

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53606; File No. SR-NASD-2006-028)

April 6, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change to Allow Nasdaq to Take Certain Actions on behalf of Its Issuers in Connection with Nasdaq's Transition to a National Securities Exchange

On February 23, 2006, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt NASD Rule 4130 to allow Nasdaq and its subsidiary, The Nasdaq Stock Market LLC ("Nasdaq Exchange"), to file an application with the Commission or another appropriate regulator on behalf of its issuers to register their listed securities under Section 12(b) of the Act,³ or seek a temporary exemption from Section 12 of the Act, in connection with Nasdaq Exchange's operation as a national securities exchange. The Commission published the proposed rule change for comment in the Federal Register on March 2, 2006.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

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 association.⁵ The Commission believes the proposed rule change is consistent with Section

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78l(b).

⁴ Securities Exchange Act Release No. 53362 (February 24, 2006), 71 FR 10734.

⁵ In approving this rule proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

15A(b)(6) of the Act,⁶ which requires, among other things, that the rules of a national securities association be designed to promote just and equitable principals 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 Commission approved the Nasdaq Exchange's registration as a national securities exchange on January 13, 2006.⁷ As noted in the Nasdaq Exchange Order, once the Nasdaq Exchange begins operations as a national securities exchange, a security will be considered for listing on the Nasdaq Exchange only if it is registered pursuant to Section 12(b) of the Act or is subject to an exemption. Further, in the Nasdaq Exchange Order, the Commission noted that Nasdaq had notified Commission staff that it intended to request appropriate regulatory relief to facilitate the efficient registration of its issuers' securities under Section 12(b) of the Act. Nasdaq also represented that it would seek an exemption for certain issuers that are currently not required to be registered under Section 12(g) of the Act.⁸ The Commission noted in the Nasdaq Exchange Order that it expected Nasdaq to provide notice to the public and its issuers of any request and provide issuers with an opportunity to opt-out of the process. Nasdaq filed this proposed rule change to give it the authority to act on behalf of its issuers and to provide notice of its plans.

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (Findings, Opinion, and Order of the Commission approving the application of the Nasdaq Stock Market LLC for registration as a national securities exchange) ("Nasdaq Exchange Order"). The Nasdaq Exchange may not operate as a national securities exchange until certain conditions have been satisfied. See *id.*

⁸ 15 U.S.C. 78l(g).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NASD-2006-028) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Nancy M. Morris
Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).