



SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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**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 extend until July 19, 2009, the temporary suspension of the continued listing requirements related to bid price and market value of publicly held shares for listing on the Nasdaq Stock Market. Nasdaq has filed this proposal under Exchange Act Rule 19b-4(f)(6)<sup>3</sup> and provided the Commission with the notice required by Exchange Act Rule 19b-4(f)(6)(iii).<sup>4</sup>

(a) The proposed rule change would continue the temporary suspension of the application of the continued inclusion bid price and market value of publicly held shares requirements for listing on the Nasdaq Stock Market through July 19, 2009.

(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

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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).

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, Associate General Counsel, 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

On October 16, 2008, Nasdaq filed a proposed rule change, which was immediately effective, to temporarily suspend the bid price<sup>5</sup> and market value of publicly held shares<sup>6</sup> continued listing requirements otherwise applicable to issuers of common

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<sup>5</sup> Nasdaq's continued listing requirements relating to bid price are set forth in Rules 4310(c)(4), 4320(e)(2)(E)(ii), 4450(a)(5), 4450(b)(4), and 4450(h)(3) and the related compliance periods are set forth in Rules 4310(c)(8)(D), 4320(e)(2)(E)(ii), and 4450(e)(2). Nasdaq has proposed to reorganize and renumber these rules, effective April 13, 2009. See SR-NASDAQ-2009-018 (pending). Under these rules, a security is considered deficient if it fails to achieve at least a \$1 closing bid price for a period of 30 consecutive business days. Once deficient, Capital Market issuers are provided one automatic 180-day period to regain compliance. Thereafter, these issuers can receive an additional 180-day compliance period if they comply with all Capital Market initial inclusion requirements except bid price. Global Market issuers are also provided one automatic 180-day period to regain compliance, after which they can transfer to the Capital Market, if they comply with all Capital Market initial inclusion requirements except bid price, to take advantage of the second 180-day compliance period. A company can regain compliance by achieving a \$1 closing bid price for a minimum of ten consecutive business days.

<sup>6</sup> Nasdaq's continued listing requirements relating to market value of publicly held shares are set forth in Rules 4310(c)(7), 4320(e)(5), 4450(a)(2), 4450(b)(3) and 4450(h)(2) and the related compliance periods are set forth in Rules 4310(c)(8)(B) and 4450(e)(1). Nasdaq has proposed to reorganize and renumber these rules, effective April 13, 2009. See SR-NASDAQ-2009-018 (pending). Under these rules, a security is considered deficient if it fails to achieve the minimum market value of publicly held shares requirement for a period of 30 consecutive business days. Thereafter, companies have a compliance period of 90 calendar days to achieve compliance by meeting the applicable standard for a minimum of ten consecutive business days.

stock, preferred stock, secondary classes of common stock, shares or certificates of beneficial interest of trusts, limited partnership interests, American Depositary Receipts, and their equivalents.<sup>7</sup> This suspension was designed to provide temporary relief to companies from the application of these requirements during a period in which the financial markets face almost unprecedented turmoil, resulting in a crisis in investor confidence and concerns about the proper functioning of the securities markets.<sup>8</sup> On December 18, 2008, Nasdaq filed a proposed rule change to extend this suspension until April 19, 2009.<sup>9</sup>

Market conditions have not improved since the suspension began and, in fact, both the number of securities trading below \$1 and the number of securities trading between \$1 and \$2 on Nasdaq has increased since the initial suspension. Nasdaq continues to believe that there was no fundamental change in the underlying business

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<sup>7</sup> Securities Exchange Act Release No. 58809 (October 17, 2008), 73 FR 63222 (October 23, 2008) (SR-NASDAQ-2008-082). One comment was submitted on this proposal by Alan F. Eisenberg, Executive Vice President, the Biotechnology Industry Organization. This comment supported the suspension and “any efforts by the Commission and NASDAQ to extend [the suspension], as necessary, beyond the termination date of January 16, 2009.”

<sup>8</sup> See, e.g., Securities Exchange Act Release No. 58588 (September 18, 2008), 73 FR 55174 (September 24, 2008) (“The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Given the importance of confidence in our financial markets as a whole, we have also become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.”)

<sup>9</sup> Securities Exchange Act Release No. 59219 (January 8, 2009), 74 FR 2640 (January 15, 2009) (SR-NASDAQ-2008-099).

model or prospects for many of these companies, and that a decline in general investor confidence has resulted in depressed pricing for companies that otherwise remain suitable for continued listing. These same conditions continue to make it difficult for companies to successfully implement a plan to regain compliance with the price or market value of publicly held shares tests.<sup>10</sup>

Given these extraordinary market conditions, Nasdaq has determined that it is appropriate to continue the temporary suspension of the bid price and market value of publicly held shares requirements for an additional three months, until July 19, 2009. Under this proposal, companies would not be cited for new bid price or market value of publicly held shares deficiencies during the suspension period, and the time allowed to companies already in a compliance period or in the hearings process for bid price or market value of publicly held shares deficiencies would remain suspended with respect to those requirements.<sup>11</sup> Following the temporary suspension, any new deficiencies with the bid price or market value of publicly held shares requirements would be determined using data starting on July 20, 2009.<sup>12</sup> When the suspension expires, companies that

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<sup>10</sup> In this regard, Nasdaq notes that the New York Stock Exchange recently filed, on an immediately effective basis, a proposed rule change to adopt a similar suspension for its \$1 price requirement, lasting until June 30, 2009. Securities Exchange Act Release No. 59510 (March 4, 2009), 74 FR 10636 (March 11, 2009) (SR-NYSE-2009-21).

<sup>11</sup> Nasdaq would continue to identify on its website and in its daily data feed to vendors those companies in a compliance period or in the hearings process as not satisfying the continued listing standards, unless the company regains compliance during the suspension. A company would continue to be subject to delisting for failure to comply with other listing requirements.

<sup>12</sup> Nasdaq would not consider the bid price or market value of publicly held shares for the period before or during the suspension with respect to a company that was not yet non-compliant with those requirements at the start of the suspension.

were in a compliance period as of October 16, 2008, when the suspension first began, would receive the balance of any pending compliance periods in effect at the time of the initial suspension.<sup>13</sup> Similarly, companies that were in the Hearings process prior to October 16, 2008, would resume in that process at the same stage they were in when the suspension first went into effect. Nasdaq will continue to monitor securities to determine if they regain compliance during the temporary suspension.

Nasdaq believes that extending the temporary suspension will permit companies to continue focusing on running their businesses, rather than satisfying market-based requirements that are largely beyond their control in the current environment. Moreover, this extension will allow investors to buy shares of some of these lower-priced securities without fear that the company will receive a delisting notification or be delisted in the very near term.<sup>14</sup> Nasdaq will continue to monitor market conditions and consider whether it is appropriate to further extend the suspension.

b. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>15</sup> in general and with Section 6(b)(5) of the Act,<sup>16</sup> in particular in

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<sup>13</sup> For example, if a company was 120 days into its first 180-day compliance period for a bid price deficiency when the suspension first started and the company does not regain compliance during the suspension, the company would have sixty days remaining, starting on July 20, 2009, to regain compliance. The company may be eligible for the second 180-day compliance period if it satisfies the conditions for the second compliance period at the conclusion of the first compliance period.

<sup>14</sup> As noted above, following the suspension, companies presently in the compliance process will remain at that same stage of the process.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

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 is designed to remove uncertainty regarding the ability of companies to remain listed on Nasdaq during this especially turbulent market environment, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market.

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

While written comments were not solicited about the proposed extension, there was one comment submitted by the Biotechnology Industry Organization on the original suspension of the bid price and market value of publicly held shares requirements, which supported the extension. That comment is described in footnote 7, above.

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 extension of the temporary suspension does not significantly affect the protection of investors or the public interest as it is a temporary measure designed to respond to extraordinary market conditions. Nasdaq also believes that the proposed extension of the temporary suspension will help protect investors and the public interest by allowing the management of listed companies to focus more on the successful operation of their businesses than on responding to market conditions that are entirely unpredictable at the present time and often completely out of the control of the company's management. Further, Nasdaq has previously imposed a similar temporary suspension following the events of September 11, 2001, when there were also extraordinary market conditions.<sup>17</sup> As such, Nasdaq believes that it is appropriate to file

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<sup>17</sup> Securities Exchange Act Release No. 44857 (September 27, 2001), 66 FR 50485 (October 3, 2001) (SR-NASD-2001-61).

this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A)<sup>18</sup> and Rule 19b-4(f)(6).<sup>19</sup>

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>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASDAQ-2008-026)

March \_\_\_\_, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Temporary Suspension of the Continued Listing Requirements Related to Bid Price and Market Value of Publicly Held Shares for Listing on the Nasdaq Stock Market through July 19, 2009.

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 March 18, 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 extend the temporary suspension of the application of the continued inclusion bid price and market value of publicly held shares requirements for listing on the Nasdaq Stock Market through July 19, 2009.

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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).

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

On October 16, 2008, Nasdaq filed a proposed rule change, which was immediately effective, to temporarily suspend the bid price<sup>4</sup> and market value of publicly held shares<sup>5</sup> continued listing requirements otherwise applicable to issuers of common

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<sup>4</sup> Nasdaq's continued listing requirements relating to bid price are set forth in Rules 4310(c)(4), 4320(e)(2)(E)(ii), 4450(a)(5), 4450(b)(4), and 4450(h)(3) and the related compliance periods are set forth in Rules 4310(c)(8)(D), 4320(e)(2)(E)(ii), and 4450(e)(2). Nasdaq has proposed to reorganize and renumber these rules, effective April 13, 2009. See SR-NASDAQ-2009-018 (pending). Under these rules, a security is considered deficient if it fails to achieve at least a \$1 closing bid price for a period of 30 consecutive business days. Once deficient, Capital Market issuers are provided one automatic 180-day period to regain compliance. Thereafter, these issuers can receive an additional 180-day compliance period if they comply with all Capital Market initial inclusion requirements except bid price. Global Market issuers are also provided one automatic 180-day period to regain compliance, after which they can transfer to the Capital Market, if they comply with all Capital Market initial inclusion requirements except bid price, to take advantage of the second 180-day compliance period. A company can regain compliance by achieving a \$1 closing bid price for a minimum of ten consecutive business days.

<sup>5</sup> Nasdaq's continued listing requirements relating to market value of publicly held shares are set forth in Rules 4310(c)(7), 4320(e)(5), 4450(a)(2), 4450(b)(3) and 4450(h)(2) and the related compliance periods are set forth in Rules 4310(c)(8)(B) and 4450(e)(1). Nasdaq has proposed to reorganize and renumber these rules, effective April 13, 2009. See SR-NASDAQ-2009-018 (pending). Under these

stock, preferred stock, secondary classes of common stock, shares or certificates of beneficial interest of trusts, limited partnership interests, American Depositary Receipts, and their equivalents.<sup>6</sup> This suspension was designed to provide temporary relief to companies from the application of these requirements during a period in which the financial markets face almost unprecedented turmoil, resulting in a crisis in investor confidence and concerns about the proper functioning of the securities markets.<sup>7</sup> On December 18, 2008, Nasdaq filed a proposed rule change to extend this suspension until April 19, 2009.<sup>8</sup>

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rules, a security is considered deficient if it fails to achieve the minimum market value of publicly held shares requirement for a period of 30 consecutive business days. Thereafter, companies have a compliance period of 90 calendar days to achieve compliance by meeting the applicable standard for a minimum of ten consecutive business days.

<sup>6</sup> Securities Exchange Act Release No. 58809 (October 17, 2008), 73 FR 63222 (October 23, 2008) (SR-NASDAQ-2008-082). One comment was submitted on this proposal by Alan F. Eisenberg, Executive Vice President, the Biotechnology Industry Organization. This comment supported the suspension and “any efforts by the Commission and NASDAQ to extend [the suspension], as necessary, beyond the termination date of January 16, 2009.”

<sup>7</sup> See, e.g., Securities Exchange Act Release No. 58588 (September 18, 2008), 73 FR 55174 (September 24, 2008) (“The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Given the importance of confidence in our financial markets as a whole, we have also become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.”)

<sup>8</sup> Securities Exchange Act Release No. 59219 (January 8, 2009), 74 FR 2640 (January 15, 2009) (SR-NASDAQ-2008-099).

Market conditions have not improved since the suspension began and, in fact, both the number of securities trading below \$1 and the number of securities trading between \$1 and \$2 on Nasdaq has increased since the initial suspension. Nasdaq continues to believe that there was no fundamental change in the underlying business model or prospects for many of these companies, and that a decline in general investor confidence has resulted in depressed pricing for companies that otherwise remain suitable for continued listing. These same conditions continue to make it difficult for companies to successfully implement a plan to regain compliance with the price or market value of publicly held shares tests.<sup>9</sup>

Given these extraordinary market conditions, Nasdaq has determined that it is appropriate to continue the temporary suspension of the bid price and market value of publicly held shares requirements for an additional three months, until July 19, 2009. Under this proposal, companies would not be cited for new bid price or market value of publicly held shares deficiencies during the suspension period, and the time allowed to companies already in a compliance period or in the hearings process for bid price or market value of publicly held shares deficiencies would remain suspended with respect to those requirements.<sup>10</sup> Following the temporary suspension, any new deficiencies with

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<sup>9</sup> In this regard, Nasdaq notes that the New York Stock Exchange recently filed, on an immediately effective basis, a proposed rule change to adopt a similar suspension for its \$1 price requirement, lasting until June 30, 2009. Securities Exchange Act Release No. 59510 (March 4, 2009), 74 FR 10636 (March 11, 2009) (SR-NYSE-2009-21).

<sup>10</sup> Nasdaq would continue to identify on its website and in its daily data feed to vendors those companies in a compliance period or in the hearings process as not satisfying the continued listing standards, unless the company regains compliance during the suspension. A company would continue to be subject to delisting for failure to comply with other listing requirements.

the bid price or market value of publicly held shares requirements would be determined using data starting on July 20, 2009.<sup>11</sup> When the suspension expires, companies that were in a compliance period as of October 16, 2008, when the suspension first began, would receive the balance of any pending compliance periods in effect at the time of the initial suspension.<sup>12</sup> Similarly, companies that were in the Hearings process prior to October 16, 2008, would resume in that process at the same stage they were in when the suspension first went into effect. Nasdaq will continue to monitor securities to determine if they regain compliance during the temporary suspension.

Nasdaq believes that extending the temporary suspension will permit companies to continue focusing on running their businesses, rather than satisfying market-based requirements that are largely beyond their control in the current environment. Moreover, this extension will allow investors to buy shares of some of these lower-priced securities without fear that the company will receive a delisting notification or be delisted in the very near term.<sup>13</sup> Nasdaq will continue to monitor market conditions and consider whether it is appropriate to further extend the suspension.

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<sup>11</sup> Nasdaq would not consider the bid price or market value of publicly held shares for the period before or during the suspension with respect to a company that was not yet non-compliant with those requirements at the start of the suspension.

<sup>12</sup> For example, if a company was 120 days into its first 180-day compliance period for a bid price deficiency when the suspension first started and the company does not regain compliance during the suspension, the company would have sixty days remaining, starting on July 20, 2009, to regain compliance. The company may be eligible for the second 180-day compliance period if it satisfies the conditions for the second compliance period at the conclusion of the first compliance period.

<sup>13</sup> As noted above, following the suspension, companies presently in the compliance process will remain at that same stage of the process.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>14</sup> in general and with Section 6(b)(5) of the Act,<sup>15</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 is designed to remove uncertainty regarding the ability of companies to remain listed on Nasdaq during this especially turbulent market environment, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market.

### 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

While written comments were not solicited about the proposed extension, there was one comment submitted by the Biotechnology Industry Organization on the original suspension of the bid price and market value of publicly held shares requirements, which supported the extension. That comment is described in footnote 6, above.

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<sup>14</sup> 15 U.S.C. 78f.

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

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 extension of the temporary suspension does not significantly affect the protection of investors or the public interest as it is a temporary measure designed to respond to extraordinary market conditions. Nasdaq also believes that the proposed extension of the temporary suspension will help protect investors and the public interest by allowing the management of listed companies to focus more on the successful operation of their businesses than on responding to market conditions that are entirely unpredictable at the present time and often completely out of the control of the company's management. Further, Nasdaq has previously imposed a similar temporary suspension following the events of September 11, 2001, when there were also extraordinary market conditions.<sup>16</sup> As such, Nasdaq believes that it is appropriate to file

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<sup>16</sup> Securities Exchange Act Release No. 44857 (September 27, 2001), 66 FR 50485 (October 3, 2001) (SR-NASD-2001-61).

this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A)<sup>17</sup> and Rule 19b-4(f)(6).<sup>18</sup>

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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2008-026 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-2008-026. This file number should be included on the subject line if e-mail is used. To help the Commission process

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

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-2008-026 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>19</sup>

Elizabeth Murphy  
Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).