

Proposed Rule Change by NASDAQ Stock Market  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input checked="" type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

A proposed rule change to modify the procedures applicable to listed companies that fail to meet the market value of listed securities requirement.

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name  Last Name   
 Title   
 E-mail   
 Telephone  Fax

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date   
 By  Executive Vice President and General Counsel  
 (Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The NASDAQ Stock Market LLC (“Nasdaq”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to modify the procedures applicable to listed companies that fail to meet the market value of listed securities requirement. Nasdaq has filed this proposal under Exchange Act Rule 19b-4(f)(6)<sup>3</sup> and requests that the Commission waive the five business day pre-filing requirement and the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>4</sup>

(a) The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.<sup>5</sup>

\* \* \* \* \*

**4310. Listing Requirements for Domestic and Canadian Securities**

To qualify for listing in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a), (b), and (c) hereof. Issuers that meet these requirements, but that are not listed on the Nasdaq Global Market, are listed on the Nasdaq Capital Market.

(a) – (b) No change

(c) In addition to the requirements contained in paragraph (a) and (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for listing on Nasdaq:

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>5</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

(1) – (7) No change.

(8) (A) – (B) No change.

(C) A failure to meet the continued listing requirement for market value of listed securities shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of [30] 90 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the [30] 90 day compliance period.

(D) – (E) No change.

(9) – (30) No change.

(d) No change.

#### **4320. Listing Requirements for Non-Canadian Foreign Securities and American Depositary Receipts**

To qualify for listing on Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b), and (e) of this Rule. Issuers that meet these requirements, but that are not listed on the Nasdaq Global Market, are listed on the Nasdaq Capital Market.

(a) – (d) No change.

(e) In addition to the requirements contained in paragraphs (a) and (b), the security shall satisfy the criteria set out in this subsection for listing on Nasdaq. In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued listing on Nasdaq.

(1) No change.

(2) (A) – (C) No change.

(D) A failure to meet the continued listing requirements for market value of listed securities shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of [30] 90 calendar days from such notification to achieve compliance with the applicable continued listing standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the [30] 90 day compliance period.

(E) No change.

(3) – (26) No change.

(f) No change.

\* \* \* \* \*

#### **4450. Quantitative Maintenance Criteria**

After listing as a Nasdaq Global Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e) (f), (g), (h) or (i) below to continue to remain listed on the Nasdaq Global Market. A security maintaining its listing under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a) – (d) No change.

(e) Compliance Periods

(1) – (3) No change.

(4) A failure to meet the continued listing requirements for market [capitalization] value of listed securities shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of [30] 90 calendar days from such notification to achieve compliance with the applicable continued listing standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the [30] 90 day compliance period.

(f) – (i) No change.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

#### **2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by senior management of Nasdaq pursuant to authority delegated by the Board of Directors of Nasdaq on July 18, 2007.

Nasdaq staff will advise the Board of Directors of Nasdaq of any action taken pursuant to

delegated authority. No other action by Nasdaq is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to Arnold Golub, Vice President, Nasdaq, at (301) 978-8075 (telephone) or (301) 978-8472 (fax).

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

Nasdaq proposes to modify the procedures applicable to listed companies that fail to meet the market value of listed securities requirement. A company fails to meet the continued listing requirement for market value of listed securities if the market value of listed securities is below the applicable threshold for a period of 10 consecutive business days.<sup>6</sup> Upon such a failure, the company is currently provided a "compliance period" of 30 calendar days to achieve compliance. Compliance is achieved by meeting the requirement for a minimum of 10 consecutive business days during the 30 day compliance period.

Nasdaq has come to believe that the 30 day compliance period afforded by the existing rules is too short a period, especially during periods of market turmoil. Further, while companies are only allowed a 30 day period to regain compliance with the market value of listed securities requirement, they are allowed a 90 day compliance period to regain compliance with the requirement for market value of publicly held securities,<sup>7</sup>

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<sup>6</sup> See Rules 4310(c)(8)(C), 4320(e)(2)(D) and 4450(e)(4).

<sup>7</sup> See Rules 4310(c)(8)(B) and 4450(e)(1).

which is a subset of all listed securities.<sup>8</sup> As such, Nasdaq proposes to modify the compliance period applicable to a company that fails to meet the market value of listed securities requirement to extend the compliance period from 30 days to 90 days, making it the same as the compliance period for the market value of publicly held securities requirement.<sup>9</sup>

Nasdaq proposes that any company that previously received a delisting notification for failing to meet the market value of listed securities requirement would continue to be subject to delisting for that reason, unless a Hearings Panel grants the company an exception pursuant to Rule 4802(b)(2). A company that has not yet received a delisting notification from Nasdaq staff would have its compliance period extended to 90 calendar days from the date it was notified of the original deficiency. Thus, for example, if 25 days had elapsed since the company was notified of its 30-day compliance period under the old rule, the company would have an additional 65 days (including the

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<sup>8</sup> Nasdaq also notes that the market value of listed securities requirement operates as an alternative to other listing requirements. See Rules 4310(c)(3), 4320(e)(2)(B), 4350(a) and 4350(b). However, while a company that previously qualified under any of the alternative listing requirements is permitted by Rule 4803(a)(1)(A) to provide Nasdaq staff with a plan to regain compliance and could receive a staff exception of up to 105 calendar days, a company that qualified under the market value of listed securities requirement is only permitted 30 calendar days to regain compliance if it becomes deficient.

<sup>9</sup> The company could also regain compliance by meeting one of the alternative listing requirements. For example, a company that fails to meet the market value of listed securities requirement could raise enough equity during the 90 day compliance period to meet the applicable equity requirement.

five days remaining in the original compliance period), for a total compliance period of 90 days from the original notification.<sup>10</sup>

b. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>11</sup> in general and with Section 6(b)(5) of the Act,<sup>12</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 proposed rule change would modify Nasdaq's treatment of non-compliance with the market value of listed securities requirement in order to help allow companies sufficient time to cure a deficiency, especially during turbulent market environments, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market.

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<sup>10</sup> Nasdaq also proposes to correct a reference in Rule 4450(e)(4) that currently refers to "market capitalization" to instead refer to "market value of listed securities." Nasdaq inadvertently failed to change this reference when it changed the description of the underlying initial and continued listing requirement. See Securities Exchange Act Release No. 45283 (January 15, 2002), 67 FR 3520 (January 24, 2002) (approving SR-NASD-2001-84).

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

4. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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.

5. 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.

6. Extension of Time Period for Commission Action

Nasdaq does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder, in that the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

Nasdaq believes that the proposed rule change does not significantly affect the protection of investors or the public interest as it affords companies that are deficient in

the market value of listed securities requirement the same maximum time – 90 days – as is currently available to cure a market value of publicly held securities deficiency.

Nasdaq believes that the proposed change especially will help protect investors and the public interest during the current period of turbulent market conditions.

Nasdaq requests that the Commission waive the five business day pre-filing requirement and the 30-day pre-operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>13</sup> Nasdaq requests this waiver so that companies can immediately receive the benefit of the extended compliance period under the proposed rules, thereby removing uncertainty from the process. In requesting this waiver, Nasdaq notes that the proposal would afford companies that are deficient in the market value of listed securities requirement the same maximum time as is currently available to cure a market value of publicly held securities deficiency.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

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<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASDAQ-2009-002)

January \_\_, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the Compliance Period Applicable to Companies that Fail to Meet the Market Value of Listed Securities Requirement.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 13, 2009, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify the compliance period applicable to listed companies that fail to meet the market value of listed securities requirement.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 C.F.R. 240.19b-4(f)(6).

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.<sup>4</sup>

#### **4310. Listing Requirements for Domestic and Canadian Securities**

To qualify for listing in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a), (b), and (c) hereof. Issuers that meet these requirements, but that are not listed on the Nasdaq Global Market, are listed on the Nasdaq Capital Market.

(a) – (b) No change

(c) In addition to the requirements contained in paragraph (a) and (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for listing on Nasdaq:

(1) – (7) No change.

(8) (A) – (B) No change.

(C) A failure to meet the continued listing requirement for market value of listed securities shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of [30] 90 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the [30] 90 day compliance period.

(D) – (E) No change.

(9) – (30) No change.

(d) No change.

#### **4320. Listing Requirements for Non-Canadian Foreign Securities and American Depositary Receipts**

To qualify for listing on Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b), and (e) of this Rule. Issuers that meet these requirements, but that are not listed on the Nasdaq Global Market, are listed on the Nasdaq Capital Market.

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<sup>4</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

(a) – (d) No change.

(e) In addition to the requirements contained in paragraphs (a) and (b), the security shall satisfy the criteria set out in this subsection for listing on Nasdaq. In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued listing on Nasdaq.

(1) No change.

(2) (A) – (C) No change.

(D) A failure to meet the continued listing requirements for market value of listed securities shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of [30] 90 calendar days from such notification to achieve compliance with the applicable continued listing standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the [30] 90 day compliance period.

(E) No change.

(3) – (26) No change.

(f) No change.

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#### **4450. Quantitative Maintenance Criteria**

After listing as a Nasdaq Global Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e) (f), (g), (h) or (i) below to continue to remain listed on the Nasdaq Global Market. A security maintaining its listing under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a) – (d) No change.

(e) Compliance Periods

(1) – (3) No change.

(4) A failure to meet the continued listing requirements for market [capitalization] value of listed securities shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of [30] 90 calendar days from such notification to

achieve compliance with the applicable continued listing standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the [30] 90 day compliance period.

(f) – (i) No change.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to modify the procedures applicable to listed companies that fail to meet the market value of listed securities requirement. A company fails to meet the continued listing requirement for market value of listed securities if the market value of listed securities is below the applicable threshold for a period of 10 consecutive business days.<sup>5</sup> Upon such a failure, the company is currently provided a “compliance period” of 30 calendar days to achieve compliance. Compliance is achieved by meeting the requirement for a minimum of 10 consecutive business days during the 30 day compliance period.

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<sup>5</sup> See Rules 4310(c)(8)(C), 4320(e)(2)(D) and 4450(e)(4).

Nasdaq has come to believe that the 30 day compliance period afforded by the existing rules is too short a period, especially during periods of market turmoil. Further, while companies are only allowed a 30 day period to regain compliance with the market value of listed securities requirement, they are allowed a 90 day compliance period to regain compliance with the requirement for market value of publicly held securities,<sup>6</sup> which is a subset of all listed securities.<sup>7</sup> As such, Nasdaq proposes to modify the compliance period applicable to a company that fails to meet the market value of listed securities requirement to extend the compliance period from 30 days to 90 days, making it the same as the compliance period for the market value of publicly held securities requirement.<sup>8</sup>

Nasdaq proposes that any company that previously received a delisting notification for failing to meet the market value of listed securities requirement would continue to be subject to delisting for that reason, unless a Hearings Panel grants the company an exception pursuant to Rule 4802(b)(2). A company that has not yet received a delisting notification from Nasdaq staff would have its compliance period extended to

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<sup>6</sup> See Rules 4310(c)(8)(B) and 4450(e)(1).

<sup>7</sup> Nasdaq also notes that the market value of listed securities requirement operates as an alternative to other listing requirements. See Rules 4310(c)(3), 4320(e)(2)(B), 4350(a) and 4350(b). However, while a company that previously qualified under any of the alternative listing requirements is permitted by Rule 4803(a)(1)(A) to provide Nasdaq staff with a plan to regain compliance and could receive a staff exception of up to 105 calendar days, a company that qualified under the market value of listed securities requirement is only permitted 30 calendar days to regain compliance if it becomes deficient.

<sup>8</sup> The company could also regain compliance by meeting one of the alternative listing requirements. For example, a company that fails to meet the market value of listed securities requirement could raise enough equity during the 90 day compliance period to meet the applicable equity requirement.

90 calendar days from the date it was notified of the original deficiency. Thus, for example, if 25 days had elapsed since the company was notified of its 30-day compliance period under the old rule, the company would have an additional 65 days (including the five days remaining in the original compliance period), for a total compliance period of 90 days from the original notification.<sup>9</sup>

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>10</sup> in general and with Section 6(b)(5) of the Act,<sup>11</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 proposed rule change would modify Nasdaq's treatment of non-compliance with the market value of listed securities requirement in order to help allow companies sufficient time to cure a deficiency, especially during turbulent market environments, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market.

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<sup>9</sup> Nasdaq also proposes to correct a reference in Rule 4450(e)(4) that currently refers to "market capitalization" to instead refer to "market value of listed securities." Nasdaq inadvertently failed to change this reference when it changed the description of the underlying initial and continued listing requirement. See Securities Exchange Act Release No. 45283 (January 15, 2002), 67 FR 3520 (January 24, 2002) (approving SR-NASD-2001-84).

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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

Nasdaq 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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder, in that the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

Nasdaq believes that the proposed rule change does not significantly affect the protection of investors or the public interest as it affords companies that are deficient in the market value of listed securities requirement the same maximum time – 90 days – as is currently available to cure a market value of publicly held securities deficiency.

Nasdaq believes that the proposed change especially will help protect investors and the public interest during the current period of turbulent market conditions.

Nasdaq requests that the Commission waive the five business day pre-filing requirement and the 30-day pre-operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>12</sup> Nasdaq requests this waiver so that companies can immediately receive the benefit of the extended compliance period under the proposed rules, thereby removing uncertainty from the process. In requesting this waiver, Nasdaq notes that the proposal would afford companies that are deficient in the market value of listed securities requirement the same maximum time as is currently available to cure a market value of publicly held securities deficiency.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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

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<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2009-002 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2009-002. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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-NASDAQ-2009-002 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Elizabeth Murphy  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).