

amendments to the proposed rule change on March 24, 2003,³ and September 26, 2003.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq is proposing to modify an existing pilot program relating to compliance periods for the bid price criteria for Nasdaq National Market and Nasdaq SmallCap Market issuers. Nasdaq has represented that, during the pilot period, it would assess the effectiveness of these changes.

Below is the text of the proposed rule change, including the revisions to the proposed rule text made by Amendment Nos. 1 and 2. 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* [will] 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* [will] 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 shall be afforded an additional 180 day compliance period, provided, that on the 180th day of the first

compliance period, [following notification of this deficiency,] the issuer demonstrates that it meets the criteria for initial inclusion set forth in Rule 4310(c)[(2)(A)] (except for the bid price requirement set forth in Rule 4310(c)(4)) based on the issuer's most recent public[ly filed] filings and market [financial] information. If the issuer has publicly announced information (e.g., in an earnings release) indicating that it no longer satisfies the applicable initial inclusion criteria, it shall not be eligible for the additional compliance period under this rule.

If on the 180th day of the second compliance period, the issuer has not been deemed in compliance during such compliance period but it satisfies the criteria for initial inclusion set forth in Rule 4310(c) (except for the bid price requirement set forth in Rule 4310(c)(4)), the issuer shall be provided with an additional compliance period up to its next annual shareholder meeting, provided: the issuer commits to seek shareholder approval for a reverse stock split to address the bid price deficiency at or before its next annual meeting, and to promptly thereafter effect the reverse stock split; and the shareholder meeting to seek such approval is scheduled to occur no later than two years from the original notification of the bid price deficiency. If the issuer fails to timely propose, or obtain approval for, or promptly execute the reverse stock split, Nasdaq shall immediately institute delisting proceedings upon such failure. [If the issuer has not been deemed in compliance prior to the expiration of the second 180 day compliance period, it shall 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 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)–(d) No change.

(e) Compliance Periods

(1) No change.

(2) 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 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 shall [will] be afforded an additional 180 day compliance period, provided, that on the 180th day following the notification of the deficiency, the issuer demonstrates that it meets the criteria for initial inclusion set forth in [either] Rule[s] 4420[(a)(1) and (a)(5), Rule 4420(b)(1) or Rule 4420(c)(6).] (except for the bid price requirement set forth in Rule 4420(a)(4), (b)(4) or (c)(3)) based on the issuer's most recent public[ly filed financial] filings and market information. *If the issuer has publicly announced information (e.g., in an earnings release) indicating that it no longer satisfies the applicable initial inclusion criteria, it shall not be eligible for the additional compliance period under this rule.*

If the issuer has not been deemed in compliance 45 calendar days before the expiration of the second 180 day compliance period, the Listing Qualifications Department shall issue a letter (the "Staff Warning Letter"), notifying the issuer of its non-compliance, the pending expiration of the compliance period, and its right to request a hearing. The issuer must request a hearing within seven calendar days of the date of the Staff Warning Letter in order to preserve its right to review pursuant to Rule 4820. If the issuer requests a hearing, the hearing shall be scheduled for a date promptly following the expiration of the compliance period. If the issuer fails to request a hearing and does not regain compliance prior to the expiration of the compliance period, it shall be delisted immediately following the compliance period with no further opportunity for a hearing. Compliance can be achieved during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days during the [180 day] applicable compliance period.

Nasdaq may, in its discretion, require an issuer to maintain a bid price of at least \$1.00 per share for a period in excess of ten consecutive business days,

³ See letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated March 21, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq made minor revisions to the original proposal.

⁴ See letter from Edward S. Knight, Executive Vice President, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated September 25, 2003 ("Amendment No. 2"). In Amendment No. 2, Nasdaq revised the length of the compliance periods and added to the criteria that issuers would have to meet to avail themselves of such periods.