

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available
From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

Extension: Industry Guides, SEC File No. 270-069, OMB Control No. 3235-0069.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Industry Guides are used by registrants in certain industries as disclosure guidelines to be followed in presenting information to investors in Securities Act (15 U.S.C. 77a *et seq.*) and Exchange Act (15 U.S.C. 78a *et seq.*) registration statements and certain other Exchange Act filings. The paperwork burden from the Industry Guides is imposed through the forms that are subject to the disclosure requirements in the Industry Guides and is reflected in the analysis of these documents. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience the Commission estimates the total annual burden imposed by the Industry Guides to be one hour.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Pamela Dyson, Director/Chief

Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: February 12, 2016.

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77137; File No. SR-NASDAQ-2015-144]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Amend Rules 5810(4), 5810(c), 5815(c) and 5820(d) To Provide Staff With Limited Discretion To Grant a Listed Company That Failed To Hold Its Annual Meeting of Shareholders an Extension of Time To Comply With the Annual Meeting Requirement

February 12, 2016.

I. Introduction

On December 9, 2015, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ a proposed rule change to provide staff of NASDAQ’s Listing Qualifications Department (“Staff”) with limited discretion to grant a listed company, that failed to timely hold its annual meeting of shareholders, a certain period of time to comply with the annual meeting requirement.⁴ The proposed rule change was published for comment in the **Federal Register** on December 30, 2015.⁵ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Companies listed on the Exchange must comply with various continued listing requirements, one of which is to

hold an annual meeting no later than one year after the end of the company’s fiscal year.⁶ Currently, if an Exchange-listed company fails to hold its annual meeting, Staff has no discretion to allow additional time for the company to regain compliance. Instead, Staff is required to issue a Delisting Determination, subjecting the company to immediate suspension and delisting, unless the company appeals the Delisting Determination to the Hearings Panel.⁷ The only other Exchange rules where a listed company is subject to immediate suspension and delisting is when a company fails to timely solicit proxies and when the Staff determines that the company’s continued listing raises a public interest concern.⁸ For all other deficiencies under the NASDAQ Listing Rules, a listed company is provided with either the opportunity to submit a plan to regain compliance or given a fixed cure period to regain compliance.⁹

The Exchange asserted in its filing that there are a variety of mitigating reasons why a listed company may fail to timely hold an annual meeting of shareholders.¹⁰ For example, the Exchange states that it has observed

⁶ Each company listing common stock or voting preferred stock, and their equivalents, must hold an annual meeting of shareholders no later than one year after the end of the company’s fiscal year and solicit proxies for that meeting. See Exchange Rules 5620(a) and (b), respectively. The proposed rule change will also apply to Exchange listed companies that are limited partnerships required to hold an annual meeting. A company that is a limited partnership is not be required to hold an annual meeting of limited partners unless required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership’s limited partnership agreement. See Exchange Rules 5615(a)(4)(D) and (F); see also Notice, *supra* note 5, at 81573 n.3.

⁷ See Exchange Rule 5810(c)(1). A listed company may request review of a Staff delisting determination by a Hearings Panel. See Exchange Rule 5815. A timely request for a hearing will stay the suspension and delisting pending the issuance of a written Panel Decision. See Exchange Rule 5815(a)(1)(A).

⁸ See Exchange Rule 5810(c)(1); see also Notice, *supra* note 5, at 81573.

⁹ See Exchange Rules 5810(c)(2) and (3); see also Notice, *supra* note 5, at 81573. Generally, a listed company is allowed 45 calendar days to submit a plan of compliance for certain deficiencies set forth in Exchange Rule 5810(c)(2)(i)–(iii). Upon review of the plan, Staff may grant the company up to 180 calendar days from the date of Staff’s initial notification of the company’s non-compliance to regain compliance. See Exchange Rule 5810(c)(2)(A) and (B); see also Exchange Rule 5810(c)(2)(F), which provides a company 60 calendar days to submit a plan to regain compliance for filing deficiencies. If upon review of the company’s plan Staff determines that an extension is not warranted, Staff will issue a Delisting Determination, which triggers the company’s right to request review by a Hearings Panel. See Exchange Rule 5815; see also Exchange Rule 5810(c)(2)(F).

¹⁰ See Notice, *supra* note 5, at 81573.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ As described in more detail below, the total amount of time a listed company that fails to hold an annual meeting of shareholders can remain listed on the Exchange will not be changing under the proposed rule change.

⁵ See Securities Exchange Act Release No. 76731 (December 22, 2015), 80 FR 81573 (“Notice”).