceptance of quotations priced at or above \$1.00 per share in an increment smaller than \$0.01, then the minimum quotation increment for such

a security shall be the minimum permitted by the SEC or \$0.0001, whichever is greater. Quotations failing to meet this standard shall be rejected.

- (2)–(3) No change.
(b)–(e) No change.

4630. Reporting Transactions in Nasdaq [National] Global Market Securities

This Rule 4630 Series applies to the reporting by members of transactions in Nasdaq [National] Global Market securities ("designated securities") to the Nasdaq Market Center.

4652. Transaction Reporting

- (a)–(c) No change.
(d) Procedures for Reporting Price and Volume *
No change.
(e)–(g) No change.

4701. Definitions

- (a)–(ee) No change.
(ff) The term "UTP Exchange" shall mean any registered national securities exchange that elects to participate in the Nasdaq Market Center and that has unlisted trading privileges in Nasdaq [National] Global Market securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("Nasdaq UTP Plan").
(gg)–(vv) No change.

4200A. Definitions

- (a) Unless the context requires otherwise, the terms used in the Rule 4000A and Rule 6000A Series shall have the meanings below. Terms not specifically defined below shall have the meaning in NASD's By-Laws and Rules and SEC [Rule 11Aa3-1] Regulation NMS.
(1) No change.
(2) "ADF-eligible security" means a Nasdaq [National] Global Market, Nasdaq Capital Market security and Nasdaq Convertible Debt securities.
(3)–(4) No change.
(5) "Nasdaq [National] Global Market" or ["NNM"] NGM is a distinct tier of the Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq [National] Global Market Security.

* For examples of reporting procedures, refer to the Rule 4630 Series, Reporting Transactions in Nasdaq [National] Global Market Securities.

- (6)–(13) No change.
(b) No change.

5410. Applicability

(a) For a period of time, NASD will operate two facilities for collecting trade reports for executions in Nasdaq [National] Global Market, Nasdaq Capital Market, and Nasdaq Convertible Debt securities ("designated securities"): The Nasdaq Stock Market and the Alternative Display Facility ("ADF"). Nasdaq will operate the Nasdaq Market Center (including its trade reporting service), and NASD, through the ADF, will operate Trade Reporting and Comparison Service ("TRACS"). This Rule 5400 Series establishes the rules for determining which member must report a trade and whether a trade must be reported to the Nasdaq Market Center, pursuant to the Rule 4630, 4640, 4650 and 6100 Series or TRACS, pursuant to the Rule 4630A and 6100A Series.
(b) No change.

6110. Definitions

(a) The term "Reportable Security" shall mean all Nasdaq [National] Global Market and Nasdaq Capital Market securities, all Consolidated Quotation Service (CQS) securities traded in the over-the-counter market, all OTC Equity Securities as defined in Rule 6600, and all Direct Participation Programs as defined in Rule 6910.
(b)–(q) No change.

6120. Trade Reporting Participation Requirements

- (a) Mandatory Participation for Clearing Agency Members
(1)–(5) No change.
(6) Upon compliance with the conditions specified in subparagraphs (A)–(E) below, access to and participation in the trade reporting service of the Nasdaq Market Center may be granted to a national securities exchange that trades Nasdaq [National] Global Market or Capital Market securities on an unlisted trading privileges basis ("UTP Exchange"). The terms and conditions of such access and participation, including available functionality and applicable rules and fees, shall be set forth in and governed by a UTP Exchange ACT Participant Application Agreement. Such access may be made available on terms that differ from the terms applicable to members but that do not unreasonably discriminate among national securities exchanges.
(A)–(E) No change.
(7) No change

(b) No change.

* * * * *

IM-6130. Trade Reporting of Short Sales

The NASD's short sale rule (Short Sale Rule or Rule 3350) generally prohibits members from effecting short sales in [NNM] *NGM* securities at or below the inside bid when the current inside bid is below the previous inside bid. Rule 6130(d)(6) requires that members indicate on ACT reports whether a transaction is a short sale or a short sale exempt transaction ("ACT short sale reporting requirements"). Rule 6130 explicitly requires members to file ACT reports not just for [NNM] *NGM* securities transactions, but for other securities transactions, including transactions in exchange-listed, Capital Market, convertible debt, OTC Bulletin Board, and OTC equity securities. Thus, all short sale transactions in these securities reported to ACT must carry a "short sale" indicator (or a "short sale exempt" indicator if it is a short sale transaction in an [NNM] *NGM* or exchange-listed security that qualifies for an exemption from Rule 3350 or SEC Rule 10a-1).

* * * * *

6150. Risk Management Functions

(a) No change.

(b) If a clearing broker voluntarily uses the Nasdaq Market Center risk management service, the Nasdaq Market Center system will provide the following risk management capabilities to clearing brokers that have executed an ACT Participant Risk Management Agreement:

(1) No change.

(2) Gross Dollar Thresholds ("Super Caps") and Sizeable Limits.

Clearing brokers will be able to establish, on an inter-day or intra-day basis, gross dollar thresholds (also known as "Super Caps") for purchases and sales for their correspondent executing brokers. When any of a correspondent's gross dollar thresholds

are exceeded, notice will be furnished to the clearing broker, and any trade in excess of an applicable "sizeable limit" that is negotiated by the correspondent will be subject to review by the clearing broker until such time as the correspondent's trading activity no longer exceeds a gross dollar threshold. Specifically, the clearing broker will have 15 minutes from execution to review any single trade negotiated by the correspondent that equals or exceeds the applicable sizeable limit in order to decide to act as principal for the trade or to decline to act as principal. If the clearing broker does not affirmatively accept or decline the "sizeable trade," at the end of 15 minutes the system will act in accordance with pre-established processing criteria, as described below.

(A) ACT Workstation Users.

(i) Clearing brokers that use the ACT Workstation may establish gross dollar thresholds and sizeable limits for each of their correspondent executing brokers. They may establish different gross dollar thresholds and sizeable limits for each type of security (i.e., Nasdaq [National] *Global* Market, Nasdaq Capital Market, Consolidated Quotations Service, or OTC Bulletin Board), as well as an aggregate gross dollar threshold and sizeable limit for all types of securities.

(ii)-(iii) No change.

(B) Other Nasdaq Market Center Risk Management Users.

(i) Clearing brokers that do not use the ACT Workstation may establish aggregate gross dollar thresholds for each of their correspondent executing brokers, but may not establish gross dollar thresholds for each type of security (i.e., Nasdaq [National] *Global* Market, Nasdaq Capital Market, Consolidated Quotations Service, or OTC Bulletin Board).

(ii)-(iii) No change.

(3)-(5) No change.

(6) Single Trade Limit.

Clearing brokers will have 15 minutes from trade report input to the Nasdaq

Market Center to review any single trade executed by their correspondent executing brokers that equals or exceeds a pre-established limit in order to decide to act as principal for the trade or to decline to act as principal. If, however, the clearing firm does not affirmatively accept or decline the trade, at the end of 15 minutes the system will act in accordance with pre-established processing criteria, as described below.

(A) ACT Workstation Users. Clearing brokers that use the ACT Workstation may establish single trade limits for each of their correspondent executing brokers, and may establish different limits for each type of security (i.e., Nasdaq [National] *Global* Market, Nasdaq Capital Market, Consolidated Quotations Service, or OTC Bulletin Board). Such clearing brokers may also establish the default processing criteria that will apply to trades that exceed the single trade limit after 15 minutes if the clearing broker does not affirmatively accept or decline the trade; the clearing broker may specify that such trades should be either automatically declined or automatically subjected to normal processing in which the clearing broker will act as principal to clear the trades.

(B) No change.

6110A. Definitions

(a)-(k) No change.

(l) The term "TRACS Eligible Security" shall mean Nasdaq [National] *Global* Market, Nasdaq Capital Market security and Nasdaq Convertible Debt securities.

(m)-(n) No change.

* * * * *

7010. System Services

(a)-(f) No change.

(g) Nasdaq Market Center Trade Reporting

The following charges shall be paid by the participant for use of the trade reporting service of the Nasdaq Market Center:

Transaction Related Charges:

Reporting of transactions in Nasdaq [National] <i>Global</i> Market and Capital Market securities executed through the Nasdaq Market Center System ("Nasdaq Market Center Covered Transactions").	
Average daily volume of transaction reports for the Nasdaq Market Center Covered Transactions during the month to which a participant is a party:	Fee per side for transaction reports of the Nasdaq Market Center Covered Transactions to which such participant is a party:
0 to 9,999	\$0.029
10,000 or more	\$0.00
Other reports for transactions in Nasdaq [National] <i>Global</i> Market and Capital Market securities not subject to comparison through the Nasdaq Market Center.	\$0.00
Reporting of transactions in ITS Securities (as defined in Rule 5210(c)) not subject to comparison through the Nasdaq Market Center ("ITS Covered Transactions").	

Average daily volume of media transaction reports for ITS Covered Transactions during the month (i) that are submitted to the trade reporting service of the Nasdaq Market Center automatically and in which a participant is identified as the reporting party, or (ii) that are submitted or introduced by such participant to the Nasdaq Market Center:	Fee per side for reports of ITS Covered Transactions to which such participant is a party:
0 to 5,000	\$0.029
More than 5,000	\$0.029 for a number of reports equal to 5,000 times the number of trading days in the month \$0.00 for all remaining reports.
Reporting of all other transactions not subject to comparison through the Nasdaq Market Center.	\$0.029/side.
Comparison	\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares).
Late Report—T+N	\$0.288/side.
Query	\$0.50/query.
CTCI fee	\$575.00/month.
WebLink ACT or Nasdaq Workstation Post Trade	\$300.00/month (full functionality) or \$150.00/month (up to an average of twenty transactions per day each month) (For the purposes of this service only, a transaction is defined as an original trade entry, either on trade date or as-of transactions per month).
Risk Management Charges	\$40.035/side and \$17.25/month per correspondent firm (maximum \$10,000/month per correspondent firm).
Corrective Transaction Charge	\$0.25/Cancel, Error, Inhibit, Kill, or 'No' portion of No/Was transaction, paid by reporting side; \$0.25/Break, Decline transaction, paid by each party.
ACT Workstation	\$525/logon/month.

(h)–(t) No change.

(u) Nasdaq Revenue Sharing Program.

After Nasdaq earns total operating revenue sufficient to offset actual expenses and working capital needs, a percentage of all Market Participant Operating Revenue (“MPOR”) shall be eligible for sharing with Nasdaq Quoting Market Participants (as defined in Rule 4701). MPOR is defined as operating revenue that is generated by Nasdaq Quoting Market Participants. MPOR consists of transaction fees, technology fees, and market data revenue that is attributable to Nasdaq Quoting Market Participant activity in Nasdaq [National] Global Market and Capital Market securities. MPOR shall not include any investment income or regulatory monies. The sharing of MPOR shall be based on each Nasdaq Quoting Market Participant’s pro rata contribution to MPOR. In no event shall the amount of revenue shared with Nasdaq Quoting Market Participants exceed MPOR. To the extent market data revenue is subject to year-end adjustment, MPOR revenue may be adjusted accordingly.

(v)–(w) No change.

* * * * *

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, as amended, 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

Nasdaq proposes to rename the Nasdaq National Market as the Nasdaq Global Market to more accurately reflect the international reach and leadership of many of the companies listed on that market and the market itself.⁹

Nasdaq also proposes to create a new segment within the Nasdaq Global Market. This new segment would be known as the Nasdaq Global Select Market, and new, higher initial listing requirements would apply to companies listing on the Nasdaq Global Select Market.¹⁰ All listing and trading rules applicable to securities on the Nasdaq Global Market would also apply to the Nasdaq Global Select Market.

⁹The Nasdaq Global Market, including the Nasdaq Global Select segment described below, would be the successor to the Nasdaq National Market. As such, Nasdaq believes that all securities listed on the Nasdaq Global Market, including those on the Nasdaq Global Select Market, would be “covered securities,” as that term is defined in Section 18(b) of the Securities Act of 1933, 15 U.S.C. 77r(b).

¹⁰As described below, given that the Nasdaq Global Select Market is a segment of the Nasdaq Global Market, Nasdaq would apply the same continued listing requirements as are applicable to other companies on the Nasdaq Global Market, which are the existing listing requirements for the Nasdaq National Market.

Listing Standards

As described below, issuers would be required to meet minimum liquidity measures and a financial test, as well as achieve a minimum bid price requirement.¹¹ Nasdaq believes that the creation of this segment would more clearly align Nasdaq’s financial and liquidity listing standards with its corporate governance standards¹² and its regulatory enforcement program, as well as its trading system. While Nasdaq believes its existing standards protect investors, Nasdaq also believes that, to the extent these higher initial listing standards help attract and maintain listings on Nasdaq and identify companies that meet these high listing standards, investors would benefit.

1. Liquidity Tests

In order to qualify for the Nasdaq Global Select Market, a company would be required to demonstrate either: (1) A minimum of 550 shareholders and an average monthly trading volume over the prior 12 months of at least 1,100,000 shares per month; or (2) A minimum of 2,200 shareholders.

¹¹Nasdaq could deny listing to a company that meets these requirements based on public interest concerns, as described in existing NASD Rule 4300 and NASD IM-4300.

¹²Companies on the Nasdaq Global Select Market would be required to meet the same rigorous corporate governance standards applicable to companies on the Nasdaq Capital and Nasdaq Global Markets. These standards require a majority independent board, an independent audit committee, and for independent directors to participate in compensation and nomination decisions. Shareholders are also required to approve significant transactions and the use of equity compensation.

Average monthly trading volume	> = 1,100,000	OR	Three year aggregate cash flows; and	> = \$27,500,000
and Shareholders	> = 550	OR	Three most recent years' cash flow each; and ...	> 0
OR Shareholders	> = 2,200	OR	Average 12 month market capitalization; and	> = \$550,000,000
		OR	Total revenue	> = \$110,000,000
		OR	Total revenue; and	> = \$90,000,000
		OR	Average 12 month market capitalization	> = \$850,000,000

In addition, a company must have at least 1,250,000 publicly held shares. In computing the number of publicly held shares, Nasdaq would not consider shares held by an officer, director, or 10% shareholder of the company.

Publicly Held Shares > = 1,250,000

Finally, those publicly held shares must have a market value of at least \$110 million; provided, however, that if the market value of publicly held shares is at least \$100 million and the company has shareholders equity of at least \$110 million the company would also qualify.

Market Value of Publicly Held Shares > = \$110,000,000

OR
Market Value of Publicly Held Shares > = \$100,000,000

and
Shareholders' Equity > = \$110,000,000

2. Financial Tests

A company would also be required to meet one of three financial tests in order to qualify for listing on the Nasdaq Global Select Market. Specifically, companies would be required to demonstrate: (1) Aggregate pre-tax earnings of at least \$11 million over the prior three years, with all three years having positive pre-tax earnings and the two most recent years having at least \$2.2 million pre-tax earnings each; (2) aggregate cash flows of at least \$27.5 million over the prior three years with all three years having positive cash flows, an average market capitalization of at least \$550 million over the prior 12 months, and total revenue of at least \$110 million in the previous fiscal year; or (3) total revenue of at least \$90 million in the previous fiscal year and an average market capitalization of at least \$850 million over the prior 12 months. However, the operating history requirements in NASD Rules 4426(c)(1) and (c)(2) may be shortened to a lesser period if an issuer does not have three years of publicly reported financial data.¹³

Three year aggregate pretax earnings; and .. > = \$11,000,000
Pre-tax earnings in the two most recent years each; and > = \$2,200,000
Third most recent year pre-tax earnings > 0

¹³ A period of less than three months shall not be considered a fiscal year. See NASD Rule 4427(f).

OR
Three year aggregate cash flows; and

Nasdaq would determine compliance with the financial tests based on a company's publicly filed financial information. Thus, for example, as specified in proposed NASD Rule 4427(b), pre-tax earnings would be the company's pre-tax income from continuing operations as filed with the Commission in the issuer's most recent periodic report and/or registration statement.

3. Price Test

Any company newly listed on Nasdaq (both initial public offerings and seasoned companies) would be required to have a minimum \$5 bid price to list on the Nasdaq Global Select Market. Companies switching from the Nasdaq Global Market would have previously satisfied the bid price requirement in connection with their initial listing and therefore would not be required to meet this requirement again when transferring to the new segment.

4. Other Provisions

A company listing in connection with a court-approved reorganization under the federal bankruptcy laws or comparable foreign laws would be required to have 450 shareholders for listing, as would a company affiliated with another company listed on the Nasdaq Global Select Market. In these cases, Nasdaq believes that while the shareholder requirement is difficult to meet immediately upon listing because the stock is not initially widely distributed, shares are widely distributed following the initial listing. For similar reasons, the market value of publicly held shares requirement would be \$70 million in the case of a company listing in connection with its initial public offering, a company that is affiliated with, or a spin-off from, another company listed on the Nasdaq Global Select Market, and a closed-end management investment company.

Due to their unique nature, closed-end management investment companies would not be required to meet the financial requirements described above.¹⁴ Further, Nasdaq has proposed

¹⁴ While Nasdaq plans to list closed-end funds on the Nasdaq Global Select Market, there are not

different liquidity standards for closed-end funds. Finally, if the primary class of a company is included in the Nasdaq Global Select Market, any secondary class of that same company, such as a secondary class of common or a preferred stock, that qualifies for listing on the Nasdaq Global Market shall also be included in the Nasdaq Global Select Market.

5. Continued Listing

Following initial listing on the Nasdaq Global Select Market, securities would be subject to the continued listing standards that are currently applicable to the Nasdaq Global Market. Thus, companies must satisfy one of the alternatives for continued listing contained in NASD Rule 4450.¹⁵

Implementation

Prior to the planned July 1, 2006, launch of the new segment, Nasdaq would review all companies' qualifications and assign qualified Nasdaq Global Market companies to the new Nasdaq Global Select segment.¹⁶ In addition, qualified Nasdaq Capital Market companies would be given the opportunity to be included in the new segment.¹⁷ Thereafter, beginning in 2007, staff of the Nasdaq Listing Qualifications Department would review all Nasdaq Global Market companies' qualifications each October and qualified Nasdaq Global Market companies would be automatically placed in the new segment the following January.¹⁸ While this review would

separate listing standards for structured products, index-linked notes, trust issued receipts, SEEDs, units, commodity-backed products, or Exchange Traded Funds.

¹⁵ For inclusion on the Nasdaq Global Select Market, an initial public offering must be able to satisfy one of the alternatives for continued listing on the Nasdaq Global Market as contained in NASD Rule 4450, as well as the requirements for initial inclusion on the Nasdaq Global Select Market. As a result, the initial listing standards would, in all cases, exceed the criteria set forth in Rule 3a51-1(a)(2) of the Act, 17 CFR 240.3a51-1(a)(2).

¹⁶ As a result of this review, no company then on the Nasdaq Global Market would be adversely affected. Note that the fees for the Nasdaq Global Market and the Nasdaq Global Select Market would be the same. See NASD Rule 4510. Fees for securities listed on the Nasdaq Capital Market would continue to differ. See NASD Rule 4520. Any company not qualifying for the Nasdaq Global Select Market would remain on the Nasdaq Global Market.

¹⁷ See NASD Rule 4425(d).

¹⁸ Nasdaq believes that the delay from October to January is necessary to assure adequate time to complete the required review and notify issuers and market participants about the change. Nonetheless, to assure that no company is disadvantaged by this delay, a company that qualifies for the Nasdaq Global Select Market when it is reviewed in October would be placed in that segment even if it falls below one or more of the initial listing requirements

occur automatically in October, a company may also apply to upgrade at any point. Companies transferring from the Nasdaq Global Market to the Nasdaq Global Select Market as part of this process would not be assessed entry or application fees. New Nasdaq Global Market listings would also be placed in the Nasdaq Global Select segment if they qualify, although they would be subject to the applicable entry and application fee schedule.

As part of both the initial transfer of companies to the Nasdaq Global Select Market and Nasdaq's ongoing review of companies' eligibility to be included in the Nasdaq Global Select Market, a company that is in a grace or compliance period with respect to a qualitative listing standard, such as the cure period allowed to companies that have a vacancy on their audit committee, would be allowed to transfer to the Nasdaq Global Select Market, subject to the continuation of that grace period. If a company is non-compliant with a qualitative listing requirement¹⁹ that does not provide for a grace period or if staff has raised a public interest concern, the company would not be permitted to transfer to the Nasdaq Global Select Market until the underlying deficiency is resolved. A company that is below a quantitative listing requirement even if the company has not been below the requirement for a sufficient period of time to be considered deficient²⁰ and a company in a grace or compliance period with respect to a quantitative listing requirement would not be allowed to transfer to the Nasdaq Global Select Market until the underlying deficiency is resolved, nor would any company before a Nasdaq Listing Qualifications Panel.

In connection with the initial transfer of companies to the Nasdaq Global Select Market, Nasdaq proposes to allow (but not require) any Nasdaq-listed company that meets the New York Stock Exchange LLC ("NYSE") initial listing standards as of July 1, 2006, but that does not then qualify for the new

in January when the actual transfer takes place. However, a company that no longer meets the continued listing requirements for the Nasdaq Global Market in January would not be transferred to the Nasdaq Global Select Market, nor would a company that is delinquent in filing its periodic reports at the time of the transfer or where staff has raised public interest concerns.

¹⁹ Qualitative listing requirements include those requirements contained in NASD Rule 4350.

²⁰ For example, a security with a closing bid price below \$1 is not considered deficient until the security has closed below \$1 for 30 consecutive business days. Nonetheless, no security with a closing bid price below \$1 would be permitted to list on the Nasdaq Global Select Market, even if it has closed above \$1 in the prior 30 business days.

segment, to be included in the Nasdaq Global Select Market, subject to an 18 month grace period until January 1, 2008, to achieve compliance.²¹ During that grace period, these companies would have to achieve compliance with all applicable criteria for initial listing on the Nasdaq Global Select Market. Any company that has not achieved compliance with all listing criteria for the Nasdaq Global Select Market by January 2008 would be moved to the Nasdaq Global Market at that time.²²

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,²³ in general, and with Section 15A(b)(6) of the Act,²⁴ in particular. Section 15A(b)(6) of the Act requires that Nasdaq's rule 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 to protect investors and the public interest. Nasdaq believes that changing the name of the Nasdaq National Market to the Nasdaq Global Market would more accurately reflect the international reach and leadership of many of the companies listed on that market and the market itself. Further, Nasdaq believes that the creation of a market segment within the Nasdaq Global Market with what it describes as higher initial listing standards would protect investors and the public interest, and would foster competition among exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, would 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.

²¹ Certain companies would qualify for the NYSE but not the Nasdaq Global Select Market.

²² If any such company fails to meet the continued listing standards for the Nasdaq Global Market at any point, staff would begin proceedings under the NASD Rule 4800 Series with respect to that company.

²³ 15 U.S.C. 78o-3.

²⁴ 15 U.S.C. 78o-3(b)(6).

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

Because the foregoing proposed rule change, as amended, does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁵ and Rule 19b-4(f)(6) thereunder.²⁶ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.²⁷

Nasdaq has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay and allow the proposed rule change, as amended, to become effective upon filing. The Commission has waived the 5-day pre-filing requirement for this proposal. In addition, the Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay.²⁸ The Commission notes that the proposed rule change, as amended, is substantially similar to a proposed rule change filed by the NASDAQ Stock Market LLC.²⁹

IV. 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:

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(6).

²⁷ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 27, 2006, the date Nasdaq filed Amendment No. 4 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

²⁸ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁹ See Securities Exchange Act Release No. 53799 (May 12, 2006), 71 FR 29195 (May 19, 2006) (SR-NASDAQ-2006-007).

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-NASD-2006-068 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-NASD-2006-068. 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 the NASD.

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-NASD-2006-068 and should be submitted on or before July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁰

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06-6038 Filed 7-7-06; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54084; File No. SR-NASD-2005-087]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to Amendments to the NASD's Rules Following the Nasdaq Exchange's Operation as a National Securities Exchange for Nasdaq UTP Plan Securities

June 30, 2006

I. Introduction

On July 11, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend various NASD rules to reflect the Nasdaq Stock Market, Inc.'s ("Nasdaq") separation from the NASD following the commencement of operations of the Nasdaq Stock Market LLC ("Nasdaq Exchange") as a national securities exchange.

Prior to 2000, Nasdaq was wholly-owned by the NASD. The NASD currently retains voting control of Nasdaq through an outstanding share of Nasdaq Series D preferred stock.³ The NASD and Nasdaq began restructuring their relationship in 2000 with the goal of completely separating Nasdaq from the NASD. As part of this restructuring, Nasdaq filed with the Commission an application to register one of its

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19B-4.

³ The share of Series D preferred stock gives the NASD the right to cast one more than one-half of all votes entitled to be cast at an election by all holders of capital stock of Nasdaq. When Nasdaq ceases to operate pursuant to the NASD's Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (the "Delegation Plan"), the Series D preferred share will expire automatically. See Securities Exchange Act Release No. 53022 (December 23, 2005), 70 FR 77433 (December 30, 2005). To reflect this change, the NASD will file a proposed rule change to revise the Delegation Plan to remove references to Nasdaq as a subsidiary of the NASD. Because this change to the Delegation Plan would terminate the NASD's control under the Series D preferred share, the NASD cannot file this proposed rule change until it can represent to the Commission that its control of Nasdaq is no longer necessary because the NASD can fulfill through other means its obligations with respect to securities reported to the Consolidated Transaction Association Plan ("CTA Plan Securities") See Order Modifying Nasdaq Exchange Conditions, *infra* note 6.

subsidiaries, the Nasdaq Exchange, as a national securities exchange.⁴

The Commission approved the Nasdaq's Exchange's registration as a national securities exchange on January 13, 2006.⁵ In the Nasdaq Exchange Order, the Commission conditioned the Nasdaq Exchange's operation as a national securities exchange on the satisfaction of certain enumerated requirements. The Nasdaq Exchange Order and the conditions therein reflected the Nasdaq Exchange's intentions to begin operations as a national securities exchange for CTA Plan Securities as well as securities listed on Nasdaq and reported to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Nasdaq UTP Plan Securities").

The Commission modified the conditions set forth in the Nasdaq Exchange Order on June 30, 2006, to allow the Nasdaq Exchange to operate as a national securities exchange solely with respect to Nasdaq UTP Plan Securities.⁶ During this period, the NASD will continue to control Nasdaq through the Series D preferred share and Nasdaq will continue to perform obligations under the Delegation Plan with respect to CTA Plan Securities. Accordingly, the NASD filed Amendment No. 1 to modify the proposed rule change to reflect the Nasdaq Exchange's operational plan.

II. NASD Proposal

In the proposed rule change, the NASD proposed to: (1) Delete certain NASD rules that pertain to the operation of the Nasdaq Exchange and thus reflect Nasdaq's separation from the NASD;⁷ (2) modify certain NASD rules to clarify the NASD's continued regulation of the over-the-counter ("OTC") market upon the Nasdaq Exchange's operation as an exchange;⁸ (3) amend the NASD's Order Audit Trail System ("OATS") to reflect the use of OATS by Nasdaq Exchange members;⁹ (4) make technical and clarifying changes to the rules governing the NASD's Alternative Display Facility

⁴ In connection with the Nasdaq Exchange registration, Nasdaq became a holding company with the Nasdaq Exchange as its wholly-owned subsidiary.

⁵ See Securities Exchange Act Release No. 53128, 71 FR 3350 (January 23, 2006) ("Nasdaq Exchange Order").

⁶ See Securities Exchange Act Release No. 54085 (June 30, 2006) ("Order Modifying Nasdaq Exchange Conditions").

⁷ See *infra* note 44 and accompanying section.

⁸ See *infra* notes 46-53 and accompanying text.

⁹ See *infra* note 55 and accompanying text.

³⁰ 17 CFR 200.30-3(a)(12).