SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65708; File No. SR-NASDAQ-2011-073)

November 8, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 1, Adopting Additional Listing Requirements for Companies Applying to List After Consummation of a "Reverse Merger" With a Shell Company

I. Introduction

On May 26, 2011, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt additional listing requirements for a company that has become an Act reporting company by combining with a public shell, whether through a reverse merger, exchange offer, or otherwise (a "Reverse Merger").[3] The proposed rule change was published for comment in the Federal Register on June 14, 2011.[4] On July 25, 2011, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved to

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 The Commission notes that this proposed rule change replaced a previous proposed rule change filed by Nasdaq regarding additional listing standards for Reverse Merger companies, which had included an exception for a Reverse Merger company that was listing in connection with a substantial firm commitment, underwritten public offering. See Securities Exchange Act Release No. 64371 (April 29, 2011), 76 FR 25730 (May 5, 2011) (SR-NASDAQ-2011-056). Nasdaq withdrew SR-NASDAQ-2011-056 on May 26, 2011. The Commission received one comment letter on this previous proposal. See Letter from Paul Gillis, Visiting Professor of Accounting, Peking University dated May 3, 2011 ("Gillis Letter").

4 See Securities Exchange Act Release No. 64633 (June 8, 2011), 76 FR 34781 ("Notice").

September 12, 2011.[5] The Commission received two comment letters on the proposal.[6] On September 12, 2011, the Commission issued an order instituting proceedings to determine whether to disapprove the proposed rule change.[7] The Commission received three comments in connection with the proceedings to determine whether to disapprove the proposed rule change.[8] Nasdaq filed Amendment No. 1 to the proposed rule change on November 4, 2011.[9] This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

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5 See Securities Exchange Act Release No. 64956 (July 25, 2011), 76 FR 45636 (July 29, 2011).

6 See Letter from David Feldman, Partner, Richardson and Patel LLP dated August 20, 2011 ("Feldman Letter") and Letter to Elizabeth M. Murphy, Secretary, Commission, from WestPark Capital, Inc. dated September 2, 2011 ("WestPark Letter").

7 See Securities Exchange Act Release No. 65319 (September 12, 2011), 76 FR 57791 (September 16, 2011) ("Order Instituting Disapproval Proceedings"). Among other things, the Commission instituted disapproval proceedings to allow the Commission to consider the Nasdaq proposal together with proposals by NYSE and NYSE Amex to enhance their respective listing standards for Reverse Merger companies that differed in certain material respects from the Nasdaq proposal. See Securities Exchange Act Release No. 65034 (August 4, 2011), 76 FR 49513 (August 10, 2011) (SR-NYSE-2011-38) and Securities Exchange Act Release No. 65033 (August 4, 2011), 76 FR 49522 (August 10, 2011) (SR-NYSEAmex-2011-55).

8 See Letter to Elizabeth M. Murphy, Secretary, Commission, from Locke Lord LLP dated October 17, 2011 ("Locke Lord Letter"); Letter to Elizabeth M. Murphy, Secretary, Commission, from James N. Baxter, Chairman and General Counsel, New York Global Group dated October 17, 2011 ("New York Global Group Letter"); and Letter to Elizabeth M. Murphy, Secretary, Commission, from David A. Donohoe, Jr., Donohoe Advisory Associates LLC dated October 18, 2011 ("Donohoe Letter").

9 See Amendment No. 1, dated November 4, 2011. In Amendment No. 1, Nasdaq made several changes to the proposed rule change, some in response to the comment letters received. The changes proposed by Nasdaq include: (i) lengthening the proposed seasoning period from six months to one year; (ii) including an exemption from the rule for firm commitment underwritten public offerings that meet a substantial size requirement; (iii) added a new exception from certain requirements contained in the rule for companies that conducted their reverse merger a substantial length of time before applying to list; (iv) applying the price requirement using closing prices, both prior to submission of the listing application and prior to listing, and for a sustained period of time; and (v) other additional changes to clarify the rule and harmonize it with a similar proposal by NYSE and NYSE Amex.

II. Description of the Original Proposal

The Exchange proposes to adopt additional listing requirements for companies that become public through a Reverse Merger,[10] to address significant regulatory concerns including accounting fraud allegation that have arisen with respect to Reverse Merger companies. In its filing, Nasdaq noted, among other things, that there have been widespread allegations of fraudulent behavior by Reverse Merger companies, leading to concerns that their financial statements cannot be relied upon.[11] Nasdaq also stated that it was aware of situations where it appeared that promoters and others intended to manipulate prices of Reverse Merger companies' securities higher to help meet Nasdaq's initial listing bid price requirement, and where companies have gifted stock to artificially satisfy Nasdaq's public holder listing requirement.[12] As a result of these concerns, Nasdaq believes certain "seasoning" requirements in connection with the listing of Reverse Merger companies are appropriate.

Specifically, as originally filed, Nasdaq proposed to prohibit a Reverse Merger company from applying to list until the combined entity has traded in the U.S. over-the-counter market, on

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10 For purposes of the Nasdaq proposal, Nasdaq would treat as a Reverse Merger any transaction whereby an operating company becomes an Act reporting company by combining, either directly or indirectly, with a shell company which is an Act reporting company whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger would not include the acquisition of an operating company by a listed company satisfying the requirements of IM-5101-2 (relating to companies whose business plan is to complete one or more acquisitions) or a business combination described in Rule 5110(a) (relating to a listed company that combines with a non-Nasdaq entity, resulting in a change of control of the Company and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing, sometimes called a "back-door listing"). A Reverse Merger would also not include a Substitution Listing Event, as defined in Rule 5005(a)(39) (proposed to be renumbered as Rule 5005(a)(40), such as the formation of a holding company to replace the listed company or a merger to facilitate a re-incorporation, because in these cases the operating company is already a listed entity.

11 See Notice.

12 Id.

another national securities exchange, or on a foreign exchange, for at least six months following the filing of all required information about the Reverse Merger transaction, including audited financial statements, with the Commission. Further, Nasdaq proposed to require that the Reverse Merger company maintain a minimum of a $4 bid price on at least 30 of the 60 trading days immediately prior to submitting the listing application. Finally, under the proposed rule, Nasdaq would not approve any Reverse Merger company for listing unless the company has timely filed its two most recent financial reports with the Commission if it is a domestic issuer or comparable information if it is a foreign issuer.

III. Comment Summary

The Commission received five comment letters on the proposal.[13] Two of the commenters objected broadly to the proposed additional listing requirements for Reverse Merger companies,[14] while three commenters suggested discrete changes to the proposal.[15]

One commenter who objected broadly to the proposal expressed the view that it could have a "chilling effect of discouraging exciting growth companies from pursuing all available techniques to obtain the benefits of a public listed stock and greater access to capital."[16] The commenter further noted, in response to Nasdaq's justifications for the proposed rule change, that virtually all of the suggestions of wrongdoing involve Chinese companies that completed reverse mergers, but that a number of other Chinese companies that completed full traditional initial public offerings face the very same allegations, so that focusing on the manner in which these companies went public may not be appropriate. Rather than imposing a seasoning

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13 See supra notes 6 and 8. See also, note 3 (referencing the comment received on Nasdaq's previous proposal).

14 See Feldman Letter and New York Global Group Letter.

15 See WestPark Letter; Donohoe Letter; and Locke Lord Letter.

16 See Feldman Letter.

requirement, the commenter suggests Nasdaq review regulatory histories and financial arrangements with promoters, and refrain from listing companies where the issues are great. In any event, the commenter recommends an exemption from the seasoning requirement for a company coming to the Exchange with a firm commitment underwritten public offering. In addition, the commenter expressed concern that the requirement to maintain a $4 trading price for 30 days prior to the listing application is unfair, and unrealistic to expect companies to achieve in the over-the-counter markets, and suggest it be eliminated.[17]

The other commenter that objected broadly to the proposal believed that the proposal would harm capital formation and hinder small companies' access to the capital markets.[18] The commenter expressed the view that no objective research or hard data has been published that supports the notion that Reverse Merger companies bear additional scrutiny, and that the Commission should not approve the proposal until an independent and comprehensive study concludes that (i) exchange listed reverse merger companies tend to fail more often than IPO companies, thus necessitating the additional scrutiny, (ii) the proposed six to twelve month "seasoning" for reverse merger companies will indeed deter corporate frauds, and (iii) the exchanges do not already have sufficient rules in place to discourage corporate frauds in both reverse merger and IPO companies.[19] Based on its research, the commenter believes that more Chinese companies have been delisted that have gone public through an IPO than through a Reverse Merger, and that they were delisted more than three years after they became public, which is well beyond the seasoning period proposed by Nasdaq.[20]

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17 Id.

18 See New York Global Group Letter.

19 Id.

20 Id.

A third commenter expressed support for the proposed rule change's objective to protect investors from potential accounting fraud, manipulative trading, abusive practices or other inappropriate behavior on the part of companies, promoters and others.[21] The commenter, however, recommended that, in order to avoid unnecessary burdens on smaller capitalization issuers, the proposed rule change be modified to exclude Form 10 share exchange transactions from the reverse merger definition, or provide an exception for a reverse merger company listing in connection with a firm commitment underwritten public offering.[22] This commenter also recommended that Nasdaq consider requiring companies listing on the Exchange to engage a recognized independent diligence firm to conduct a forensic audit and issue a forensic diligence report prior to approval of the listing application.[23]

Another commenter, while it did not believe the Exchange had presented a sufficient rationale or data to support the need for a Reverse Merger seasoning period, agreed that a reasonable seasoning period for Reverse Merger companies could be beneficial, and was of the view that the six-month seasoning period proposed by Nasdaq was preferable to the one-year seasoning period proposed by NYSE and NYSE Amex.[24] The commenter also believed that Nasdaq's proposed requirement that a Reverse Merger company maintain the requisite stock price for at least 30 of the 60 trading days immediately preceding the filing of the listing application was lacking because, among other things, it would not apply to the period during which the listing application was under review.[25] In addition, this commenter expressed support

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21 See WestPark Letter.

22 Id.

23 Id.

24 See Donohoe Letter.

25 Id.

for an underwritten public offering exception, regardless of size, from the proposed rule's additional listing requirement.[26]

A fifth commenter also expressed the view that there should be an exception where the securities issued in the Reverse Merger were registered with the Commission, so that the additional listing standards would be directed toward those transactions that have not been subjected to full Commission review.[27] This commenter also suggested that, if a Reverse Merger company is controlled by a non-U.S. person, the control person should be required to execute a consent to service of process in the U.S.[28]

IV. Nasdaq Amendment No. 1 and Response to Comments

In Amendment No. 1 Nasdaq made several modifications to the proposed rule change and responded to comments received on the proposal. Specifically, Nasdaq proposed to extend the trading period contemplated in the original filing from six months to one year and require that, prior to listing, the company timely file all required periodic financial reports for the prior year, including at least one annual report. Such annual report must contain audited financial statements for a full fiscal year following the filing of all required information about the reverse merger transaction. In Nasdaq's view, this would allow additional time for FINRA and other regulators to review trading patterns and uncover potentially manipulative trading. The amendment also seeks to clarify that, during the trading period, the foreign exchanges on which trading may take place must be "regulated" foreign exchanges.

In addition, Amendment No. 1 would supplement the proposed additional standard to maintain the minimum $4 price by requiring that it be maintained for "a sustained period," as

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26 Id.

27 See Locke Lord Letter.

28 Id.

well for at least 30 of the most recent 60 trading days, and to apply that requirement to the date of listing, as well as to the date of the listing application. Nasdaq stated its belief that these changes would clarify its ability to consider a longer period of time for purposes of evaluating the minimum price requirement, if necessary in light of the security's trading volume, frequency of trading, and the trend of the company's stock price during the applicable periods.[29] Nasdaq also changed the $4 price reference from the bid price to the closing price.

Amendment No. 1 also includes two new exceptions from the proposed additional listing requirement for Reverse Merger companies. First, a Reverse Merger company completing a firm commitment underwritten public offering at, or about, the time of listing, where the gross proceeds to the company will be at least $40 million, would not be subject to the proposed additional listing requirements. Nasdaq noted that such an exception was supported by several of the commenters,[30] and would be consistent with the approach proposed by NYSE and NYSE Amex. Second, Nasdaq proposed an exception for a Reverse Merger company that has filed at least four annual reports with the Commission following the one year trading period. Nasdaq stated its belief that it is appropriate, after the passage of such a period of more than four years, to treat a company that became public through a Reverse Merger just like any other company.

Finally, Nasdaq proposed several technical changes in Amendment No. 1, including clarifying that a Reverse Merger is any transaction where an operating company becomes an "Exchange Act reporting company" (rather than a "public company" as in the original filing) by

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29 Nasdaq also noted that the proposed minimum period was supported by the Donohoe Letter.

30 See, e.g., WestPark Letter; Donohoe Letter; and Feldman Letter. While these commenters indicated a preference for a smaller threshold for the exception, Nasdaq stated its belief that the proposed $40 million level is appropriate to protect investors and the public interest.

combining with a shell company which is an Act reporting company, and that this could occur "directly or indirectly."[31]

In Amendment No. 1, Nasdaq noted that any Reverse Merger company must also meet all other applicable requirements for listing on Nasdaq.[32] In response to commenters that stated that problems frequently occur when companies go public through an IPO or other method, and that Reverse Mergers should not be singled out, Nasdaq did not believe that the existence of broader concerns should preclude it from taking more discrete steps to protect investors from potential abuses.[33] Nasdaq further stated that it would continue to review all applicants for potential public interest concerns. If Nasdaq observes problems with other types of companies, it may seek to adopt additional enhancements to its listing standards, or modify these proposed requirements, to address those problems.[34]

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31 Nasdaq also stated that this definition would include a company that engages in a "Form 10 share exchange transaction." While the WestPark Letter suggested that such transactions should not be included, Nasdaq stated its belief that it is appropriate to impose the proposed additional requirements on such a transaction to allow review of the trading activity following the Reverse Merger.

32 Nasdaq noted in Amendment No. 1 that these requirements include the corporate governance requirements contained in the Nasdaq Listing Rule 5600 Series, as well as the applicable quantitative and liquidity measures contained in the Rule 5300, 5400 and 5500 Series governing listing on the Nasdaq Global Select, Global, and Capital Markets, respectively.

33 See, e.g., WestPark Letter; Donohoe Letter; and New York Global Group Letter. Nasdaq stated that it does not agree with the view expressed by some of these commenters that it can adopt requirements applicable to Reverse Merger Companies only if it now also addresses those other types of companies. Rather, the Exchange believes that the proposed rule change is consistent with the Act in that it is designed to protect investors and the public interest from abuses that Nasdaq has observed in connection with Reverse Merger Companies.

34 The Exchange noted that several of the commenters suggested additional enhancements or changes that go beyond the scope of this proposed rule change. For example, the Locke Lord Letter proposed a consent of service requirement for entities controlled by non-U.S. residents. The Exchange stated that it does not believe it is appropriate to include such a requirement in connection with this filing, as the concern identified is not

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing and whether Amendment No. 1 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-2011-073 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-2011-073. 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 website (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 website viewing and

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unique to Reverse Merger companies and could involve any company controlled by non-U.S. residents. Moreover, the Exchange believes that such a requirement would be better considered by the Commission in connection with a review of the requirements to access the U.S. capital markets. Similarly, the Gillis Letter supported the proposed rule, but also suggested additional Commission rulemaking, which, Nasdaq stated, is beyond its ability to implement.

printing 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-2011-073, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rule and regulations thereunder applicable to a national securities exchange,[35] and, in particular, Section 6(b)(5) of the Act,[36] which, among other things, requires that the rules of a national securities exchange be 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 development and enforcement of meaningful listing standards for an exchange is of substantial importance to financial markets and the investing public. Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float,

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35 In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

36 15 U.S.C. 78f(b)(5).

investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.

Nasdaq proposed to make more rigorous its listing standards for Reverse Merger companies, given the significant regulatory concerns, including accounting fraud allegations, that have recently arisen with respect to these companies. As noted above, NYSE and NYSE Amex filed similar proposals for the same reasons.[37] Among other things, the proposals seek to improve the reliability of the reported financial results of Reverse Merger companies by requiring a pre-listing "seasoning period" during which the post-merger public company would have produced financial and other information in connection with its required Commission filings. The proposals also seek to address concerns that some might attempt to meet the minimum price test required for exchange listing through a quick manipulative scheme in the securities of a Reverse Merger company, by requiring that minimum price to be sustained for a meaningful period of time.

The Commission believes the proposed one-year seasoning requirement for Reverse Merger companies that seek to list on the Exchange is reasonably designed to address concerns that the potential for accounting fraud and other regulatory issues is more pronounced for this type of issuer. As discussed above, these additional listing requirements will assure that a Reverse Merger company has produced and filed with the Commission at least one full year of audited financial statements following the Reverse Merger transaction before it is eligible to list

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[37] See Securities Exchange Act Release No. 65034 (August 4, 2011), 76 FR 49513 (August 10, 2011) and Securities Exchange Act Release No. 65033 (August 4, 2011), 76 FR 49522.

on Nasdaq. The Reverse Merger company also must have timely filed all required Commission reports since the consummation of the Reverse Merger, which should help assure that material information about the issuer has been filed with the Commission and that the issuer has a demonstrated track record of meeting its Commission filing and disclosure obligations. In addition, the requirement that the Reverse Merger company have traded for at least one year in the over-the-counter market or on another exchange could make it more likely that analysts have followed the company for a sufficient period of time to provide an additional check on the validity of the financial and other information made available to the public.

Although certain commenters expressed concern that the proposal might inhibit capital formation and access by small companies to the markets, the Commission notes that the enhanced listing standards apply only to the relatively small group of Reverse Merger companies – where there have been numerous instances of fraud and other violations of the federal securities laws – and merely requires those entities to wait until their first annual audited financial statements are produced before they become eligible to apply for listing on the Exchange. While fraud and other illegal activity may occur with other types of issuers, as noted by certain commenters, the Commission does not believe this should preclude Nasdaq from taking reasonable steps to address these concerns with Reverse Merger companies.

The Commission also believes the proposed requirement for a Reverse Merger company to maintain the specified minimum share price for a sustained period, and for at least 30 of the most recent 60 trading days, prior to the date of the initial listing application and the date of listing, is reasonably designed to address concerns that the potential for manipulation of the security to meet the minimum price requirements is more pronounced for this type of issuer. By requiring that minimum price to be maintained for a meaningful period of time, the proposal

should make it more difficult for a manipulative scheme to be successfully used to meet the Exchange's minimum share price requirements.

In addition, the Commission believes that the proposed exceptions to the enhanced listing requirements for Reverse Merger companies that (1) complete a substantial firm commitment underwritten public offering at or about the time of listing,[38] or (2) have filed at least four annual reports containing all required audited financial statements with the Commission following the filing of all required information about the Reverse Merger transaction, and satisfying the one-year trading requirement, reasonably accommodate issuers that may present a lower risk of fraud or other illegal activity. The Commission believes it is reasonable for the Exchange to conclude that, although formed through a Reverse Merger, an issuer that (1) undergoes the due diligence and vetting required in connection with a sizeable underwritten public offering, or (2) has prepared and filed with the Commission four years of all required audited financial statements following the satisfaction of the one year trading requirement, presents less risk and warrants the same treatment as issuers that were not formed through a Reverse Merger. Nevertheless, the Commission expects the Exchange to monitor any issuers that qualify for these exceptions and, if fraud or other abuses are detected, to propose appropriate changes to its listing standards.

The Commission notes that certain commenters suggested the Exchange impose specific additional requirements on Reverse Merger companies that seek an exchange listing, such as the completion of an independent forensic diligence report on the issuer, or the execution of a consent to service of process in the U.S. by foreign controlling persons. Although there may be merit in these or other potential ways to enhance listing standards for Reverse Merger companies, the Commission believes that the additional listing standards proposed by the

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38 The Commission notes that several commenters supported an exception for issuers with underwritten public offerings. See WestPark Letter; Donohoe Letter; and Locke Lord Letter.

Exchange should help prevent fraud and manipulation, protect investors and the public interest, and are otherwise consistent with the Act.

The Commission also notes that several of the changes proposed by the Exchange in Amendment No. 1 were designed to make its proposal consistent with the proposals submitted by NYSE and NYSE Amex. As indicated in the Order Instituting Disapproval Proceedings, the Commission believes that it is important to assure that the Exchanges develop consistent and effective enhancements to their listing standards, to best address the serious concerns that have arisen with respect to the listing of Reverse Merger companies.

For the reasons discussed above, the Commission believes that Nasdaq's proposal will further the purposes of Section 6(b)(5) of the Act by, among other things, helping prevent fraud and manipulation associated with Reverse Merger companies, and protecting investors and the public interest.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[39] for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice in the Federal Register. As noted above, the changes made in Amendment No. 1 harmonize the proposed rule change with similar proposals by NYSE and NYSE Amex that have been subject to public comment, in addition to providing clarifying language consistent with the intent of the original rule proposal. In addition, the Commission believes it is in the public interest for Nasdaq to begin applying its enhanced listing standards as soon as practicable, in light of the serious concerns that have arisen with respect to the listing of Reverse Merger companies.

[39] 15 U.S.C. 78s(b)(2).

VII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASDAQ-2011-073), as amended, be, and hereby is, approved, on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Kevin M. O'Neill
Deputy Secretary

[40] 17 CFR 200.30-3(a)(12).