

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

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.

**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-ISE-2010-101 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 submissions should refer to File Number SR-ISE-2010-101. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-ISE-2010-101 and should be submitted on or before November 12, 2010.

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

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-26509 Filed 10-20-10; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63110; File No. SR-NASDAQ-2010-107]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval to a Proposed Rule Change To Modify the Eligibility Criteria for the Second Compliance Period for a Bid Price Deficiency on the Nasdaq Capital Market**

October 14, 2010.

**I. Introduction**

On August 25, 2010, 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify the eligibility criteria in order for a listed company to qualify for the second compliance period for a bid price deficiency on the Nasdaq Capital Market. The proposed rule change was published for comment in the **Federal Register** on September 2, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

**II. Description of the Proposal**

Nasdaq is proposing, in order for a company to receive a second compliance period for a bid price deficiency on the Nasdaq Capital Market ("Capital Market"), to modify the eligibility criteria concerning market value of publicly held shares. Under the current Nasdaq rules, when a company has a closing bid price below \$1 for 30 consecutive days, it is deemed deficient under Nasdaq's bid price continued listing standard, and promptly receives written notice that it has 180 calendar days from such notification to regain compliance.<sup>4</sup> Compliance can be achieved by maintaining a minimum \$1 closing bid price for ten consecutive days. At the expiration of the 180-day compliance period, a company can receive an additional 180-day compliance period,<sup>5</sup> provided it is either already listed on the Capital Market or transfers to that market and satisfies all of the Capital Market's

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

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

<sup>3</sup> See Securities Exchange Act Release No. 62782 (August 27, 2010), 75 FR 53994 ("Notice").

<sup>4</sup> See Nasdaq Rule 5810(c)(3)(A).

<sup>5</sup> In its filing, Nasdaq refers to the 180-day compliance period as a "grace" period.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). When filing a proposed rule change pursuant to Rule 19b-4(f)(6) under the Act, an exchange is required to give 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. The Commission notes that the Exchange has satisfied this requirement.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

initial listing criteria, except for bid price.<sup>6</sup>

Nasdaq has observed that many companies fail to qualify for the second compliance period because they do not meet the market value of publicly held shares requirement for initial listing on the Capital Market. Nasdaq therefore is proposing to ease the requirements for the second compliance period on the Capital Market by allowing a company to qualify if it satisfies the lower continued listing requirement for market value of publicly held shares, thereby enabling more companies to be eligible for the second compliance period.<sup>7</sup> The company would still need to meet all of the other initial listing criteria for Capital Market other than bid price.<sup>8</sup>

Under the proposal, the company will need to notify Nasdaq of its intent to cure the bid price deficiency. If a company does not indicate its intent to cure the deficiency, or if it does not appear to Nasdaq staff that it is possible for the company to cure the deficiency, the company would not be eligible for the second compliance period under the Capital Market rules. Under the proposal, a company listed on Nasdaq's Global or Global Select Markets would be permitted to transfer to the Capital Market if it meets the applicable market value of publicly held shares requirement for continued listing and all other applicable requirements for initial listing on the Capital Market (except for the bid price requirement), and notifies Nasdaq of its intent to cure the bid price deficiency.<sup>9</sup> Once on the Capital Market, the company would be eligible for the second compliance period on the Capital Market, unless it does not appear to Nasdaq staff that it is possible for the Company to cure the deficiency.<sup>10</sup> In its filing, Nasdaq noted

that under the proposal, while certain companies that do not currently qualify for the second compliance period could receive an additional 180 days to comply with the bid price requirement, the proposed rule change would not extend the overall maximum time of 360 days that is currently available to qualifying companies.

Nasdaq also proposes to remove language in Rule 5810(c)(3) referencing the payment of fees by a company which transfers to the Capital Market. The current language implies that there are fees applicable to such a company. However, no fees are applicable under Rule 5920(a) to such a company. Nasdaq is proposing to delete the language, to remove any confusion, and has also proposed some other clarifying and non-substantive changes to the rule.<sup>11</sup>

### III. Discussion and Commission Findings

After careful consideration, 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<sup>12</sup> and, in particular, the requirements of Section 6 of the Act.<sup>13</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with 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 and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have, or in the case of an initial public offering will

have, sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained, and so that only companies suitable for listing remain listed on a national securities exchange.

The Commission believes that the proposal to modify the eligibility criteria for the second compliance period for a bid price deficiency on the Capital Market is reasonable and consistent with the Act, and furthers investor protection and the public interest. As stated above, Nasdaq has observed that many companies fail to qualify for the second compliance period because they do not meet the market value of publicly held shares requirement for initial listing on the Capital Market. The Commission notes that to qualify for a second compliance period, the company would still need to meet all of the other initial listing criteria for Capital Market other than bid price, as well as the continued listing requirement for market value of publicly held shares.<sup>15</sup> These standards should help continue to ensure that only companies that meet the minimum requirements for adequate depth and liquidity remain listed for an extended period of time on the Capital Market.

In addition, the company will need to notify Nasdaq of its intent to cure the bid price deficiency. If a Capital Market company does not indicate its intent to cure the deficiency, or if it does not appear to Nasdaq staff that it is possible for the company to cure the deficiency, the company would not be eligible for the second compliance period. Similarly, a company listed on the Global or Global Select Markets would be permitted to transfer to the Capital Market if it meets the applicable market value of publicly held shares requirement for continued listing and all other applicable requirements for initial listing on the Capital Market (except for the bid price requirement) and notifies Nasdaq of its intent to cure the bid price deficiency. Once on the Capital Market, the company would be eligible for the second compliance

<sup>6</sup> See Nasdaq Rule 5810(c)(3)(A)(i)-(ii).

<sup>7</sup> The initial listing requirements for market value of publicly held shares for common stock on the Capital Market range from \$5 million to \$15 million, depending on the listing standard under which the company qualifies; the continued listing requirement is \$1 million. See Nasdaq Rules 5505(b) and 5555(a)(4).

<sup>8</sup> The initial listing standards for the Capital Market are set forth in Nasdaq Rule 5505 and include an equity standard, market value of listed securities standard, and a net income standard. See Nasdaq Rule 5505.

<sup>9</sup> As noted above, Nasdaq Global and Global Select companies can currently receive the additional 180 day compliance period, provided they meet all the applicable Capital Market initial requirements and transfer to that market.

<sup>10</sup> According to Nasdaq, once a company transfers to the Capital Market, Nasdaq would assess whether it is possible for the company to cure the deficiency. If not, the company would be denied the second 180 day compliance period, and Nasdaq would commence delisting proceedings for the company as a Capital Market listing.

<sup>11</sup> See Notice, *supra* note 3.

<sup>12</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> See *supra* note 8.

period on the Capital Market, unless it does not appear to Nasdaq staff that it is possible for the Company to cure the deficiency.

The Commission believes that requiring a company to affirmatively state its intent to cure the bid price deficiency and Nasdaq staff to determine whether it is possible for the company to cure that deficiency, provides further protections to investors, by helping to ensure that only companies that are serious and capable of gaining compliance with the Capital Market listing standards within the timeframe provided qualify for the second compliance period. In this regard, the Commission would expect a thorough review to ensure that it is possible for the bid price deficiency to be cured at the end of the second 180 day compliance period and, if not, would expect Nasdaq to immediately commence delisting proceedings.

In approving the Nasdaq's proposal, the Commission recognizes that certain companies that do not currently qualify for the second compliance period could receive additional time to remain listed on a public market. The proposal, however, does not extend the overall maximum time of 360 days that a company may remain listed before delisting proceedings will commence. Moreover, the proposal eliminates the automatic nature of the second 180 day bid price compliance period that exists under the current rules. Further, notwithstanding the change in eligibility criteria for a second compliance period, the Commission expects Nasdaq to monitor companies closely that are out of compliance and use its authority to delist issuers in a prompt, efficient, and fair manner where necessary and appropriate, in accordance with Nasdaq Rule 5100, including where there are public interest or other concerns such as low price or market value, that make continued listing unwarranted.

Finally, the Commission finds that Nasdaq's proposal to remove language in Rule 5810(c)(3) will reduce confusion regarding the application of the rule by clarifying that there are no fees applicable to a company which transfer to the Capital Market. The additional changes proposed by Nasdaq to the text of Rule 5810(c)(3)(A)(i)-(ii) conform the rule language and format of the two paragraphs and clarify that Nasdaq will assess a company for compliance with applicable listing requirements based on the company's most recent public filings and market information. The Commission believes that these changes either clarify the rule or are non-substantive.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-NASDAQ-2010-107), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon**,  
Deputy Secretary.

[FR Doc. 2010-26474 Filed 10-20-10; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

##### **In the Matter of Cape Systems Group, Inc., Caribbean Cigar Company, Casual Male Corp., Cell Power Technologies, Inc., Cellmetrix, Inc. (f/k/a BCAM International, Inc.), Cellular Products, Inc. (n/k/a 872 Main Street Corp.), Ceptor Corp., CGS Scientific Corp., and Ciprico, Inc., File No. 500-1; Order of Suspension of Trading**

October 19, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cape Systems Group, Inc. because it has not filed any periodic reports since the period ended December 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Caribbean Cigar Company because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Casual Male Corp. because it has not filed any periodic reports since the period ended February 3, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cell Power Technologies, Inc. because it has not filed any periodic reports since the period ended April 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cellmetrix, Inc. (f/k/a BCAM International, Inc.) because it has not filed any periodic reports since the period ended June 30, 2000.

It appears to the Securities and Exchange Commission that there is a

<sup>16</sup> 15 U.S.C. 78s(b)(2).

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

lack of current and accurate information concerning the securities of Cellular Products, Inc. (n/k/a 872 Main Street Corp.) because it has not filed any periodic reports since the period ended December 31, 1994.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ceptor Corp. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CGS Scientific Corp. because it has not filed any periodic reports since the period ended February 29, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ciprico, Inc. because it has not filed any periodic reports since the period ended December 31, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on October 19, 2010, through 11:59 p.m. EDT on November 1, 2010.

By the Commission.

**Elizabeth M. Murphy**,  
Secretary.

[FR Doc. 2010-26698 Filed 10-19-10; 11:15 am]

**BILLING CODE 8011-01-P**

#### SOCIAL SECURITY ADMINISTRATION

##### **Agency Information Collection Activities: Comment Request**

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a new information collection for OMB approval.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated