

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57214; File No. SR-NASDAQ-2007-096]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify the Allocation of the Maximum Time an Adjudicatory Body May Grant a Company To Regain Compliance With the Listing Requirements Without Modifying the Maximum Time Available Under Nasdaq Rule 4802

January 28, 2008.

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 December 3, 2007, 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 Substance of the Proposed Rule Change

Nasdaq proposes to modify the allocation of the maximum time an adjudicatory body may grant a company to regain compliance with the listing requirements. Nasdaq will implement the proposed rule immediately upon approval.

The text of the proposed rule change appears below. Proposed new language is italicized and proposed deletions are in brackets.³

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4802. Purpose and General Provisions

(a) No change.

(b) An issuer may file a written request for an exception to any of the standards set forth in the Rule 4000 Series at any time during the pendency of a proceeding under the Rule 4800 Series. A Listing Qualifications Panel may grant exceptions for a period not to exceed [the earlier of 90 days from the date of the Panel Decision or] 180 days from the date of the Staff Determination with respect to the deficiency for which the exception is granted, and the Listing Council may grant exceptions for a period not to exceed [the earlier of 60

days from the date of the Listing Council Decision or 180] 360 days from the date of the [Panel Decision] *Staff Determination* with respect to the deficiency for which the exception is granted, in each case where it deems appropriate.

(c)—(f) No change.

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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 III 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 modify provisions in the "Procedure for Review of Nasdaq Listing Determinations" relating to the allocation of the maximum time an adjudicatory body may grant a company to regain compliance with the listing requirements ("Exception Period"). This proposal would not increase the maximum time potentially available under the rule.

Under the current rules, the Exception Period a Listing Qualifications Panel ("Panel") can grant is limited to the lesser of 180 days from the date that Nasdaq staff sends a delisting letter ("Staff Determination") or 90 days from the date of the Panel's decision in the matter. Similarly, the maximum Exception Period that the Nasdaq Listing and Hearing Review Council ("Listing Council") can grant when reviewing a Panel decision is limited to the lesser of 180 days from the date of the Panel decision on review or 60 days from the date of the Listing Council's decision in the matter. As a result, while the maximum cumulative exception these bodies can grant is 360 days from the date of the Staff Determination, the actual amount of time can vary from company to company based on how quickly the company is scheduled for a hearing and the speed with which the Panel and Listing Council decisions are prepared.⁴ This variability creates

uncertainty for Nasdaq-listed companies and their investors regarding the maximum amount of time available under an exception.

In order to eliminate these differences and provide certainty to companies and investors regarding the Nasdaq delisting process, Nasdaq proposes to modify the computation of the maximum Exception Period such that the maximum time that a Panel can provide is 180 days from the date of the Staff Determination and the maximum time that the Listing Council can provide is 360 days from the date of the Staff Determination. As such, this proposal will eliminate the competing deadlines that are based on variable events, such as the amount of time it takes to schedule a hearing and issue decisions reflecting the Panel or Listing Council's conclusions. As is presently the case, these adjudicatory bodies may grant a company a shorter Exception Period, or no Exception Period at all, based on their analysis of the applicable facts and circumstances.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Section 6(b)(5) of the Act,⁶ in particular. Nasdaq believes that the proposed rule change is designed to provide additional transparency to Nasdaq's process surrounding the review of delisting determinations, thereby protecting investors and removing an impediment to a free and open market.

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

Nasdaq does not believe that the proposed rule change will impose 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.

III. 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:

at a given time and the availability of Panel or Listing Council members for the review and approval of drafts.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaq.complinet.com>.

⁴ These time frames are influenced by factors including the number of companies in the process

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-NASDAQ-2007-096 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-2007-096. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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-2007-096 and should be submitted on or before February 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57212; File No. SR-NASDAQ-2008-004]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Related to Supplemental Market Participant Identifiers

January 28, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on January 9, 2008, 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 Substance of the Proposed Rule Change

Nasdaq proposes to make permanent the pilot program that allows market makers and Electronic Communications Networks ("ECNs") to obtain supplemental market participant identifiers ("MPIDs"). Nasdaq also proposes to remove any restrictions on the number of MPIDs market participants can request. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room and nasdaq.complinet.com.

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. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to make permanent the pilot program incorporated in

Nasdaq Rule 4613(a)(2) ("Rule") that allows market makers and ECNs to obtain supplemental MPIDs. The pilot inadvertently was permitted to lapse on November 30, 2006. The Rule has operated as a temporary pilot since it was first adopted in June 2003 and although the pilot lapsed, Nasdaq continued to apply the procedures set forth in the Rule and the related interpretive material.³ The purpose of providing supplemental MPIDs is to provide quoting market participants a better ability to organize and manage diverse order flows from their customers and to route orders and quotes to Nasdaq's listed trading facilities from different units/desks. To the extent that this flexibility provides increased incentives to provide liquidity to Nasdaq systems, Nasdaq believes that all market participants benefit. Because the Rule has benefited market makers and ECNs and has not had any negative impact on the Nasdaq market in the more than four years that it has been in place, Nasdaq believes the Rule should become permanent.

Nasdaq also proposes to remove the current restriction in the Rule that limits the number of supplemental MPIDs that market makers and ECNs can request for displaying attributable quotes or orders. In accordance with the pilot program, market makers and ECNs may be issued a maximum of nine supplemental MPIDs. The reason for this restriction was a technological limitation that existed at the time the Rule was adopted, but this limitation no longer exists. Therefore, Nasdaq proposes to remove the restriction.

In addition, Nasdaq proposes to remove IM-4613, which sets forth the procedures for allocating supplemental MPIDs. The removal of Nasdaq's technological limitation on the number of MPIDs for a given security makes the procedures unnecessary.

The decision to remove any restriction on the number of supplemental MPIDs must be balanced against the need to protect the integrity of the Nasdaq market. Accordingly, market makers and ECNs would be prohibited from using a supplemental MPID to accomplish indirectly what they are prohibited from doing directly through a single MPID. For example, members would not be permitted to use a supplemental MPID to avoid their Manning obligations under IM-2110-2, best execution obligations under Nasdaq Rule 2320, or their obligations under the

³ See Securities Exchange Act Release No. 47954 (May 30, 2003), 68 FR 34017 (June 6, 2003). See also IM-4613—Procedures for Allocation of Second Displayable MPIDs.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁷ 17 CFR 200.30-3(a)(12).