

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55856; File No. SR-NASDAQ-2007-029)

June 4, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Require Nasdaq-Listed Issuers to Submit Material News to Nasdaq Using Nasdaq's Electronic Disclosure Submission System

I. Introduction

On March 27, 2007, The NASDAQ Stock Market LLC ("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 require Nasdaq-listed issuers to submit material news to Nasdaq through Nasdaq's electronic disclosure submission system, except in emergency situations. Nasdaq filed Amendment No. 1 to the proposal on April 25, 2007. The proposed rule change, as amended, was published for comment in the Federal Register on May 2, 2007.³ The Commission received no comments regarding the proposed rule change, as amended. This order approves the proposed rule change, as amended.

II. Description of the Proposal

Nasdaq Rules 4310(c)(16) and 4320(e)(14) require a Nasdaq-listed issuer, except in unusual circumstances, to make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of any material information that would reasonably be expected to affect the value of its securities or to influence investors' decisions. These rules also require the issuer to provide notice of certain disclosures to Nasdaq's

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 55672 (April 26, 2007), 72 FR 24349.

MarketWatch Department (“Nasdaq MarketWatch”) prior to the release of the information. Nasdaq reviews these disclosures to determine whether a trading halt is appropriate. Issuers currently provide material news notifications to Nasdaq MarketWatch electronically through Nasdaq’s electronic disclosure submission system, or via fax or telephone. Nasdaq does not disseminate this information.

Although Nasdaq introduced the electronic disclosure submission system in 2004, most issuers continue to provide material news notifications to Nasdaq MarketWatch by fax.⁴ According to Nasdaq, the material information from fax-delivered documents and telephone notifications must be retyped manually into Nasdaq MarketWatch’s database systems, a process that uses staff time, introduces error risk, and results in a less robust audit trail. To reduce this administrative burden, Nasdaq proposes to amend Nasdaq Rule 4120, “Trading Halts,” and IM-4120-1, “Disclosure of Material Information,” to require issuers to submit material news notifications to Nasdaq through Nasdaq’s electronic disclosure submission system, except in emergency situations.⁵ In an emergency, an issuer would continue to be required to notify Nasdaq prior to disseminating material news, but Nasdaq would accept notification by telephone or fax.

Under the proposal, Nasdaq may issue a Staff Determination that is a public reprimand letter or, in extreme circumstances, a Staff Determination to delist an issuer’s securities, if an issuer repeatedly fails to notify Nasdaq prior to the distribution of material news, or repeatedly

⁴ Nasdaq notes, for example, that of approximately 4,200 material news notifications submitted to Nasdaq MarketWatch in January 2007, over 70% were submitted by fax.

⁵ Nasdaq defines emergency situations to include: lack of computer or internet access; a technical problem on either the issuer or Nasdaq system, or an incompatibility between those systems; and a material development such that no draft disclosure document exists, but immediate notification to Nasdaq MarketWatch is important based on the event. See Nasdaq IM-4120-1.

fails to use the electronic disclosure submission system in the absence of an emergency.⁶ In determining whether to issue a public reprimand letter, Nasdaq will consider whether the issuer has demonstrated a pattern of failures, whether the issuer has been contacted concerning previous violations, and whether the issuer has taken steps to assure that future violations will not occur.⁷

Nasdaq proposes to implement the proposal approximately 90 days after the proposal is approved.

III. Discussion

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.⁸ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁹ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

By requiring issuers to submit material news notifications to Nasdaq through Nasdaq's electronic disclosure submission system, except in emergencies, the Commission believes that the proposal appears to be reasonably designed to reduce the administrative burdens and error risk associated with retyping material news information provided by telephone or fax into Nasdaq's database systems. By reducing the error risk associated with retyping this

⁶ See Nasdaq IM-4120-1.

⁷ See Nasdaq IM-4120-1.

⁸ 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).

⁹ 15 U.S.C. 78f(b)(5).

information into Nasdaq's database systems, the Commission also believes that the proposal appears to be reasonably designed to help to enhance the accuracy and integrity of Nasdaq's audit trail.

Under the proposal, Nasdaq may issue a Staff Determination that is a public reprimand letter or, in extreme circumstances, a determination to delist an issuer's securities, if an issuer fails repeatedly to notify Nasdaq prior to the distribution of material news or fails repeatedly to use the electronic disclosure submission system in the absence of an emergency.¹⁰ The Commission notes that the procedures in the Nasdaq Rule 4800 Series, "Procedures for Review of Nasdaq Listing Determinations," will apply to any such Staff Determinations.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-NASDAQ-2007-029), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹⁰ See Nasdaq IM-4120-1.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).