

the same resources by the Department as when a new applicant that is not already a member of NYSE seeks membership.

The effective date of the proposed rule change will be the date of Commission approval of the proposed rule change.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(6) of the Act,<sup>11</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and, in general, to protect investors and the public interest. The proposed rule change will facilitate the consolidation of member regulation functions under a single self-regulatory organization, resulting in more effective and efficient regulation of brokers and dealers, thereby enhancing investor protection, while also ensuring that those NYSE-only member organizations eligible for the waive-in process meet suitable standards for admission into FINRA.

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

NASD does not believe that the proposed rule change will result in 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## 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-NASD-2007-056 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-NASD-2007-056. 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, 100 F Street, NE., Washington, DC 20549, 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 FINRA. 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-NASD-2007-056 and should be submitted on or before September 28, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56339; File No. SR-NASDAQ-2007-042]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Modify the Entry and Annual Fees Paid by a Company That Lists on Nasdaq Upon Emerging From Bankruptcy

August 30, 2007.

#### I. Introduction

On April 13, 2007, 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" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to modify the entry and annual fees paid by a company that lists on Nasdaq upon emerging from bankruptcy. The Exchange filed Amendment No. 1 to the proposed rule change on June 28, 2007. The proposal was published for comment in the **Federal Register** on July 25, 2007.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

#### II. Description of the Proposal

The Exchange proposes to modify the fees charged to companies that list upon emerging from bankruptcy. Specifically, Nasdaq proposes to waive the entry fee (including the application fee)<sup>4</sup> that such companies would otherwise be required to pay. In addition, for companies listing on the NASDAQ Global Market (including the NASDAQ Global Select Market), Nasdaq proposes to charge the company the minimum annual listing fee applicable to companies on that market (currently \$30,000) for the first (prorated) year that

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

<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. 56092 (June 18, 2007), 72 FR 40915.

<sup>4</sup> Nasdaq's entry fee includes a \$5,000 non-refundable application fee. The proposed waiver would also waive this part of the fee.

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

such a company is listed<sup>5</sup> and for each of the subsequent two full calendar years.<sup>6</sup> Finally, Nasdaq proposes that a company that emerges from bankruptcy and relists during the same year that it has previously paid an annual fee will not be required to pay a second annual fee for that year.

The Exchange believes that the proposed fee waivers are justified by the unique circumstances faced by companies emerging from bankruptcy. According to the Exchange, these companies typically are not raising any new capital at the time of listing, so the payment of entry and listing fees is more burdensome than for companies that are listing upon an initial public offering. Also, because of the desire in bankruptcy proceedings to ensure that creditors are paid as much as possible, the Exchange believes these companies are much more sensitive to both the initial and continued costs associated with listing. As such, the Exchange believes the proposed fees are reasonable and equitably allocated.

The Exchange has represented that the proposed rule change would not affect its commitment of resources to its regulatory oversight of the listing process or its other regulatory programs. Nasdaq reports that historically it has not listed a large number of companies emerging from bankruptcy in any given year.<sup>7</sup> Moreover, Nasdaq stated that it would still conduct a complete review of these companies for compliance with Nasdaq listing standards in the same manner as any other company applying for listing on Nasdaq. The company must successfully complete that review process and demonstrate compliance with the initial listing requirements prior to being approved for listing.

### III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>9</sup> which requires that an exchange

have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission also finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, *inter alia*, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and not designed to permit unfair discrimination between issuers. The Commission has not received any comments on the proposal. This order approves the proposed rule change, as modified by Amendment No 1.

The Commission notes that a company who relists upon emerging from bankruptcy has usually paid either an entry fee to the Exchange or a similar initial listing fee to another national securities exchange at the time of its initial listing. In addition, with respect to the application of the minimum annual listing fee to a company which lists upon emergence from bankruptcy and the waiver of the annual fee for a company that emerges from bankruptcy and relists during the same year that it has previously paid an annual fee, the Commission notes that this fee reduction or waiver is a temporary one, designed to enable recently bankrupt companies to manage the costs associated with listing, consistent with the desire in bankruptcy proceeding to ensure that creditors are paid as much as possible. For these reasons, the Exchange believes that reduction or waiver of the Exchange's fees in these cases is equitable.

The Commission also notes that the Exchange has represented that the waiver of entry fees and the reduction or waiver of annual listing fees in these limited circumstances should not affect its commitment of resources to its regulatory oversight of the listing process or its other regulatory programs.

Further, the proposed fee changes would not have any impact on whether a company is actually eligible to list on the Exchange. The Commission expects, and the Exchange has represented, that a full and independent review of compliance with Nasdaq listing standards will be conducted for any company seeking to take advantage of the proposed fee changes, in the same manner as for any company that applies for listing on the Exchange.

In light of these arguments, the Commission agrees that the proposed waiver and fee cap, which are retroactively effective to April 13, 2007, the date of the filing of the proposed

rule change, do not constitute an inequitable allocation of reasonable dues, fees, and other charges, do not permit unfair discrimination between issuers, and are generally consistent with the Act.

### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR—NASDAQ—2007—042), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## DEPARTMENT OF STATE

[Public Notice 5928]

### Culturally Significant Objects Imported for Exhibition Determinations: "Reflecting Antiquity: Modern Glass Inspired by Ancient Rome"

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Reflecting Antiquity: Modern Glass Inspired by Ancient Rome," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum at the Getty Villa, Malibu, California, from on or about October 18, 2007, until on or about January 14, 2008, Corning Museum of Glass, Corning, New York, from on or about February 15, 2008, until on or about May 27, 2008 and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is

<sup>5</sup> Nasdaq prorates the annual fee for the year a company lists, based on the month in which the company lists.

<sup>6</sup> All domestic companies on the NASDAQ Capital Market pay the same annual fee.

<sup>7</sup> Nasdaq listed four companies upon their emergence from bankruptcy from January 1, 2006, through March 31, 2007.

<sup>8</sup> 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).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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

<sup>11</sup> *Id.*

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