

*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-Amex-2007-04 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-Amex-2007-04. 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 Section, 100 F Street, NE., Washington, DC 20549. The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and [http://www.amex.com/atamex/ruleFilings/at\\_rulefilings.html](http://www.amex.com/atamex/ruleFilings/at_rulefilings.html). 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-Amex-2007-04 and should be submitted on or before May 15, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-55642; File No. SR-NASDAQ-2006-032]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments No. 1, 2, and 3 Thereto, To Revise The Nasdaq Capital Market Listing Requirements**

April 18, 2007.

**I. Introduction**

On August 23, 2006, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") 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 revise certain listing requirements applicable to the Nasdaq Capital Market ("NCM"). On August 28, 2006, Nasdaq filed Amendment No. 1 ("Amendment No. 1") to the proposed rule change.<sup>3</sup> The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on September 5, 2006.<sup>4</sup> The Commission received no comments on the proposal, as amended by Amendment No. 1. On December 4, 2006, Nasdaq filed Amendment No. 2 ("Amendment No. 2") to the proposed rule change.<sup>5</sup> On February 15, 2007, Nasdaq filed Amendment No. 3 ("Amendment No. 3") to the proposed rule change.<sup>6</sup> This order provides notice of Amendment No. 3 and approves the proposed rule

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

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

<sup>3</sup> In Amendment No. 1, Nasdaq made clarifying changes to the rule text in the NCM convertible debt listing standards. Nasdaq also made clarifying changes to the purpose section regarding convertible debt, rights and warrants, and non-Canadian foreign securities and American Depository Receipts.

<sup>4</sup> See Securities Exchange Act Release No. 54378 (August 28, 2006), 71 FR 52351 (September 5, 2006) ("Notice").

<sup>5</sup> In Amendment No. 2, Nasdaq made minor clarifying changes to the purpose section to explain the application of the new NCM listing standards as they relate to the grace period for non-compliance with the bid requirement pursuant to Nasdaq Rules 4310(c)(8)(D), 4320(e)(2)(E)(ii), and 4450(i). This is a technical amendment and is not subject to notice and comment.

<sup>6</sup> In Amendment No. 3, Nasdaq amended its initial and continuing listing standards for convertible debt to require that current last sale information be available in the United States for the underlying security into which a convertible debt issue is convertible.

change on an accelerated basis, as amended.

**II. Discussion**

Nasdaq proposes to increase the initial and continued listing requirements for companies seeking to list, or that are already listed, on the NCM, as set forth in Nasdaq Rule 4310 (for domestic and Canadian securities) and Nasdaq Rule 4320 (for non-Canadian foreign securities and American Depository Receipts).<sup>7</sup>

The Commission finds that these proposed changes are consistent with Section 6(b) of the Act,<sup>8</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that these proposed rule changes are consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, 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 development and enforcement of adequate standards governing the initial listing and maintenance of listing of securities is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for a marketplace to screen issuers and to provide listed status only to bona fide companies with sufficient float, investor base, and trading interest to maintain fair and orderly markets. Once an issuer has been approved for initial listing, the maintenance criteria allow a marketplace to monitor the status and trading characteristics of that issuer to ensure that it continues to meet standards for market depth and liquidity.

The changes to the continued listing requirements will be effective 30 days after the proposed rule change is approved by the Commission. Nasdaq represents that as of February 9, 2006, it is not aware of any issuer currently listing on NCM that would fail to meet the new continued listing requirements.<sup>11</sup> In the case of

<sup>7</sup> For a full description of the proposed rule change, see Notice, *supra* note 4 and Amendments No. 2 and 3, *supra* notes 5 and 6.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> In approving this proposal, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> See letter from Arnold Golub, Associate General Counsel, Nasdaq, to Elizabeth K. King, Associate Director, Division ("Division"),

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

companies applying for initial listing, the new requirements will be effective immediately upon Commission approval of this proposed rule change for companies that applied after August 23, 2006, the date this proposed rule change was filed with the Commission. Companies that applied for listing prior to August 23, 2006 would be allowed to qualify under the prior standards, provided that they complete the listing process not later than 30 days after the proposed rule change is approved by the Commission. The Commission believes this implementation schedule is reasonable, and provided adequate notice to prospective applicants for listing.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 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 No. SR-NASDAQ-2006-032 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-2006-032. 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. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2006-032 and should be submitted on or before May 15, 2007.

### IV. Accelerated Approval

Pursuant to Section 19(b)(2) of the Act,<sup>12</sup> the Commission finds good cause to approve the proposal, as amended, prior to the thirtieth day after the amended proposal is published for comment in the **Federal Register**. Amendment No. 3 requires that convertible debt securities listed on the NCM have current last sale information available in the United States for the underlying security into which a convertible debt issue is convertible. Accelerating approval of the proposal, as modified by Amendment No. 3, would avoid delay in strengthening the initial and continued listing standards of the NCM, thereby benefiting investors and the public. Accordingly, the Commission finds good cause to accelerate approval of the amended proposal prior to the thirtieth day after publication in the **Federal Register**.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NASDAQ-2006-032), as modified by Amendments No. 1, 2, and 3, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-7729 Filed 4-23-07; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55641; File No. SR-NYSE-2007-39]

### Self-Regulatory Organizations; New York Stock Exchange LLC, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Rule 103B (Specialist Stock Allocation)

April 17, 2007.

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> notice is hereby given that on April 13, 2007, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On April 17, 2007, the NYSE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange has designated the proposed rule change as "non-controversial" under Section 19(b)(3)(A)(iii)<sup>4</sup> of the Act and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Rule 103B (Specialist Stock Allocation) to permit a listing company transferring from NYSE Arca, Inc. ("NYSE Arca<sup>SM</sup>" or "NYSE Arca") to waive the allocation process set forth in Exchange Rule 103B when the listing company was assigned a Lead Market Maker firm ("LMM firm"), which is also a registered specialist firm on the NYSE, and selects as its specialist firm on the NYSE that same NYSE Arca LMM firm. The proposed rule further provides for additional input from the listing company in the selection of its specialist firm should it choose to refer the matter to the Allocation Committee. Below is the text of the proposed rule change. Proposed new language is in *italics*.

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

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

<sup>3</sup> Amendment No. 1 makes clarifications to the purpose section of the proposed rule change and typographical corrections to the rule text.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

Commission on February 12, 2007; see also letter from Arnold Golub, Associate General Counsel, Nasdaq, to Elizabeth K. King, Associate Director, Division, Commission on November 7, 2006.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).