SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54583; File No. SR-NASDAQ-2006-021)

October 6, 2006

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto to Modify Certain of Nasdaq's Corporate Governance Standards, Including the Definition of Independent Director

On July 28, 2006, The NASDAQ Stock Market LLC ("Nasdaq" or "the Exchange") 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 amend Nasdaq Rules 4200(a)(15), IM-4200, and 4350, which pertain to Nasdaq's corporate governance standards for listed companies. On August 7, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on August 28, 2006.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

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,[4] and, in particular, Section 6(b)(5) of the Act.[5] The Commission believes that the proposed rule change would provide clarity and guidance to listed

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 54333 (August 18, 2006), 71 FR 50955 ("Notice").

4 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).

5 15 U.S.C. 78f(b)(5).

companies, particularly with respect to the determination of whether a director is independent. In particular, the proposed rule change would preclude a finding of independence if a director accepts any compensation from the company or its affiliates in excess of $60,000 during the prescribed time period.[6] This proposed change would align the Nasdaq rule with a corresponding rule of the New York Stock Exchange LLC ("NYSE") relating to corporate governance standards of listed issuers.[7] The proposal also would revise various other provisions of Nasdaq's corporate governance standards, including by amending several provisions to conform more closely with the NYSE's corporate governance standards for its listed issuers.[8]

---

[6] Under current Nasdaq Rule 4200(a)(15)(B), a director of a listed company would not be considered independent if the director or a family member of the director has accepted more than $60,000 in payments from the company or its parent or subsidiary during the time period set forth in the rule. The proposed rule change would amend the rule to refer to compensation in excess of $60,000 from the company, rather than payments. Nasdaq believes that, based on its experience, a revised rule based on compensation rather than payments more directly bears upon a director's independence.

[7] See Section 303A.02(b)(ii) of the NYSE Listed Company Manual. Proposed changes to Nasdaq's IM-4200 would provide examples of non-compensatory payments, such as interest related to banking services, insurance proceeds, and non-preferential loans from financial institutions. At the same time, the proposed changes to IM-4200 would make clear that payments made by the company for the benefit of the director – such as political contributions to the campaign of a director or a family member and loans to a director or family member that are on terms not generally available to the public – could be considered indirect compensation so as to preclude a finding that the director was independent.

[8] See Notice, supra note 3. These other changes relate to: status of independent directors who served as interim officers for a maximum one-year period; the definition of "non-executive employee;" inclusion of parent and subsidiary within the meaning of "company;" and an exception in Nasdaq's standards relating to audit committees for certain issuers that have a listed parent, consistent with a similar exception contained in Rule 10A-3 under the Act, 17 CFR 240.10A-3.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act[9], that the proposed rule change (File No. SR-NASDAQ-2006-021), as amended, be, and hereby is, approved.[10]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris
Secretary

---

9 15 U.S.C. 78s(b)(2).

10 Nasdaq advised that it will implement the proposed rule change immediately upon approval by the Commission. Nasdaq represented that, to facilitate the transition to the new rules, any director that would be considered independent under the existing rules prior to the rule change, but that no longer would be considered independent under the new rules, would be permitted to continue to serve on the issuer's Board of Directors as an independent director until no later than 90 days after the approval of this rule filing. The Commission notes that this transition period does not affect an issuer's obligation to comply with the requirements of Rule 10A-3 under the Act relating to audit committees.

11 17 CFR 200.30-3(a)(12).