

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53908)

May 31, 2006

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Declaration of Effectiveness of the Fingerprint Plan of the NASDAQ Stock Market LLC

On May 30, 2006, the NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") a fingerprint plan ("Plan") pursuant to Rule 17f-2(c)<sup>1</sup> under the Securities Exchange Act of 1934 ("Act").<sup>2</sup>

Nasdaq believes that the Plan will facilitate compliance by Nasdaq members and Nasdaq member applicants (together, "participants") with Section 17(f)(2) of the Exchange Act and Rule 17f-2 thereunder, by providing a facility for participants to have the fingerprints of their partners, directors, officers, and employees processed by the Attorney General of the United States or his designee ("Attorney General").

The Plan will be administered for Nasdaq by NASD Regulation, Inc. ("NASDR") and the National Association of Securities Dealers, Inc. ("NASD"), the parent corporation of NASDR, pursuant to a regulatory services agreement between NASDR and Nasdaq (the "Regulatory Contract"). The Commission notes that, notwithstanding the fact that Nasdaq has entered into the Regulatory Contract to have NASDR perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

Under the Plan, participants submit fingerprints and identifying information, on paper or electronically, to the NASD, which then forwards the cards to the Federal Bureau of Investigation ("FBI") (the fingerprint processing arm of the Attorney General).

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<sup>1</sup> 17 CFR 240.17f-2(c).

<sup>2</sup> 15 U.S.C. 78a et seq.

The FBI identifies submitted fingerprints, retrieves relevant criminal history information, and returns fingerprint reports (including the original paper fingerprint cards, if any) to authorized recipients (i.e., to a participant that submitted the fingerprints and to regulators for licensing, registration and other regulatory purposes). Under the terms of the Plan, participants will be able to view the status and results of fingerprints, including any relevant criminal history information, through the NASD's Central Registration Depository (CRD<sup>®</sup>) system after submission to the Attorney General.

The Commission has reviewed the procedures detailed in the Plan and believes that the Plan is consistent with the public interest and the protection of investors. Thus, the Commission declares the Plan to be effective.

The Commission notes that securities industry fingerprinting procedures are in a state of flux due to rapidly advancing technology. In the event that an industry-wide standard is adopted or becomes prevalent and in the event that this Plan substantially differs therefrom, the Commission would expect Nasdaq to revise its fingerprint plan to incorporate the industry-wide standard.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

Nancy M. Morris  
Secretary

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<sup>3</sup> 17 CFR 200.30-3(a)(17)(iii).

Exhibit A

The NASDAQ Stock Market LLC; Fingerprint Plan

The NASDAQ Stock Market LLC (“Nasdaq”) submits this Fingerprint Plan (“Plan”) pursuant to Rule 17f-2(c) under the Securities Exchange Act of 1934 (“Exchange Act”).

The purpose of this Plan is to facilitate compliance by Nasdaq members and Nasdaq member applicants with Section 17(f)(2) of the Exchange Act and Rule 17f-2 thereunder, by providing a mechanism for Nasdaq members and Nasdaq member applicants to have the fingerprints of their partners, directors, officers, and employees processed by the Attorney General of the United States or his designee (hereinafter “Attorney General”) as required by Section 17(f)(2) of the Exchange Act and Rule 17f-2 thereunder. The Plan will be administered for Nasdaq by NASD Regulation, Inc. (“NASDR”) and the National Association of Securities Dealers, Inc. (“NASD”), the parent corporation of NASDR, pursuant to a regulatory services agreement between NASDR and Nasdaq (the “Regulatory Contract”). In the event that Nasdaq enters into a contract to administer the Plan with a regulatory service provider other than NASDR or decides to administer the Plan itself, Nasdaq shall file an amendment to the Plan with the Securities and Exchange Commission (the “Commission”). Notwithstanding the fact that Nasdaq has entered into the Regulatory Contract to have NASDR perform some of Nasdaq’s functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

NASD, pursuant to a Plan filed with and declared effective by the Commission,<sup>4</sup>

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<sup>4</sup> Securities Exchange Act Release No. 53751 (May 2, 2006), 71 FR 27299 (May 10, 2006).

processes fingerprint records of securities industry participants as described herein consistent with Section 17(f)(2) of the Exchange Act and Rule 17f-2 thereunder.

NASD accepts fingerprints and identifying information from associated persons of Nasdaq members and Nasdaq member applicants required to be fingerprinted pursuant to Rule 17f-2. Nasdaq members and Nasdaq member applicants may submit fingerprints and identifying information on paper or electronically, provided such submissions are consistent with protocols and requirements established by the Attorney General.

NASD transmits fingerprints and identifying information, on paper or electronically, to the Attorney General for identification and processing, consistent with protocols and requirements established by the Attorney General.

NASD receives processed results from the Attorney General (on paper or electronically) and transmits those results via paper or electronic means to authorized recipients (i.e., to a Nasdaq member or Nasdaq member applicant that submitted the fingerprints and to regulators for licensing, registration and other regulatory purposes), consistent with protocols and requirements established by the Attorney General. In cases where the Attorney General's search on the fingerprints submitted fails to disclose prior arrest data, NASD transmits that result to the Nasdaq member or Nasdaq member applicant that submitted the fingerprints. In cases where the Attorney General's search yields Criminal History Record Information (CHRI), NASD transmits that information to the Nasdaq member or Nasdaq member applicant that submitted the fingerprints. With respect to Nasdaq members, NASD also reviews any CHRI returned by the Attorney General to identify persons who may be subject to statutory disqualification under the Exchange Act and notifies NASD and Nasdaq staff to take action, as appropriate, with

respect to such persons.

Nasdaq advises its members and member applicants of the availability of fingerprint services and any fees charged in connection with those services and the processing of fingerprints pursuant to this Plan. Nasdaq will file any such Nasdaq member fees with the Commission pursuant to Section 19(b) of the Exchange Act.

NASD maintains copies of fingerprint processing results received from the Attorney General with respect to fingerprints submitted by NASD pursuant to this Plan, in accordance with Nasdaq's record retention obligations under the Act. Any maintenance of fingerprint records by NASD shall be for NASD's and Nasdaq's own administrative purposes, and NASD is not undertaking to maintain fingerprint records on behalf of Nasdaq members pursuant to Rule 17f-2(d)(2). NASD records in the Central Registration Depository (CRD<sup>®</sup>) the status of fingerprints submitted to the Attorney General. Through the CRD system, NASD makes available to a Nasdaq member that has submitted fingerprints the status and results of such fingerprints after submission to the Attorney General.

Neither NASD nor Nasdaq shall be liable for losses or damages of any kind in connection with fingerprinting services, as a result of a failure to follow, or properly to follow, the procedures described above, or as a result of lost or delayed fingerprint cards, electronic fingerprint records, or fingerprint reports, or as a result of any action by NASD or Nasdaq or NASD's or Nasdaq's failure to take action in connection with this Plan.