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## Upcoming Changes to NASDAQ®

NASDAQ will soon implement a number of structural changes that will be of interest to NASDAQ issuers and companies interested in listing on NASDAQ. This client advisory summarizes these upcoming changes.

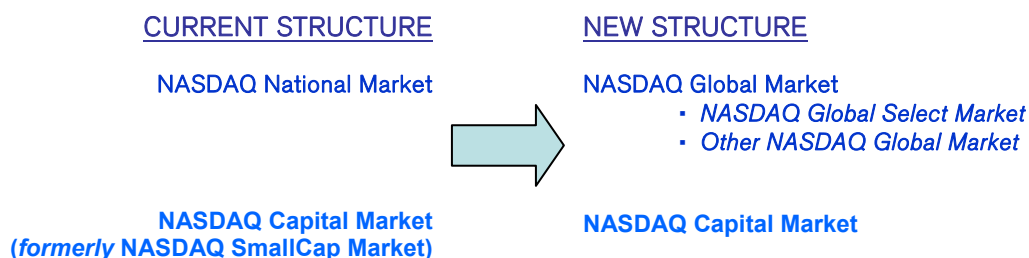
### Introduction of New Market Segment

Striving to keep pace in the competitive stock market arena, NASDAQ will soon introduce a new market segment called The NASDAQ Global Select Market<sup>SM</sup>. Commencing on July 3, 2006, The NASDAQ Global Select Market will be open to those public companies listed on NASDAQ that satisfy higher listing standards than those currently in place, based on measures such as market value, liquidity, and financial performance. Approximately 1,200 existing NASDAQ issuers qualify for inclusion in this new, top-tier market segment.<sup>1</sup>

At the same time that it introduces this new market segment, NASDAQ will rename the existing NASDAQ National Market<sup>®</sup> as The NASDAQ Global Market<sup>SM</sup>. The new NASDAQ Global Select Market will comprise a segment within the renamed NASDAQ Global Market. These changes, which presumably are aimed at imparting an international aspect to the NASDAQ brand name, may end up causing some confusion given the similarity of the Global Select Market and Global Market names.

NASDAQ will continue to offer The NASDAQ Capital Market<sup>®</sup> (formerly known as The NASDAQ SmallCap Market and renamed in 2005). NASDAQ will apply its existing corporate governance standards to all three tiers of its market.

The chart below illustrates the changes to NASDAQ's market tier structure.



Some of the key points regarding the new NASDAQ Global Select Market are summarized below:

*Initial Listing on the NASDAQ Global Select Market:* Initially, NASDAQ will unilaterally transfer any company whose securities are quoted currently on The NASDAQ National Market (to be renamed

<sup>1</sup> NASDAQ Press Release, "NASDAQ Names Companies to The NASDAQ Global Select Market" (June 26, 2006)  
[http://www.nasdaq.com/newsroom/news/pr2006/ne\\_section06\\_084.stm](http://www.nasdaq.com/newsroom/news/pr2006/ne_section06_084.stm)

NASDAQ Global Market) and which meets the initial listing standards for the new segment to The NASDAQ Global Select Market when it opens on July 3, 2006.<sup>2</sup>

Beginning in October 2007, NASDAQ will review annually the qualifications of all companies listed on The NASDAQ Global Market and automatically transfer any company that then satisfies the initial and continued listing standards for The NASDAQ Global Select Market to that market. Outside this annual review process, at any time NASDAQ-listed companies will be permitted to transfer within the NASDAQ structure to The NASDAQ Global Select Market, provided they satisfy the initial listing standards and pay the applicable entry fees.

Initial listing standards for the new NASDAQ Global Select Market segment are shown in **Table 1**. Initial listing standards for The NASDAQ Global Market generally (other than for the Global Select Market) are shown in **Table 2**. Initial listing standards for The NASDAQ Capital Market are shown in **Table 3**.<sup>3</sup>

*Continued Listing on The NASDAQ Global Select Market:* The continued listing standards for the new NASDAQ Global Select Market segment will be the same as the existing continued listing standards of The NASDAQ Global Market. Continued listing standards for the three markets are shown in **Table 1**, **Table 2** and **Table 3**.

*Fees:* Fees for The NASDAQ Global Select Market segment will be the same as fees for The NASDAQ Global Market generally. Companies already listed on The NASDAQ Global Market will not be required to pay an entry or application fee to be listed on The NASDAQ Global Select Market. NASDAQ Capital Market companies wishing to be listed on The NASDAQ Global Select Market will be required to pay the same entry fees they would be required to pay in order to be listed on The NASDAQ Global Market.

*“Covered Security”:* Because The NASDAQ Global Market, including the Global Select Market segment, will be the successor to The NASDAQ National Market, securities listed on The NASDAQ Global Market (including in the Global Select Market segment) will constitute “covered securities” within the meaning of Section 18(b) of the Securities Act of 1933, thereby preempting the application of state securities laws to such securities.<sup>4</sup>

*NASDAQ Market Indices:* NASDAQ will maintain indices for each of its three markets. In addition, NASDAQ will continue to calculate the NASDAQ Composite Index.

*Other Benefits:* NASDAQ has also said that it plans to offer an enhanced package of services for NASDAQ Global Select Market companies, including communications, visibility, management, and board support.

## **Conversion to National Securities Exchange**

During the third quarter of 2006, NASDAQ expects to begin operating as a national securities exchange. This change is primarily a change in legal status and is expected to have little effect on

<sup>2</sup> On June 26, 2006, NASDAQ released a list of the companies that will be included in The NASDAQ Global Select Market. The list of NASDAQ Global Select companies is available at <http://www.nasdaq.com/GlobalSelect>.

<sup>3</sup> For a fuller discussion of the new market segment and the initial listing standards, as well as NASDAQ's commentary and reasons for the changes, see Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto to Create the Nasdaq Global Select Market and Rename the Nasdaq National Market, Rel. No. 34-53799 (May 12, 2006) (the “Release”). The Release is available on the SEC's website at <http://sec.gov/rules/sro/nasdaq/2006/34-53799.pdf>.

<sup>4</sup> See Release at 36.

NASDAQ's operations. NASDAQ currently operates as a subsidiary of the National Association of Securities Dealers, a national securities association. When the change occurs, the current NASDAQ Stock Market, Inc. will become a holding company for a newly formed subsidiary, The NASDAQ Stock Market LLC, which will operate as the exchange.

NASDAQ's exchange registration should have minimal impact on listed companies. The primary change is that securities currently listed on NASDAQ and registered under Section 12(g) of the Securities Exchange Act of 1934, and investment company securities currently exempt from registration under Section 12(g)(2)(B), will need to be registered under Section 12(b) of the Exchange Act. Under rules adopted by NASDAQ and approved by the SEC, NASDAQ will file a single application with the SEC for registration of NASDAQ-listed companies under Section 12(b), on behalf of all such listed companies. This global application will be filed the day before NASDAQ begins operating as an exchange. As a result, no action is required to be taken by listed companies in order to register under Section 12(b).

After NASDAQ begins operating as an exchange, all filings by a listed company under the Exchange Act should indicate that the company's NASDAQ-listed securities are registered under Section 12(b) of the Exchange Act instead of Section 12(g). In addition, upon the conversion, all Section 16 filings, Schedule 13D and 13G filings, and Form 144 filings related to NASDAQ-listed securities will need to be filed with NASDAQ. However, NASDAQ has petitioned the SEC to allow listed companies to satisfy this obligation through the electronic filing of these reports and forms on the SEC's EDGAR system. In any event, any such reports and forms not filed electronically through EDGAR should be sent to NASDAQ's [Listing Qualifications](#) office.

Finally, companies whose securities are registered under Section 12(b) of the Exchange Act follow a different process for deregistering their securities than do companies whose securities are registered under Section 12(g). Deregistration for a Section 12(b) company is effected pursuant to Section 12(d) of the Exchange Act. The deregistration process is governed by Rule 12d2-2 and involves the filing of a Form 25. NASDAQ has recently proposed modifications to its delisting procedures to comply with Rule 12d2-2. Section 12(g) companies, by contrast, follow a process governed by Rule 12g-4, including filing a Form 15.

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This information is not intended as legal advice, which may often turn on specific facts. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

If you have any questions concerning the material discussed in this client advisory, please contact the following members of our securities practice group:

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Table 1. NASDAQ Global Select Market -- Listing Standards

| <i>Initial Listing Standards</i>     |               |   |
|--------------------------------------|---------------|---|
| No. of Beneficial Shareholders       | Alternative 1 | 550 and average monthly trading volume of 1.1M shares/month over prior 12 months  |
|                                      | Alternative 2 | 2,200   |
|                                      | Alternative 3 | 450 and<br>(a) issuer listing in connection with emergence from bankruptcy; or<br>(b) issuer is affiliated with another NASDAQ Global Select Market company   |
| Market Value of Publicly Held Shares | Alternative 1 | \$110M  |
|                                      | Alternative 2 | \$100M and stockholders' equity of \$110M   |
|                                      | Alternative 3 | \$70M and<br>(a) issuer listing in connection with IPO;<br>(b) issuer is affiliated with, or a spin-off from, another NASDAQ Global Select Market company; or<br>(c) issuer is a closed end management investment company                 |
| Financial Requirements               | Alternative 1 | (1) \$11M aggregate pre-tax income over past three fiscal years;<br>(2) positive pre-tax income in each of past three fiscal years; and<br>(3) \$2.2M pre-tax income in each of past two fiscal years                                     |
|                                      | Alternative 2 | (1) \$27.5M aggregated cash flows over past three fiscal years;<br>(2) positive cash flow in each of past three fiscal years;<br>(3) \$550M average market value over past 12 months; and<br>(4) \$110M total revenue in past fiscal year |
|                                      | Alternative 3 | (1) \$850M average market value over past 12 months; and<br>(2) \$90M total revenue in past fiscal year   |
| Minimum Bid Price Per Share          |               | \$5 (if not already included in NASDAQ Global Market)   |
| No. of Publicly Held Shares          |               | 1,250,000   |

| <i>Continued Listing Standards</i>   |                            |  |
|--------------------------------------|----------------------------|--|
|                                      | Alternative 1              | Alternative 2  |
| Financial Requirements               | \$10M stockholders' equity | \$50M market value of listed securities or<br>\$50M total assets and \$50M total revenue |
| No. of Publicly Held Shares          | 750,000                    | 1.1M   |
| Market Value of Publicly Held Shares | \$5M                       | \$15M  |
| Minimum Bid Price                    | \$1                        | \$1  |
| Shareholders (Round Lot Holders)     | 400                        | 400  |
| Market Makers                        | 2                          | 4  |
| Operating History                    | N/A                        | N/A  |

*Notes:*

- "Publicly Held Shares" do not include shares held by any officer, director, or 10% shareholder.
- In calculating cash flow and pre-tax income, NASDAQ will rely on the company's most recent periodic report and/or registration statement filed with the SEC.
- Companies that do not have three years of publicly reported data may still qualify for The NASDAQ Global Select Market if they meet separate financial requirements.
- Closed end management investment companies are not subject to the financial requirements shown in the table.
- If the common stock of an issuer is included in The NASDAQ Global Select Market, any other security of that same issuer, such as preferred stock, that qualifies for listing on The NASDAQ Global Market will be included in The NASDAQ Global Select Market.
- Round lot holders are holders of 100 shares or more.
- An electronic communications network is not considered a market maker for the purpose of these rules.

Table 2. NASDAQ Global Market -- Listing Standards

*(other than NASDAQ Global Select Market)*

|                                      | Initial  |                            |   | Continued                  |   |
|--------------------------------------|--|----------------------------|---|----------------------------|---|
|                                      | Alternative 1                                      | Alternative 2              | Alternative 3   | Alternative 1              | Alternative 2   |
| Financial Requirements               | \$15M stockholders' equity and \$1M pre-tax income | \$30M stockholders' equity | \$75M market value of listed securities or \$75M total assets and \$75M total revenue | \$10M stockholders' equity | \$50M market value of listed securities or \$50M total assets and \$50M total revenue |
| No. of Publicly Held Shares          | 1.1M   | 1.1M                       | 1.1M  | 750,000                    | 1.1M  |
| Market Value of Publicly Held Shares | \$8M   | \$18M                      | \$20M   | \$5M                       | \$15M   |
| Minimum Bid Price                    | \$5  | \$5                        | \$5   | \$1                        | \$1   |
| Shareholders (Round Lot Holders)     | 400  | 400                        | 400   | 400                        | 400   |
| Market Makers                        | 3  | 3                          | 4   | 2                          | 4   |
| Operating History                    | N/A  | 2 years                    | N/A   | N/A                        | N/A   |

## Notes:

- "Publicly Held Shares" do not include shares held by any officer, director, or 10% shareholder.
- Round lot holders are holders of 100 shares or more.
- Pre-tax income requirements are for the latest fiscal year or two of the last three fiscal years.
- Seasoned companies (those companies already listed or quoted on another marketplace) that only qualify under Alternative 3 of the initial listing standards must meet the market value and minimum bid price requirements for 90 consecutive trading days prior to applying for listing.
- An electronic communications network is not considered a market maker for the purpose of these rules.

Table 3. NASDAQ Capital Market -- Listing Standards

|                                      | Initial  | Continued  |
|--------------------------------------|--|--|
| Financial Requirements               | \$5M stockholders' equity or \$50M market value of listed securities or \$750,000 pre-tax income | \$2.5M stockholders' equity or \$35M market value of listed securities or \$500,000 pre-tax income |
| No. of Publicly Held Shares          | 1M   | 500,000  |
| Market Value of Publicly Held Shares | \$5M   | \$1M   |
| Minimum Bid Price                    | \$4  | \$1  |
| Shareholders (Round Lot Holders)     | 300  | 300  |
| Market Makers                        | 3  | 2  |
| Operating History                    | 1 year or \$50M market value of listed securities  | N/A  |

## Notes:

- "Publicly Held Shares" do not include shares held by any officer, director, or 10% shareholder.
- Round lot holders are holders of 100 shares or more.
- Pre-tax income requirements are for the latest fiscal year or two of the last three fiscal years.
- Seasoned companies (those companies already listed or quoted on another marketplace) that only qualify under the \$50M market value financial requirement of the initial listing standards must meet the market value and minimum bid price requirements for 90 consecutive trading days prior to applying for listing.
- An electronic communications network is not considered a market maker for the purpose of these rules.