

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48124; File No. SR-NASD-2002-138]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Require Non-U.S. Issuers To Disclose Any Exemptions They May Receive From Nasdaq's Corporate Governance Listing Standards

July 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 9, 2002, 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") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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 Substance of the Proposed Rule Change

Nasdaq proposes to implement changes to its listing standards relating to foreign issuers that are aimed at helping to restore investor confidence by enhancing transparency.³ Nasdaq proposes that the rule take effect for new listings and filings made on or after January 1, 2004.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in *brackets*.

Rule 4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq Small Cap Market Issuers Except for Limited Partnerships Traded on the Nasdaq National Market
(a) Applicability.

No provisions of this Rule shall be construed to require any foreign issuer to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such issuer or that is contrary to generally accepted business practices in

the issuer's country of domicile. Nasdaq shall have the ability to provide exemptions from [the applicability of] this Rule as may be necessary or appropriate to carry out this intent, *except to the extent that such exemptions would be contrary to the federal securities laws. An issuer that receives an exemption under this subsection must disclose in its annual report filed with the Commission (e.g., Forms 20-F, 40-F, or 10-K) each requirement from which it is exempted and describe the alternative practice, if any, of the issuer in lieu of these requirements. In addition, foreign issuers making their initial public offering or first U.S. listing on Nasdaq must disclose any such exemptions in their registration statement (e.g., Forms F-1, 20-F, or 40-F).*

IM-4350: Currently, foreign issuers listed on Nasdaq may obtain exemptions from Nasdaq's corporate governance standards if such rules would require the issuer to do anything contrary to the laws, rules, regulations or generally accepted business practices of the home country. Nasdaq believes that the current exemption process should be made more transparent for the benefit of investors.

Accordingly, the proposed rule change requires a foreign issuer to disclose the receipt of a corporate governance exemption from Nasdaq in the issuer's annual report with the Commission, and at the time of the issuer's original listing in the United States, if that listing is on Nasdaq. The disclosure must include a statement of what alternative measures, if any, the issuer has taken in lieu of the particular corporate governance requirement from which it was exempted. Nasdaq believes that such disclosure will not only alert investors that the issuer has been granted an exemption from certain Nasdaq rules, but may also cause foreign issuers to consider carefully their need for an exemption, rather than applying for one as a matter of course.

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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

Disclosure of Exemptions to Corporate Governance Standards. Currently, non-U.S. issuers listed on Nasdaq may obtain exemptions from Nasdaq's corporate governance standards if such rules would require the issuer to do anything contrary to the laws, rules, regulations or generally accepted business practices of the issuer's home country. Nasdaq believes that the current exemption process should be made more transparent for the benefit of investors. Accordingly, the proposed rule change requires a foreign issuer to disclose the receipt of a corporate governance exemption from Nasdaq in its annual report for the year the exemption is granted and on an annual basis thereafter. Such disclosure must be made within the issuer's annual filing of its financial statements with the Commission and Nasdaq on Forms 20-F, 40-F, or, in certain cases, Form 10-K. The disclosure must include a statement of what alternative measures, if any, the issuer has taken, pursuant to home country law or practice, in lieu of the particular corporate governance requirement from which it was exempted. Nasdaq believes that such disclosure will not only alert investors that the issuer has been granted an exemption from certain Nasdaq rules, but may also cause non-U.S. issuers to consider carefully their need for an exemption, rather than applying for one as a matter of course. In addition, the proposed rule change clarifies that any exemption from Nasdaq requirements granted by Nasdaq in no way affects the issuer's obligation to comply with applicable law and regulation.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁴ in general, and with section 15A(b)(6) of the Act,⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

⁴ 15 U.S.C. 78o-3.

⁵ 15 U.S.C. 78o-(b)(6).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See also Securities Exchange Act Release No. 47516 (March 17, 2003), 68 FR 14451 (March 25, 2003) (NASD 2002-141) for a description of additional proposed revisions to NASD's corporate governance listing standards.