

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58335; File No. SR-NASDAQ-2008-053]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Modify the Definition of "Independent Director"

August 8, 2008.

On June 6, 2008, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to modify Nasdaq's definition of "independent director." The proposed rule change was published for comment in the **Federal Register** on July 2, 2008.³ The Commission received no comments on the proposal.

Currently, Nasdaq Rule 4200(a)(15)(B) provides that a director of a listed company who accepted, or has a family member who accepted, any compensation from the company in excess of \$100,000 during any period of twelve months within the preceding three years cannot be deemed an independent director (with certain exceptions). The proposed rule change would change this threshold amount to \$120,000.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular with Section 6(b)(5) of the Act.⁴ The Commission notes that Regulation S-K, Item 404, under the Act,⁵ which requires public companies to disclose certain material information regarding the independence of directors (among other "related persons" associated with the company),

establishes \$120,000 as the amount above which financial transactions and relationships involving a company and its directors must be disclosed.⁶ The Commission believes that it is appropriate for Nasdaq to use this same threshold amount with regard to its definition of "independent director" in Nasdaq Rule 4200(a)(15) as a "bright line" test to determine whether a director of a listed company would be precluded from being considered independent. The Commission further notes that even if a director (or a family member) received less than \$120,000 in compensation from the listed company, the company's board still would have to make an affirmative determination that the director has no relationship with the listed company that, in the board's opinion, would interfere with the exercise of his or her independent judgment in carrying out the responsibilities of a director.⁷

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NASDAQ-2008-053) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58344; File No. SR-NSCC-2007-15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Admission of Foreign Entities

August 12, 2008.

I. Introduction

On November 16, 2007, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-2006-15 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on

March 10, 2008.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change establishes a policy statement regarding the admission of entities that are organized in a foreign country and are not subject to U.S. federal or state regulation ("foreign entities") as members of NSCC.³ NSCC Rule 2 and Addendum B to NSCC's Rules address the admission of applicants as NSCC members. NSCC's Rules provide that admission as a member is subject to an applicant's demonstration that it meets NSCC's standards of financial responsibility, operational capability, and character. Additionally, each member must continue to be in a position to demonstrate to NSCC that it meets these standards. The purpose of the proposed rule change is to establish admission criteria that will permit well-qualified foreign entities to become NSCC members and thereby obtain direct access to NSCC's services while assuring that the unique risks associated with the admission of foreign entities are adequately addressed.

The admission of foreign entities as members raises a number of unique risks and issues, including that (1) the entity is not subject to U.S. federal or state regulation, (2) the operation of the laws of the entity's home country and time zone differences⁴ may impede the successful exercise of NSCC's rights and remedies particularly in the event of the entity's failure to settle, and (3) financial information about the foreign entity made available to NSCC for monitoring purposes may be less adequate than information about U.S.-based entities.

² Securities Exchange Act Release No. 57391 (February 27, 2008), 71 FR 76414.

³ The Depository Trust Company ("DTC") filed and the Commission has granted approval of a similar proposed rule change that would permit DTC to adopt a similar policy statement with respect to the admission of foreign entities as participants. Securities Exchange Act Release No. 58345 (August 12, 2008) (File No. SR-DTC-2007-16).

⁴ Time zone differences could complicate communications between the foreign member and its U.S. Settling Bank with respect to the timely payment of the member's net debit to NSCC, including intraday demands for payment. These differences could also delay NSCC's receipt of information available in the member's home country to others (including its other creditors) about the member's financial condition on the basis of which NSCC would have taken steps to protect the interests of NSCC and its members.

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58029 (June 26, 2008), 73 FR 38016.

⁴ 15 U.S.C. 78f(b)(5). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 17 CFR 229.404 and 17 CFR 228.404.

⁶ See Securities Exchange Act Release No. 54302A (August 29, 2006), 71 FR 53158 (September 8, 2006).

⁷ See Nasdaq Rule 4200(a)(15) and IM-4200.

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).