SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54421; File No. SR–NASDAQ–2006–011]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Granting Approval to Proposed Rule Change To Modify the Cure Period Available to an Issuer That Loses an Independent Director or Audit Committee Member

September 11, 2006.

On May 23, 2006, 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 the cure period available to a listed issuer that loses an independent director or audit committee member. The proposed rule change was published for comment in the **Federal Register** on June 14, 2006.[3] The Commission received two comment letters on the proposal.[4] This order approves the proposed rule change.

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,[5] and, in particular, Section 6(b)(5) of the Act.[6]

Nasdaq Rule 4350, among other things, requires each listed issuer to have a majority of independent directors on its board and an audit committee that consists of at least three independent members and meets other composition requirements. The rule also includes provisions affording a cure period for an issuer that fails to comply with the majority independent board requirement, either because a vacancy arises on the board or because a board member ceases to be independent for reasons outside the member's reasonable control, as well as for an issuer that fails to comply with the audit committee composition requirement because a vacancy arises on the audit committee. The cure period lasts until the earlier of the company's next annual shareholders' meeting or one year from the date of the event that caused the non-compliance.[7] The proposed rule change would provide that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply with the majority independent board requirement or the audit committee composition requirement, the issuer will instead have 180 days from the event to regain compliance.

The Commission notes that, under the current rule, an issuer that falls out of compliance shortly after its annual meeting is granted a cure period of nearly one year to regain compliance, and believes that the proposal to grant a cure period of 180 days to an issuer that falls out of compliance within 180 days before its annual meeting helps to address an anomaly in Nasdaq's qualitative listing requirements and should afford such an issuer a reasonable amount of time to find a new director.[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–NASDAQ–2006–011) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53941 (June 5, 2006), 71 FR 34408.

[4] *See* letters to Nancy M. Morris, Secretary, Commission, from Sharon H. Lachman, Regulatory Counsel, America's Community Bankers, dated July 5, 2006, and from Society of Corporate Secretaries and Governance Professionals, Carol Hayes, Chair, Listing Standards Committee, received by e-mail July 5, 2006. Both comment letters supported the proposed rule change.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] This cure period comports with language in Rule 10A–3 under the Act, 17 CFR 240.10A–3, which states that a national securities exchange may provide a cure period to allow a member of an audit committee who ceases to be independent through reasons outside the member's reasonable control to remain on the audit committee ''until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent,'' subject to the condition that the issuer notify the applicable exchange. 17 CFR 240.10A–3(a)(3).

[8] The Commission notes that, as indicated by Nasdaq in its proposal, the 180-day period would not apply to allow a director on an issuer's audit committee who ceases to be independent to remain on the committee beyond the period contemplated in Rule 10A–3(a)(3) under the Act, 17 CFR 240.10A–3(a)(3), and codified in Nasdaq Rule 4350(d)(4)(A).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54425; File No. SR–NYSEArca–2006–57]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Fees and Charges

September 11, 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 September 7, 2006, the NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') 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 prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Schedule of Fees and Charges in order to modify the fee that applies to Option Strategy Executions.[5] The text of the proposed rule change is available on NYSE Arca's Web site at (*http://www.nyseacra.com*), at the Office of the Secretary at NYSE Arca, 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, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(2).

[5] Fees on Options Strategy Executions are applicable through a Pilot Program until March 1, 2007.