

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

Nasdaq has proposed to modify and extend until December 31, 2004, the existing pilot program relating to compliance periods for the bid price criteria for Nasdaq National Market and Nasdaq SmallCap Market issuers; to eliminate the provision which permitted, on a pilot basis, certain companies that transferred to the SmallCap Market to return to the Nasdaq National Market under the continued inclusion criteria;⁴ and to permanently modify the continued bid price requirement for certain Nasdaq National Market issuers by requiring these issuers meet a \$1 bid price instead of the existing \$3 requirement. During the pilot period, Nasdaq will assess the effectiveness of these changes.

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

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4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a)-(b) No change.

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

(1)-(7) No change.

(8)(A)-(C) No change.

(D) A failure to meet the continued inclusion requirement for minimum bid price on The Nasdaq SmallCap Market shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. If the issuer has not been deemed in compliance prior to the expiration of the 180 day compliance period, it will be afforded an additional 180 day compliance period, provided that on the 180th day following notification of this deficiency, the issuer meets any of the three criteria for initial inclusion set forth in Rule 4310(c)(2)(A) based on the issuer's most recent publicly filed financial information. *If the issuer has not been deemed in*

compliance prior to the expiration of the second 180 day compliance period, it will be afforded an additional 90 day compliance period, provided that on the last day of the second 180 day compliance period, the issuer meets any of the three criteria for initial inclusion set forth in Rule 4310(c)(2)(A) based on the issuer's most recent publicly filed financial information. Compliance can be achieved during any [either 180 day] compliance period by meeting the applicable standard for a minimum of 10 consecutive business days.

(E) No change.

(9)-(29) No change.

(d) No change.

4450. Quantitative Maintenance Criteria

After designation as a Nasdaq National 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 be designated as a national market system security. A security maintaining its designation under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a) No change.

(b) Maintenance Standard 2—First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts

(1)-(3) No change.

(4) Minimum bid price per share of [S\$] \$1;

(5)-(6) No change.

(c)-(d) No change.

(e) Compliance Periods.

(1) No change.

(2) [For issuers subject to the \$1.00 bid price requirement under Maintenance Standard 1 or the \$3.00 bid price requirement under Maintenance Standard 2, a] A failure to meet the continued inclusion requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 180 [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 180 [90] day compliance period. Nasdaq may, in its discretion, require an issuer [under Maintenance Standard 1] to maintain a bid price of at least \$1.00 per share for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business

days, before determining that the issuer has demonstrated an ability to maintain long-term compliance. In determining whether to monitor bid price beyond ten business days, Nasdaq will consider the following four factors: (i) Margin of compliance (the amount by which the price is above the \$1.00 minimum standard); (ii) trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the number of market makers quoting at or above \$1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down).

(3)-(4) No change.

(f)-(h) No change.

(i) Transfers between The Nasdaq National and SmallCap Markets For Bid Price Deficient Issuers

(1) If a National Market issuer has not been deemed in compliance prior to the expiration of [the 90 day] a compliance period for bid price or otherwise so chooses, it may transfer to The Nasdaq SmallCap Market, provided that it meets all applicable requirements for continued inclusion on the SmallCap Market set forth in Rule 4310(c) (other than the minimum bid price requirement of Rule 4310(c)(4)) or Rule 4320(e), as applicable. A Nasdaq National Market issuer transferring to The Nasdaq SmallCap Market must pay the entry fee set forth in Rule 4520(a). The issuer may also request a hearing to remain on The Nasdaq National Market pursuant to the Rule 4800 Series.

(2) Following a transfer to The Nasdaq SmallCap Market pursuant to paragraph (1), a domestic or Canadian Nasdaq National Market issuer [under Maintenance Standard 1] will be afforded the remainder of [the initial] any [180 day] compliance period set forth in Rule 4310(c)(8)(D) *as if the issuer had been listed on The Nasdaq SmallCap Market* [and may thereafter be eligible for the subsequent 180 day compliance period pursuant to that rule]. The [90 day grace] *compliance* periods afforded by this rule and any time spent in the hearing process will be deducted *in determining the length of the remaining* [from the] applicable [grace] *compliance* periods on The Nasdaq SmallCap Market. [Any issuer that was formerly listed on The Nasdaq National Market, and which transferred to The Nasdaq SmallCap Market pursuant to this paragraph, may transfer back to The Nasdaq National Market without satisfying the initial inclusion criteria if it maintains compliance with the \$1 bid price requirement for a minimum of 30 consecutive business days prior to the expiration of the

⁴ An issuer that has transferred to the Nasdaq SmallCap Market in reliance on the existing pilot rule would be permitted to return to the Nasdaq National Market under the terms of the rule in effect at the time of transfer.