

Commission thereafter received six comment letters¹¹ and two response letters from the Exchange.¹² On September 14, 2012, the Commission issued a notice of designation of longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.¹³ The Commission thereafter received two additional comment letters.¹⁴ On November 13, 2012, the Exchange withdrew the proposed rule change, as modified by Amendment No. 1 (SR-ISE-2012-22).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68238; File No. SR-NASDAQ-2012-128]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Exemption to the Direct Registration Program Requirement to All Foreign Issuers Rather Than Only Foreign Private Issuers

November 15, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 7, 2012, The NASDAQ Stock Market LLC ("Nasdaq" or "the

Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which items have been prepared primarily by the Exchange. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder so that the proposed rule change was effective upon filing with the Commission.² The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The Exchange proposes to expand the exemption to the Direct Registration Program requirement under Nasdaq Rules 5210(c) and 5255(c) so that it applies to all foreign issuers rather than foreign private issuers only. If the Commission waives the pre-operative delay provided for in Rule 19b-4(f)(6),³ Nasdaq proposes to implement the proposed rule change immediately. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.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 these statements.⁴

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

(1) Purpose

Nasdaq Rules 5210(c) and 5255 provide that all securities listed on Nasdaq (except securities which are book-entry only) must be eligible for a Direct Registration Program⁵ ("DRS") operated by a clearing agency registered

under Section 17A of the Act.⁶ When this requirement was initially adopted, Nasdaq recognized that the laws or regulations of certain foreign countries might make it impossible for companies incorporated in those countries to comply. Consequently, the current rule permits a foreign private issuer to follow its home country practice in lieu of this requirement when prohibited from complying by a law or regulation in its home country.⁷

Nasdaq now proposes to amend this exemption to extend its application to all "foreign issuers" as that term is used in Securities Exchange Act Rule 3b-4⁸ rather than only to foreign private issuers. Nasdaq believes this amendment is necessary because the same legal or regulatory impediments to DRS eligibility exist for a foreign issuer which is incorporated in a foreign jurisdiction but which does not qualify for foreign private issuer status as is the case for a foreign private issuer incorporated in the same jurisdiction which is currently eligible to utilize the existing exemption. Absent this extension of the scope of the exemption, the DRS eligibility requirement would render it impossible for a foreign issuer to list if it was not a foreign private issuer but was incorporated in a foreign jurisdiction whose law or regulation made compliance with the DRS requirement impossible. Nasdaq believes that the proposed rule change is appropriate in light of the specific and discrete problem faced by foreign issuers that are not foreign private issuers but who are prohibited by home country law or regulation from becoming DRS eligible. As under the current exemption, the foreign issuer will have to submit to Nasdaq a written statement from an independent counsel in the company's home country certifying that a law or regulation in the home country prohibits compliance with the DRS requirement in order to utilize the exemption.

Nasdaq Rule 5615 provides limited exemptions with respect to certain corporate governance and reporting requirements for foreign private issuers. The proposed rule change does not expand the scope of such relief to

⁶ 15 U.S.C. 78q-1.

⁷ See Securities Exchange Act Release No. 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) (order approving SR-NASDAQ-2006-008). See also Exchange Act Release No. 58125 (July 9, 2008), 73 FR 42389 (July 21, 2008) (order approving SR-NASDAQ-2008-031).

⁸ Exchange Act Rule 3b-4 defines the term "foreign issuer" as any issuer which is a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country. 17 CFR 240.3b-4.

¹¹ See letters to Elizabeth M. Murphy, Secretary, Commission, from Christopher Nagy, President, KOR Trading LLC, dated August 6, 2012; John L. Jacobs, Executive Vice President, NASDAQ OMX Global Index Group, NASDAQ OMX Group, Inc., dated August 10, 2012; Kenneth M. Vittor, Executive Vice President and General Counsel, McGraw-Hill, dated August 10, 2012; Edward T. Tilly, President and Chief Operating Officer, CBOE, dated August 10, 2012; John V. O'Hanlon, Dechert LLP, on behalf of the Index Industry Association, dated August 10, 2012; and Edward T. Tilly, President and Chief Operating Officer, CBOE, dated August 27, 2012.

¹² See letters to Elizabeth M. Murphy, Secretary, Commission, from Michael J. Simon, Secretary, ISE, dated August 10, 2012 and August 27, 2012.

¹³ See Securities Exchange Act Release No. 67865 (September 14, 2012), 77 FR 58432 (September 20, 2012).

¹⁴ See letters to Elizabeth M. Murphy, Secretary, Commission, from Kenneth M. Vittor, Executive Vice President and General Counsel, McGraw-Hill, dated November 5, 2012 and Edward T. Tilly, President and Chief Operating Officer, CBOE, dated November 7, 2012.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b-4(f)(6).

³ 17 CFR 240.19b-4(f)(6).

⁴ The Commission has modified the text of the summaries prepared by Nasdaq.

⁵ The Direct Registration Program is more often referred to in the securities industry as the Direct Registration System or "DRS."

foreign issuers that do not qualify for foreign private issuer status. To minimize confusion about the availability of such exemptions to foreign issuers that do not qualify for foreign private issuer status, the proposed rule change will relocate the procedural requirements to utilize the exemption from Rule 5615 and IM-5615 to Rules 5210(c) and 5255 and conform the language used in Rules 5210(c) and 5255 to describe the exemption.

(2) Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and with section 6(b)(5) of the Act,¹⁰ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination in persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change is consistent with the investor protection objectives of the Act in that it will provide a very limited exemption to Nasdaq's DRS eligibility requirements for foreign issuers that provide a letter from home country counsel certifying that compliance with that requirement is prohibited by home country law or regulation. Further, the proposed rule change should facilitate cooperation and coordination among clearing agencies, transfer agents, and broker-dealers by explaining the basis upon which certain foreign issuers are not required to participate in DRS. This, in turn, should facilitate better efficiency in the clearance and settlement of securities transactions involving the securities of these foreign issuers and should facilitate better efficiency in the transfer of such securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments relating to the proposed rule change were neither solicited nor received. Nasdaq will notify the Commission of any written comments received by the Exchange.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act¹¹ and paragraph (f)(6) of Rule 19b-4 thereunder,¹² in that the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has provided the Commission of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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, as amended, 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 email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-128 on the subject line.

Paper Comments

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

All submission should refer to File Number SR-NASDAQ-2012-128. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of Nasdaq and on Nasdaq's Web site at <http://www.nasdaq.cchwallstreet.com>. 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-2012-128 and should be submitted on or before December 12, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,

Deputy Secretary.

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⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 200.30-3(a)(12).