Commission thereafter received six comment letters and two response letters from the Exchange. On September 14, 2012, the Commission issued a notice of designation of longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1. The Commission thereafter received two additional comment letters. On November 13, 2012, the Exchange withdrew the proposed rule change, as modified by Amendment No. 1 (SR–ISE–2012–22).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority:1
Kevin M. O’Neill,
Deputy Secretary.

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations: The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Exemption to the Direct Registration Program Requirement to All Foreign Issuers Rather Than Only Foreign Private Issuers

November 15, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), notice is hereby given that on November 7, 2012, The NASDAQ Stock Market LLC (“NASDAQ” or “the Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I and II below, which items have been prepared primarily by the Exchange. NASDAQ filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder so that the proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The Exchange proposes to expand the exemption to the Direct Registration Program requirement under NASDAQ Rules 5210(c) and 5255(c) so that it applies to all foreign issuers rather than foreign private issuers only. If the Commission waives the pre-operative delay provided for in Rule 19b–4(f)(6), NASDAQ proposes to implement the proposed rule change immediately. The text of the proposed rule change is available at http://nasdaq.cchwallstreet.com, at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

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 these statements.4

(A) Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

NASDAQ Rules 5210(c) and 5255 provide that all securities listed on NASDAQ (except securities which are book-entry only) must be eligible for a Direct Registration Program 5 (“DRS”) operated by a clearing agency registered under Section 17A of the Act.5 When this requirement was initially adopted, NASDAQ recognized that the laws or regulations of certain foreign countries might make it impossible for companies incorporated in those countries to comply. Consequently, the current rule permits a foreign private issuer to follow its home country practice in lieu of this requirement when prohibited from complying by a law or regulation in its home country.6

NASDAQ now proposes to amend this exemption to extend its application to all “foreign issuers” as that term is used in Securities Exchange Act Rule 3b–4 rather than only to foreign private issuers. NASDAQ believes this amendment is necessary because the same legal or regulatory impediments to DRS eligibility exist for a foreign issuer which is incorporated in a foreign jurisdiction but which does not qualify for foreign private issuer status as is the case for a foreign private issuer incorporated in the same jurisdiction whose law or regulation made compliance with the DRS requirement impossible. NASDAQ believes that the proposed rule change is appropriate in light of the specific and discrete problem faced by foreign issuers that are not foreign private issuers but who are prohibited by home country law or regulation from becoming DRS eligible. As under the current exemption, the foreign issuer will have to submit to NASDAQ a written statement from an independent counsel in the company’s home country certifying that a law or regulation in the home country prohibits compliance with the DRS requirement in order to utilize the exemption.

NASDAQ Rule 5615 provides limited exemptions with respect to certain corporate governance and reporting requirements for foreign private issuers. The proposed rule change does not expand the scope of such relief to

5 The Direct Registration Program is more often
8 Exchange Act Rule 3b–4 defines the term

SROs and their code of conduct
foreign issuers that do not qualify for foreign private issuer status. To minimize confusion about the availability of such exemptions to foreign issuers that do not qualify for foreign private issuer status, the proposed rule change will relocate the procedural requirements to utilize the exemption from Rule 5615 and IM–5615 to Rules 5210(c) and 5255 and conform the language used in Rules 5210(c) and 5255 to describe the exemption.

(2) Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,9 in general, and with section 6(b)(5) of the Act,10 in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination in persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms 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 consistent with the investor protection objectives of the Act in that it will provide a very limited exemption to Nasdaq’s DRS eligibility requirements for foreign issuers that provide a letter from home country counsel certifying that compliance with that requirement is prohibited by home country law or regulation. Further, the proposed rule change should facilitate cooperation and coordination among clearing agencies, transfer agents, and broker-dealers by explaining the basis upon which certain foreign issuers are not required to participate in DRS. This, in turn, should facilitate better efficiency in the clearance and settlement of securities transactions involving the securities of these foreign issuers and should facilitate better efficiency in the transfer of such securities.

(C) 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.

Electronic Comments
- Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml) or
- Send an email to rule-comments@sec.gov. Please include File Number SR–NASDAQ–2012–128 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 submission should refer to File Number SR–NASDAQ–2012–128. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission’s Public Reference Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of Nasdaq and on Nasdaq’s Web site at http://www.nasdaq.chwallstreet.com. 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–2012–128 and should be submitted on or before December 12, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.

Kevin M. O’Neill,
Deputy Secretary.
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