

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 23	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2012 - * 002 Amendment No. (req. for Amendments *) 1
Proposed Rule Change by NASDAQ Stock Market Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934		
Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>
Section 19(b)(2) * <input checked="" type="checkbox"/>		
Section 19(b)(3)(A) * <input type="checkbox"/>		
Section 19(b)(3)(B) * <input type="checkbox"/>		
Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
<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 type="checkbox"/> 19b-4(f)(6)		
Exhibit 2 Sent As Paper Document <input type="checkbox"/> Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
Description Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *). <div style="border: 1px solid black; height: 40px; width: 100%; margin-top: 5px;"></div>		
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 * Arnold Last Name * Golub Title * Vice President and Associate General Counsel E-mail * arnold.golub@nasdaqomx.com Telephone * (301) 978-8075 Fax (301) 978-8472		
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 04/16/2012 By Edward S. Knight 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. <div style="text-align: center; margin-top: 10px;"> Edward S Knight, </div>		

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required)

Add Remove View

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 (required)

Add Remove View

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

Add Remove View

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”),¹ and Rule 19b-4 thereunder,² The NASDAQ Stock Market LLC (“Nasdaq”) is filing with the Securities and Exchange Commission (“Commission”) this amendment to SR-NASDAQ-2012-002, which was published for comment by the Commission on January 13, 2012.³

(a) The text of the proposed rule change is attached in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of Nasdaq approved the proposed rule change on November 23, 2011, which authorized the filing of the rule change with the Commission. No other action by Nasdaq is necessary for the filing of the rule change.

Nasdaq will implement the proposed rule upon approval.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 66159, 77 FR 3021 (January 20, 2012). One comment was submitted supporting Nasdaq’s proposal and urging the Commission to amend the Penny Stock Rules to eliminate the “regulatory inequality” that allows NYSE Amex, but not Nasdaq, to list securities below \$4 without additional requirements to satisfy those rules. Letter dated February 10, 2012, from David Donohoe, Donohoe Advisory Associates LLC. On March 1, 2012, the Commission designated a longer period to act on the proposed rule change. Securities Exchange Act Release No. 66499, 77 FR 13680 (March 7, 2012).

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

a. Purpose

Nasdaq has proposed to adopt an alternative to the minimum \$4 price requirement for companies seeking to list on the Capital Market which meet the express exclusion from the definition of a "penny stock" contained in Exchange Act Rule 3a51-1(g).⁴ In order to address comments on that proposal from the Commission Staff, Nasdaq proposes to replace the proposed rule text with the rule text set forth in Exhibit 5.

As revised, the proposed alternative price test will be based on a security's closing price, instead of its closing bid price. This change will more closely align the proposed rule to the rules of NYSE Amex, which already permits the listing of securities at prices as low as \$2.⁵ Nasdaq also proposes to clarify that the required closing price must be achieved for at least five consecutive business days before approval of the listing application.

In addition, Nasdaq proposes to modify the criteria for when a security will no longer be considered as having listed under the alternative requirement. As revised, this test will also be based on the security's closing price, rather than its bid price, and will require the security to achieve a \$4 closing price for at least five consecutive business days.⁶ If a security obtains a \$4 closing price, Nasdaq will determine whether it meets all other initial listing requirements for the Nasdaq Capital Market, including both the

⁴ 17 CFR 240.3a51-1(g).

⁵ Section 102(b) of the NYSE Amex Company Guide.

⁶ Nasdaq, working with FINRA, will also adopt surveillance procedures to monitor securities listed under the proposed alternative as they approach \$4. These procedures will be designed to identify anomalous trading that could be indicative of potential manipulation of the price.

quantitative and qualitative requirements.⁷ If the security meets all initial listing requirements, it will satisfy the requirements for the exclusion contained in Rule 3a51-1(a)(2) and no longer be monitored for compliance with the other exclusions from the definition of a penny stock.

For purposes of the \$2 or \$3 closing price requirement for initial listing and the \$4 closing price requirement for a security to no longer be treated as listing under the alternative requirement, the applicable closing price will be the NASDAQ Official Closing Price (“NOCP”), if there is one, or the consolidated closing price distributed under the applicable National Market System Plan if there is no NOCP.⁸ Nasdaq may extend the minimum five day compliance period required to satisfy these tests based on any fact or circumstance, including the margin of compliance, the trading volume, the

⁷ The security will have to meet the \$4 bid price requirement contained in Rule 5505(a)(1)(A). In addition, Rule 5505(b)(2) requires a company qualifying only under the Market Value of Listed Securities requirement to satisfy that requirement and the price requirement for 90 consecutive trading days prior to applying for listing. Such a company will have to achieve a \$4 bid price for 90 consecutive trading days and a \$4 closing price for five days, although these periods may overlap.

⁸ The NASDAQ Official Closing Price is set by the NASDAQ Closing Cross process, utilizing an algorithm to find the equilibrium price matching all eligible buy and sell orders. See Rule 4754. A Closing Cross occurs for every security listed on Nasdaq. If no shares are matched in the Closing Cross, the NOCP is the last matched trade that occurred that day on Nasdaq. The methodology behind the calculation of the NOCP ensures that the closing price is at, or within, the best bid and ask quotations. The NOCP calculation also minimizes the impact of any anomalies in a security’s price that might occur at the end of the trading day. The NOCP is used by leading index providers to calculate closing values for indexes and by mutual funds to calculate their closing net asset values. If no shares are matched in the Closing Cross and there is no matched trade that day on Nasdaq, the closing price would be the consolidated close reported on the tape, which could be the last matched trade on Nasdaq from a prior day or a more recent trade reported by another execution venue.

Market Maker montage, the trend of the security's price, or information or concerns raised by other regulators concerning the trading of the security.

Finally, in the original proposal, Nasdaq noted that a security that qualified for initial listing only under the proposed requirement could become a "penny stock" if it failed the net tangible assets and revenue tests after listing and did not satisfy any of the other exclusions from being a penny stock. In order to assist brokers' and dealers' compliance with the requirements of the Penny Stock Rules, Nasdaq will monitor securities listed under the proposed alternative and publish a list of any security that initially listed under that requirement, which does not then meet the requirements of Rule 3a51-1(g), or any of the other exclusions from being a penny stock contained in Rule 3a51-1. Nasdaq proposes to clarify that this list will be updated on a daily basis.

b. Statutory Basis

Nasdaq believes that this amendment is consistent with the provisions of Section 6 of the Act,⁹ in general and with Sections 6(b)(5) and (8) of the Act,¹⁰ in particular. Section 6(b)(5) requires, among other things, that a national securities exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change, as amended, would adopt a \$2 and \$3 initial listing price alternative for the NASDAQ Capital Market that is substantially similar to the requirements of NYSE Amex, which the Commission has already determined is

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5) and (8).

consistent with these requirements.¹¹ In this amendment, Nasdaq proposes to determine compliance with the new alternative based on a security's closing price, instead of its bid price. Nasdaq believes that this change will protect investors and the public interest by ensuring that a trade, reflecting the value of the security to both the buyer and seller, has taken place at the required price. Nasdaq also proposes to require that a company meet the applicable closing price for at least five consecutive business days, which will protect investors and the public interest by helping to ensure that the company has achieved more than just fleeting compliance. In addition, Nasdaq is providing additional information clarifying how it will determine compliance with the price requirements and how it will review a security that initially listed under the proposed alternative to determine if that security subsequently achieves a \$4 price and meets the other initial listing requirements. Nasdaq believes that this additional transparency will also help protect investors and the public interest.

As noted in the original filing, Nasdaq believes that the proposed price requirement is sufficient to protect investors and would exercise its discretionary authority to deny initial listing if Nasdaq was concerned about the ability of the company to maintain compliance with the continued listing price or believed there were public interest concerns leading to the company's low stock price. Moreover, given that these companies have an exchange-listing available to them, prohibiting listing on Nasdaq does not serve to protect investors and Nasdaq believes that investors would be at least as well protected by having these companies instead listed on the Capital Market, where they would be subject to oversight by Nasdaq's regulatory staff. As such, Nasdaq believes

¹¹ Securities Exchange Act Release No. 53050 (January 3, 2006), 71 FR 1580 (January 10, 2006) (approving the NYSE Amex \$2 price requirement).

that the proposed rule change, as amended, is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In addition, Section 11A of the Act¹² requires that there be fair competition among exchange markets to further the public interest and protection of investors. As noted in the original rule filing, Nasdaq believes that the existing situation, whereby NYSE Amex is permitted to list companies that no other market can, is an unfair burden on competition in violation of Sections 6(b)(8) and 11A. The proposed rule change would enhance the competition between exchanges, and benefit companies and their investors, by providing companies that today are forced to list on NYSE Amex an alternative exchange listing venue. As such, the proposed rule change is consistent with Sections 6(b)(8) and 11A.

Finally, as noted above, the proposed rule change would adopt the identical initial listing price requirement contained in the NYSE Amex Company Guide of \$2 or \$3 depending on the security's other characteristics. As such, Nasdaq believes that its listing requirements would remain substantially similar to those of NYSE Amex, as required for covered securities under Section 18 of the Securities Act.¹³ In addition, as noted, the proposed rule change, as amended, would require that any security qualifying under this new price alternative also meet the requirements of Rule 3a51-1(g)¹⁴ and that these

¹² 15 U.S.C. 78k-1.

¹³ 15 U.S.C. 77r.

¹⁴ 17 CFR 240.3a51-1(g).

securities therefore would not be considered “penny stocks” under the Act at the time of their listing. To the extent that a security no longer qualified for the exclusion under Rule 3a51-1(g), or any of the other exclusions in Rule 3a51-1, Nasdaq would notify the public by including the security in a list published on Nasdaq’s website.

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, as amended. Instead, the proposed rule change would enhance the competition between exchanges, and benefit companies and their investors, by allowing companies that today are forced to list on NYSE Amex an alternative listing venue.

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)

Nasdaq requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act,¹⁵ for approving this Amendment No. 1 prior to the 30th day after the date of publication of notice in the Federal Register. In making this request, Nasdaq notes that the amendment proposes changes designed to enhance investor protection, clarify Nasdaq’s original proposal, and more closely align the proposed rule change with

¹⁵ 15 U.S.C. 78s(b)(2).

the rules of NYSE Amex, which the Commission has already approved.¹⁶ The proposed amendment does not raise different issues from those contained in the original filing, which was subject to public notice and comment. In addition, as noted above and in the initial filing, Nasdaq believes that the existing situation, whereby NYSE Amex is permitted to list companies that no other market can, is an unfair burden on competition in violation of Sections 6(b)(8) and 11A. Accelerating approval for this proposal will serve to more quickly reduce this unfair burden on competition.

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

The proposed rule change is based upon the Exchange Act Rule 3a51-1(g),¹⁷ which exempts from the definition of a penny stock the securities of issuers with: (1) net tangible assets in excess of \$2,000,000, if the issuer has been in continuous operation for at least three years; (2) net tangible assets in excess of \$5,000,000, if the issuer has been in continuous operation for less than three years; or (3) average revenue of at least \$6,000,000 for the last three years. The proposed rule change is also substantially similar to the requirements of Section 102(b) of the NYSE Amex Company Guide, which the Commission has already determined is consistent with the requirements of the Act.¹⁸

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.
4. Text of the proposed rule change marked to show changes from original filing.
5. Text of proposed rule change.

¹⁶ Securities Exchange Act Release No. 53050, supra (approving the NYSE Amex \$2 price requirement).

¹⁷ 17 CFR 240.3a51-1(g).

¹⁸ Securities Exchange Act Release No. 53050, supra.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASDAQ-2012-002)

April __, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, to Adopt an Alternative to the \$4 Initial Listing Bid Price Requirement for the Nasdaq Capital Market of Either \$2 or \$3, if Certain Other Listing Requirements Are Met

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 April 16, 2012, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) Amendment No. 1 to the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

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

Nasdaq proposes to adopt an alternative to the \$4 initial listing bid price requirement for the Nasdaq Capital Market. The text of the proposed rule change is available on the Nasdaq’s Website at <http://www.nasdaq.cchwallstreet.com>, at Nasdaq’s principal office, and at the Commission’s Public Reference Room. Nasdaq will implement the proposed rule change upon approval.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Amendment No. 1 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 has proposed to adopt an alternative to the minimum \$4 price requirement for companies seeking to list on the Capital Market which meet the express exclusion from the definition of a "penny stock" contained in Exchange Act Rule 3a51-1(g).³ In order to address comments on that proposal from the Commission Staff, Nasdaq proposes to replace the proposed rule text with the rule text set forth in Exhibit 5.

As revised, the proposed alternative price test will be based on a security's closing price, instead of its closing bid price. This change will more closely align the proposed rule to the rules of NYSE Amex, which already permits the listing of securities at prices as low as \$2.⁴ Nasdaq also proposes to clarify that the required closing price must be achieved for at least five consecutive business days before approval of the listing application.

In addition, Nasdaq proposes to modify the criteria for when a security will no longer be considered as having listed under the alternative requirement. As revised, this

³ 17 CFR 240.3a51-1(g).

⁴ Section 102(b) of the NYSE Amex Company Guide.

test will also be based on the security's closing price, rather than its bid price, and will require the security to achieve a \$4 closing price for at least five consecutive business days.⁵ If a security obtains a \$4 closing price, Nasdaq will determine whether it meets all other initial listing requirements for the Nasdaq Capital Market, including both the quantitative and qualitative requirements.⁶ If the security meets all initial listing requirements, it will satisfy the requirements for the exclusion contained in Rule 3a51-1(a)(2) and no longer be monitored for compliance with the other exclusions from the definition of a penny stock.

For purposes of the \$2 or \$3 closing price requirement for initial listing and the \$4 closing price requirement for a security to no longer be treated as listing under the alternative requirement, the applicable closing price will be the NASDAQ Official Closing Price ("NOCP"), if there is one, or the consolidated closing price distributed under the applicable National Market System Plan if there is no NOCP.⁷ Nasdaq may

⁵ Nasdaq, working with FINRA, will also adopt surveillance procedures to monitor securities listed under the proposed alternative as they approach \$4. These procedures will be designed to identify anomalous trading that could be indicative of potential manipulation of the price.

⁶ The security will have to meet the \$4 bid price requirement contained in Rule 5505(a)(1)(A). In addition, Rule 5505(b)(2) requires a company qualifying only under the Market Value of Listed Securities requirement to satisfy that requirement and the price requirement for 90 consecutive trading days prior to applying for listing. Such a company will have to achieve a \$4 bid price for 90 consecutive trading days and a \$4 closing price for five days, although these periods may overlap.

⁷ The NASDAQ Official Closing Price is set by the NASDAQ Closing Cross process, utilizing an algorithm to find the equilibrium price matching all eligible buy and sell orders. See Rule 4754. A Closing Cross occurs for every security listed on Nasdaq. If no shares are matched in the Closing Cross, the NOCP is the last matched trade that occurred that day on Nasdaq. The methodology behind the calculation of the NOCP ensures that the closing price is at, or within, the best bid and ask quotations. The NOCP calculation also minimizes the impact of any

extend the minimum five day compliance period required to satisfy these tests based on any fact or circumstance, including the margin of compliance, the trading volume, the Market Maker montage, the trend of the security's price, or information or concerns raised by other regulators concerning the trading of the security.

Finally, in the original proposal, Nasdaq noted that a security that qualified for initial listing only under the proposed requirement could become a "penny stock" if it failed the net tangible assets and revenue tests after listing and did not satisfy any of the other exclusions from being a penny stock. In order to assist brokers' and dealers' compliance with the requirements of the Penny Stock Rules, Nasdaq will monitor securities listed under the proposed alternative and publish a list of any security that initially listed under that requirement, which does not then meet the requirements of Rule 3a51-1(g), or any of the other exclusions from being a penny stock contained in Rule 3a51-1. Nasdaq proposes to clarify that this list will be updated on a daily basis.

2. Statutory Basis

Nasdaq believes that this amendment is consistent with the provisions of Section 6 of the Act,⁸ in general and with Sections 6(b)(5) and (8) of the Act,⁹ in particular. Section 6(b)(5) requires, among other things, that a national securities exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote

anomalies in a security's price that might occur at the end of the trading day. The NOCP is used by leading index providers to calculate closing values for indexes and by mutual funds to calculate their closing net asset values. If no shares are matched in the Closing Cross and there is no matched trade that day on Nasdaq, the closing price would be the consolidated close reported on the tape, which could be the last matched trade on Nasdaq from a prior day or a more recent trade reported by another execution venue.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5) and (8).

just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change, as amended, would adopt a \$2 and \$3 initial listing price alternative for the NASDAQ Capital Market that is substantially similar to the requirements of NYSE Amex, which the Commission has already determined is consistent with these requirements.¹⁰ In this amendment, Nasdaq proposes to determine compliance with the new alternative based on a security's closing price, instead of its bid price. Nasdaq believes that this change will protect investors and the public interest by ensuring that a trade, reflecting the value of the security to both the buyer and seller, has taken place at the required price. Nasdaq also proposes to require that a company meet the applicable closing price for at least five consecutive business days, which will protect investors and the public interest by helping to ensure that the company has achieved more than just fleeting compliance. In addition, Nasdaq is providing additional information clarifying how it will determine compliance with the price requirements and how it will review a security that initially listed under the proposed alternative to determine if that security subsequently achieves a \$4 price and meets the other initial listing requirements. Nasdaq believes that this additional transparency will also help protect investors and the public interest.

As noted in the original filing, Nasdaq believes that the proposed price requirement is sufficient to protect investors and would exercise its discretionary authority to deny initial listing if Nasdaq was concerned about the ability of the company to maintain compliance with the continued listing price or believed there were public interest concerns leading to the company's low stock price. Moreover, given that these

¹⁰ Securities Exchange Act Release No. 53050 (January 3, 2006), 71 FR 1580 (January 10, 2006) (approving the NYSE Amex \$2 price requirement).

companies have an exchange-listing available to them, prohibiting listing on Nasdaq does not serve to protect investors and Nasdaq believes that investors would be at least as well protected by having these companies instead listed on the Capital Market, where they would be subject to oversight by Nasdaq's regulatory staff. As such, Nasdaq believes that the proposed rule change, as amended, is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In addition, Section 11A of the Act¹¹ requires that there be fair competition among exchange markets to further the public interest and protection of investors. As noted in the original rule filing, Nasdaq believes that the existing situation, whereby NYSE Amex is permitted to list companies that no other market can, is an unfair burden on competition in violation of Sections 6(b)(8) and 11A. The proposed rule change would enhance the competition between exchanges, and benefit companies and their investors, by providing companies that today are forced to list on NYSE Amex an alternative exchange listing venue. As such, the proposed rule change is consistent with Sections 6(b)(8) and 11A.

Finally, as noted above, the proposed rule change would adopt the identical initial listing price requirement contained in the NYSE Amex Company Guide of \$2 or \$3 depending on the security's other characteristics. As such, Nasdaq believes that its listing requirements would remain substantially similar to those of NYSE Amex, as required for

¹¹ 15 U.S.C. 78k-1.

covered securities under Section 18 of the Securities Act.¹² In addition, as noted, the proposed rule change, as amended, would require that any security qualifying under this new price alternative also meet the requirements of Rule 3a51-1(g)¹³ and that these securities therefore would not be considered “penny stocks” under the Act at the time of their listing. To the extent that a security no longer qualified for the exclusion under Rule 3a51-1(g), or any of the other exclusions in Rule 3a51-1, Nasdaq would notify the public by including the security in a list published on Nasdaq’s website.

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, as amended. Instead, the proposed rule change would enhance the competition between exchanges, and benefit companies and their investors, by allowing companies that today are forced to list on NYSE Amex an alternative listing venue.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) by order approve such

¹² 15 U.S.C. 77r.

¹³ 17 CFR 240.3a51-1(g).

proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-NASDAQ-2012-002 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2012-002. 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-2012-002 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 4Changes to the Proposed Rule Text¹

Text is marked to show changes to proposed rule language in the original filing. Additions to original filing are double underlined; deletions from original filing are stricken through.

5505. Initial Listing of Primary Equity Securities

A Company applying to list its Primary Equity Security on the Capital Market must meet all of the requirements set forth in Rule 5505(a) and at least one of the Standards in Rule 5505(b).

(a) Initial Listing Requirements for Primary Equity Securities:

- (1) (A) Minimum bid price of \$4 per share; or
(B) Minimum bid/closing price of \$3 per share, if the Company meets the requirements of the Equity or Net Income Standards under Rules 5505(b)(1) or (b)(3), or of \$2 per share, if the Company meets the requirements of the Market Value of Listed Securities Standard under Rule 5505(b)(2), provided that in either case the Company must also demonstrate that it has net tangible assets (i.e., total assets less intangible assets and liabilities) in excess of \$2 million, if the issuer has been in continuous operation for at least three years; or net tangible assets in excess of \$5 million, if the issuer has been in continuous operation for less than three years; or average revenue of at least \$6 million for the last three years. A security must meet the applicable closing price requirement for at least five consecutive business days prior to approval.
For purposes of this paragraph (B), net tangible assets or average revenues must be demonstrated on the Company's most recently filed audited financial statements filed with, and satisfying the requirements of, the Commission or Other Regulatory Authority, and which are dated less than 15 months prior to the date of listing.

(2) – (5) No change.

(b) Initial Listing Standards for Primary Equity Securities:

(1) No change.

(2) Market Value of Listed Securities Standard

¹ Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaq.cchwallstreet.com>.

(A) Market Value of Listed Securities of at least \$50 million (current publicly traded Companies must meet this requirement and the [\$4] bid] price requirement for 90 consecutive trading days prior to applying for listing if qualifying to list only under the Market Value of Listed Securities Standard);

(B) – (C) No change.

(3) No change.

IM-5505. Initial Listing for Securities below \$4

(a) Penny Stock Provisions. Rule 5505(a)(1)(B) provides an alternative initial listing requirement for certain companies with a minimum bid price below \$4. A company that qualifies for initial listing only under this alternative could become a “penny stock” if it later fails the net tangible assets and revenue tests after listing and does not satisfy any of the other exclusions from being a penny stock contained in Rule 3a51-1 under the Act. In order to assist brokers’ and dealers’ compliance with the requirements of the Penny Stock Rules, Nasdaq will monitor companies listed under the alternative requirement and publish on its website on a daily basis a list of any company that initially listed under the alternative requirement, which no longer satisfies the net tangible assets or revenue test contained in Rule 5505(a)(1)(B), and which does not satisfy any of the other exclusions from being a penny stock contained in Rule 3a51-1 under the Act. If a company initially lists with a bid price below \$4 under the alternative requirement at a price below \$4 contained in Rule 5505(a)(1)(B), but subsequently achieves a \$4 closing price for at least five consecutive business days and, at the same time, satisfies all other initial listing criteria, it will no longer be considered as having listed under the alternative requirement, and Nasdaq will notify the Company that it has qualified for listing under the price requirement contained in Rule 5505(a)(1)(A).

Brokers and dealers are reminded that the list published by Nasdaq is only an aid and that the Penny Stock Rules impose specific obligations on brokers and dealers with respect to transactions in penny stocks.

(b) Determination of closing price. For purposes of Rule 5505(a)(1)(B) and this IM-5505, the closing price will be the Nasdaq Official Closing Price, if there is one, or the consolidated closing price distributed under the applicable National Market System Plan if there is no Nasdaq Official Closing Price. Nasdaq will require that a security maintain the necessary closing price for five consecutive business days, but may extend this five day period, based on any fact or circumstance, including the margin of compliance, the trading volume, the Market Maker montage, the trend of the security’s price, or information or concerns raised by other regulators concerning the trading of the security.

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EXHIBIT 5Text of the Proposed Rule Change¹

New language is underlined; deletions are in [brackets].

5505. Initial Listing of Primary Equity Securities

A Company applying to list its Primary Equity Security on the Capital Market must meet all of the requirements set forth in Rule 5505(a) and at least one of the Standards in Rule 5505(b).

(a) Initial Listing Requirements for Primary Equity Securities:

- (1) (A) Minimum bid price of \$4 per share; or
(B) Minimum closing price of \$3 per share, if the Company meets the requirements of the Equity or Net Income Standards under Rules 5505(b)(1) or (b)(3), or of \$2 per share, if the Company meets the requirements of the Market Value of Listed Securities Standard under Rule 5505(b)(2), provided that in either case the Company must also demonstrate that it has net tangible assets (i.e., total assets less intangible assets and liabilities) in excess of \$2 million, if the issuer has been in continuous operation for at least three years; or net tangible assets in excess of \$5 million, if the issuer has been in continuous operation for less than three years; or average revenue of at least \$6 million for the last three years. A security must meet the applicable closing price requirement for at least five consecutive business days prior to approval.

For purposes of this paragraph (B), net tangible assets or average revenues must be demonstrated on the Company's most recently filed audited financial statements filed with, and satisfying the requirements of, the Commission or Other Regulatory Authority, and which are dated less than 15 months prior to the date of listing.

- (2) – (5) No change.

(b) Initial Listing Standards for Primary Equity Securities:

- (1) No change.

(2) Market Value of Listed Securities Standard

¹ Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaq.cchwallstreet.com>.

(A) Market Value of Listed Securities of at least \$50 million (current publicly traded Companies must meet this requirement and the [\$4 bid] price requirement for 90 consecutive trading days prior to applying for listing if qualifying to list only under the Market Value of Listed Securities Standard);

(B) – (C) No change.

(3) No change.

IM-5505. Initial Listing for Securities below \$4

(a) Penny Stock Provisions. Rule 5505(a)(1)(B) provides an alternative initial listing requirement for certain companies with a minimum bid price below \$4. A company that qualifies for initial listing only under this alternative could become a “penny stock” if it later fails the net tangible assets and revenue tests after listing and does not satisfy any of the other exclusions from being a penny stock contained in Rule 3a51-1 under the Act. In order to assist brokers’ and dealers’ compliance with the requirements of the Penny Stock Rules, Nasdaq will monitor companies listed under the alternative requirement and publish on its website on a daily basis a list of any company that initially listed under the alternative requirement, which no longer satisfies the net tangible assets or revenue test contained in Rule 5505(a)(1)(B), and which does not satisfy any of the other exclusions from being a penny stock contained in Rule 3a51-1 under the Act. If a company initially lists with a bid price below \$4 under the alternative requirement contained in Rule 5505(a)(1)(B), but subsequently achieves a \$4 closing price for at least five consecutive business days and, at the same time, satisfies all other initial listing criteria, it will no longer be considered as having listed under the alternative requirement and Nasdaq will notify the Company that it has qualified for listing under the price requirement contained in Rule 5505(a)(1)(A).

Brokers and dealers are reminded that the list published by Nasdaq is only an aid and that the Penny Stock Rules impose specific obligations on brokers and dealers with respect to transactions in penny stocks.

(b) Determination of closing price. For purposes of Rule 5505(a)(1)(B) and this IM-5505, the closing price will be the Nasdaq Official Closing Price, if there is one, or the consolidated closing price distributed under the applicable National Market System Plan if there is no Nasdaq Official Closing Price. Nasdaq will require that a security maintain the necessary closing price for five consecutive business days, but may extend this five day period, based on any fact or circumstance, including the margin of compliance, the trading volume, the Market Maker montage, the trend of the security’s price, or information or concerns raised by other regulators concerning the trading of the security.

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