



THE NASDAQ STOCK MARKET, INC.
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July 15, 2003

By Hand

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

**RE: SR-NASD-2002-141; Amendment No. 2
Director Independence and Independent Committees under Rules 4200
and 4350**

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed herewith is Amendment No. 2 of the above-numbered rule filing. I am also enclosing a 3-1/2" disk containing the rule filing in Word 7.0 to facilitate production of the Federal Register notice. This Amendment is intended to comply with the requirement under Rule 10A-3 of the Exchange Act that The Nasdaq Stock Market ("Nasdaq") adopt listing standards relating to audit committees. Nasdaq expects to file further amendments shortly in response to public comment on this rule proposal.

- 1) The text of Rule 4350(d)(1)(D), which appears on pages 9 and 30 of Amendment 1 to original rule filing, should read as follows:

(D) the specific audit committee responsibilities and authority necessary to comply with Rule 10A-3(b)(2), (3), (4) and (5) of the Act (subject to the exemptions provided in Rule 10A-3(c)), concerning responsibilities relating to registered public accounting firms, complaints relating to accounting, internal accounting controls or auditing matters, authority to engage advisors, and funding of the audit committee.

2) The text of Rule 4350(d)(2), which appears on pages 10 and 31 of Amendment 1 to the original rule filing, should read as follows:

(2) Audit Committee Composition

(A) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, [comprised solely of independent directors] each of whom [is]:

(i) must: (a) be independent as defined under Rule 4200; and (b) meet the criteria for independence set forth in Rule 10A-3(b)(1) of the Act (subject to the exemptions provided in Rule 10A-3(c)); and

(ii) must be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement [or will become able to do so within a reasonable period of time after his or her appointment to the audit committee]. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee [that] who has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(B) Notwithstanding paragraph (2)(A)(i), one director who: (i) is not independent as defined in Rule 4200, (ii) meets the criteria for independence set forth in Rule 10A-3(b)(1) of the Act (subject to the exemptions provided in Rule 10A-3(c)), and (iii) is not a current officer or employee or a[n immediate] F[f]amily M[m]ember of such [employee] person, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination. A member appointed under this exception may not serve longer than two years and may not chair the audit committee.

[(C) Exception for Small Business Filers - Paragraphs (2)(A) and (2)(B) do not apply to issuers that file reports under SEC Regulation S-B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.]

3) New Rule 4350(d)(3) and (4), as follows, should be added following the end of 4350(d)(2) which appears on pages 12 and 33 of Amendment 1 to the original rule filing:

(3) An issuer is required to provide Nasdaq with prompt notification after an executive officer of the listed issuer becomes

aware of any material noncompliance by the listed issuer with the requirements of this Rule 4350(d).

(4) If an issuer fails to comply with the audit committee composition requirements under Rule 4350(d)(2) because an audit committee member ceases to be independent for reasons outside the member's reasonable control, or due to a vacancy on the audit committee, upon notice to Nasdaq the issuer will have up to the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with the Rule 4350(d) requirements. This cure period is available for one audit committee member.

- 4) IM 4350-4 Board Independence and Independent Committees, paragraphs 7 and 8 appearing on pages 14 and 35 of Amendment 1 to the original rule filing, should read as follows:

Audit Committees – Rule 4350(d)

Audit Committee Charter. Each issuer is required to adopt a formal written charter that specifies the scope of its responsibilities and the means by which it carries out those responsibilities; the outside auditor's accountability to the audit committee; and the audit committee's responsibility to ensure the independence of the outside auditor. Consistent with this, the charter must specify all audit committee responsibilities set forth in Rule 10A-3(b)(2), (3), (4) and (5) of the Act. The rights and responsibilities as articulated in the audit committee charter empower the audit committee and enhance its effectiveness in carrying out its responsibilities. While the audit committee is empowered to retain outside consultants, it is not expected to do so routinely. Rather, it

is expected that such authority would be exercised in response to specific circumstances giving rise to an audit committee determination that such action is in the best interest of the company and its shareholders.

Audit Committee Composition. Audit committees are required to have a minimum of three members and be comprised only of independent directors. In addition to satisfying the independent director requirements under Rule 4200, audit committee members must meet the criteria for independence set forth in Rule 10A-3(b)(1) of the Act (subject to the exemptions provided in Rule 10A-3(c)); they must not accept any consulting, advisory, or other compensatory fee from the company other than for board service, and they must not be an affiliated person of the company.

4) The first full paragraph and the next paragraph on pages 16 and 37 of Amendment 1 to the original rule filing should be replaced with the following two paragraphs:

In order to allow companies to make necessary adjustments in the course of their regular annual meeting schedule, the proposed rules must be implemented by the following dates:

- July 31, 2005 for foreign private issuers and small business issuers (as defined in Rule 12b-2); and
- For all other listed issuers, the earlier of the listed issuer's first annual shareholders meeting after January 15 2004, or October 31, 2004.

Following Commission approval of the proposed rule change, newly listed companies will be afforded two years to comply with all board composition requirements except with respect to the Audit Committee requirements under Rule 4350(d)(2), which are governed under the exemptions of Rule 10A-3(b)(1)(iv)(A). Companies transferring

from other markets with substantially similar requirements will be afforded the balance of any grace period afforded by the other market.

If you have any questions, please contact me at (202) 912-3032. The fax number of the Office of General Counsel is (202) 912-3199.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sara Nelson Bloom". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Sara Nelson Bloom
Associate General Counsel

cc: Nancy Sanow
Joe Rabits