

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 CBOE. 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-CBOE-2006-87 and should be submitted on or before December 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54797; File No. SR-NASDAQ-2006-041]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify an Aspect of the Definition of Independent Director

November 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 3, 2006, The NASDAQ Stock Market LLC ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to amend its Rules 4200(a)(15)(B) and IM-4200 to modify an aspect of Nasdaq's definition of

"independent director." Nasdaq will implement the proposed rule upon approval by the Commission.

The text of the proposed rule change is available on Nasdaq's Web site at <http://www.nasdaq.com>, at Nasdaq's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to modify the definition of an "independent director" in Nasdaq's rules to reflect recent changes made to Commission rules. The definition of "independent director" is relevant to Nasdaq's corporate governance standards for listed companies.<sup>3</sup>

Current Nasdaq Rule 4200(a)(15) and IM-4200 generally preclude a director of a listed company from being considered independent if the director has received more than \$60,000 in compensation from the issuer. Nasdaq states that this threshold was originally based on the disclosure threshold set by the Commission in Regulation S-K, Item 404.<sup>4</sup> Since the Commission recently adopted a proposal to raise this threshold to \$120,000,<sup>5</sup> Nasdaq believes that it would be appropriate to raise its independence threshold to the same amount.

When the \$60,000 threshold in the definition of independent director was first adopted in 1999, the proposal to implement the rule stated that " \* \* \* Nasdaq believes that a compensation threshold of \$60,000 is appropriate as it corresponds to the *de minimis* threshold for disclosure of relationships that may affect the independent judgment of directors set forth in SEC Regulation S-

K, Item 404."<sup>6</sup> Nasdaq states that the disclosure amount from Item 404 was chosen for the independence test in Nasdaq's rules because it was transparent and straightforward for issuers to understand and apply.<sup>7</sup> Moreover, Nasdaq believes that using this disclosure threshold greatly simplifies its proxy review process for assessing compliance with the independent director requirements. In that regard, with the Commission's disclosure threshold set at \$120,000, issuers will not be required to disclose lower amounts between \$60,000 and \$120,000, and therefore, in the absence of the proposed rule change, it would be difficult for Nasdaq to monitor the independent director requirement.<sup>8</sup>

###### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general and with Section 6(b)(5) of the Act,<sup>10</sup> in particular. Section 6(b)(5) requires, among other things, that Nasdaq's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Nasdaq states that the proposed change is consistent with these requirements because it will conform Nasdaq rules to Commission rules and provide a standard that is clear, straightforward and uniform for issuers to understand and apply.

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

Nasdaq does not believe that the proposed rule change will result in any

<sup>6</sup> See Securities Exchange Act Release No. 41982 (October 6, 1999), 64 FR 55510 (October 13, 1999).

<sup>7</sup> Telephone conference among Ira Brandriss and Kristie Diemer, Special Counsels, Commission, and Erika Moore, Assistant General Counsel, Nasdaq, on November 8, 2006 ("Telephone conference with Nasdaq").

<sup>8</sup> Nasdaq also notes that while the existing Nasdaq rule prohibits an independent director from receiving payments in excess of \$60,000, the comparable rule of the New York Stock Exchange LLC ("NYSE") prohibits compensation in excess of \$100,000. See Section 303A.02(b)(ii) of the NYSE Listed Company Manual.

It should be noted that even when an individual has passed the "bright line" test of independence amended by this proposal, a board of directors could still determine on its own that the individual should not be considered independent, depending upon the amount of the compensation and the surrounding circumstances. See Nasdaq Rule 4200(a)(15) and IM-4200. Telephone conference with Nasdaq.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Nasdaq Rule 4350(c)-(d).

<sup>4</sup> 17 CFR 229.404.

<sup>5</sup> See Securities Exchange Act Release No. 54302A (August 29, 2006), 71 FR 53158 (September 8, 2006).

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2006-041 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-NASDAQ-2006-041. 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2006-041 and should be submitted on or before December 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54799; File No. SR-NASD-2003-141]

**Self-Regulatory Organizations:  
National Association of Securities  
Dealers, Inc.; Notice of Filing of  
Amendment Nos. 3, 4, and 5 to a  
Proposed Rule Change Relating to  
Additional Mark-Up Policy for  
Transactions in Debt Securities,  
Except Municipal Securities**

November 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 11, 2005, November 22, 2005, and October 31, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment Nos. 3, 4, and 5 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD submitted the original proposed rule change to the Commission on September 17, 2003 and filed amendments on June 29, 2004, and February 17, 2005.<sup>3</sup> The Commission

published the proposed rule change, as amended by Amendment Nos. 1 and 2, for comment in the **Federal Register** on March 15, 2005.<sup>4</sup> The Commission received six comments on the proposal.<sup>5</sup> NASD submitted a response to these comments on October 4, 2005, and filed Amendment Nos. 3, 4, and 5 to further address the comments and propose responsive amendments.<sup>6</sup> Amendment No. 5 replaces in their entirety the original rule filing and Amendment Nos. 1 through 4 thereto. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD is proposing to adopt NASD IM-2440-2 to NASD Rule 2440 to provide additional mark-up policy for transactions in debt securities, except municipal securities. Below is the amended text of the proposed rule change. Proposed new language is in italic.

\* \* \* \* \*

**IM-2440-1. Mark-Up Policy**

Remainder of IM-2440-1 No change.

\* \* \* \* \*

**IM-2440-2. Additional Mark-Up Policy  
For Transactions in Debt Securities,  
Except Municipal Securities<sup>1</sup>**

*(a) Scope*

*(1) IM-2440-1 applies to debt securities transactions, and this IM-2440-2 supplements the guidance provided in IM-2440-1.*

*(b) Prevailing Market Price*

*(1) A dealer that is acting in a principal capacity in a transaction with*

superseded in its entirety the original rule filing, as amended by Amendment No. 1.

<sup>4</sup> See Securities Exchange Act Release No. 51338 (March 9, 2005), 70 FR 12764 (March 15, 2005) (NASD-2003-141).

<sup>5</sup> The Commission received comments from Mr. Paul Scheurer, Banc of America Securities LLC, The Bond Market Association, CitiGroup Global Markets, Inc., The Asset Managers Forum, and the American Securitization Forum. Two comments were submitted during the comment period which closed on April 5, 2005, and four additional comment letters were submitted after the comment period closed.

<sup>6</sup> Both Amendment Nos. 3 and 4 to SR-NASD-2003-141 made technical changes to the rule filing as amended by Amendment No. 2.

<sup>1</sup> The Interpretation does not apply to transactions in municipal securities. Single terms in parentheses within sentences, such as the terms "(sale)" and "(to)" in the phrase, "contemporaneous dealer purchase (sale) transactions with institutional accounts," refer to scenarios where a member is charging a customer a mark-down.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Amendment No. 1 to SR-NASD-2003-141 made technical changes to the original rule filing. Amendment No. 2 to SR-NASD-2003-141