

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61008; File No. SR-NASDAQ-2009-094)

November 16, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Require that Companies Provide Nasdaq with at least Ten Minutes Prior Notification when Releasing Material Information and Eliminate a Potential Inconsistency with Commission Guidance on the Use of Company Websites to Satisfy Public Disclosure Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on November 5, 2009, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to require, rather than recommend, that Nasdaq-listed companies provide Nasdaq with at least ten minutes prior notification when releasing material information. In addition, Nasdaq proposes to modify rule language that may be inconsistent with Commission guidance on the use of company websites to satisfy public disclosure requirements. The proposed rule change, which is immediately effective, shall become operative on December 7, 2009.

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 C.F.R. 240.19b-4(f)(6).

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.⁴

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5250. Obligations for Companies Listed on The Nasdaq Stock Market

(a) No change

(b) Obligation to Make Public Disclosure

(1) Except in unusual circumstances, a Nasdaq-listed Company shall make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. The Company shall, prior to the release of the information, provide notice of such disclosure to Nasdaq's MarketWatch Department at least ten minutes prior to public announcement if the information involves any of the events set forth in IM-5250-1. As described in IM-5250-1, prior notice to the MarketWatch Department [should] must be made through the electronic disclosure submission system available at www.nasdaq.net, except in emergency situations.

(2) – (3) No change

(c) – (f) No change

IM-5250-1. Disclosure of Material Information

Rule 5250(b)(1) requires that, except in unusual circumstances, Nasdaq Companies disclose promptly to the public through any Regulation FD compliant method (or combination of methods) of disclosure any material information that would reasonably be expected to affect the

⁴ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

value of their securities or influence investors' decisions. Nasdaq Companies must notify Nasdaq at least ten minutes prior to [in the manner described below of] the release to the public of [such] material information that involves any of the events set forth below [prior to its release to the public]. [Nasdaq recommends that Nasdaq Companies provide such notification at least ten minutes before such release.] Under unusual circumstances Companies may not be required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the Company to pursue its legitimate corporate objectives. However, Nasdaq Companies remain obligated to disclose this information to Nasdaq upon request pursuant to Rule 5250(a).

Paragraph 2. No change.

Notification to Nasdaq MarketWatch Department

Nasdaq Companies must notify Nasdaq's MarketWatch Department prior to the distribution of certain material news at least ten minutes prior to public announcement of the news. Except in emergency situations, this notification must be made through Nasdaq's electronic disclosure submission system available at www.nasdaq.net. In emergency situations, Companies [shall] may instead provide notification by telephone or facsimile. Examples of an emergency situation include: lack of computer or internet access; technical problems on either the Company or Nasdaq system or an incompatibility between those systems; and a material development such that no draft disclosure document exists, but immediate notification to MarketWatch is important based on the material event.

If a Nasdaq Company repeatedly fails to either notify Nasdaq at least ten minutes prior to the distribution of material news, or repeatedly [fail] fails to use the electronic disclosure submission system when Nasdaq finds no emergency situation existed, Nasdaq may issue a Public

Reprimand Letter (as defined in Rule 5805(j)) or, in extreme cases, a Staff Delisting Determination (as defined in Rule 5805(h)). In determining whether to issue a Public Reprimand Letter, Nasdaq will consider whether the Company has demonstrated a pattern of failures, whether the Company has been contacted concerning previous violations, and whether the Company has taken steps to assure that future violations will not occur.

Trading Halts

Paragraphs 1 – 3. No change.

Companies are required to notify the MarketWatch Department of the release of material information included in the following list of events at least ten minutes prior to the release of such information to the public. It should also be noted that every development that might be reported to Nasdaq in these areas would not necessarily be deemed to warrant a trading halt. In addition to the following list of events, Nasdaq encourages Companies to avail themselves of the opportunity for advance notification to the MarketWatch Department in situations where they believe, based upon their knowledge of the significance of the information, that a temporary trading halt may be necessary or appropriate.

(a) – (h) No change.

Use of Regulation FD Compliant Methods in the Disclosure of Material Information

Regardless of the method of disclosure that a Company chooses to use, Companies are required to notify the MarketWatch Department of the release of material information that involves any of the events set forth above at least ten minutes prior to its release to the public. [Nasdaq recommends that Companies provide such notification at least ten minutes before such release.] When a Company chooses to utilize a Regulation FD compliant method for disclosure other than a press release or Form 8-K, the Company will be required to provide prior notice to the

MarketWatch Department of: 1) the press release announcing the logistics of the future disclosure event; and 2) a descriptive summary of the material information to be announced during the disclosure event if the press release does not contain such a summary.

Depending on the materiality of the information and the anticipated effect of the information on the price of the Company's securities, the MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The MarketWatch Department will assess with Companies using methods of disclosure other than a press release or Form 8-K the timing within the disclosure event when the Company will cover the material information so that the halt can be commenced accordingly. Companies will be responsible for promptly alerting the MarketWatch Department of any significant changes to the previously outlined disclosure timeline. Companies are reminded that the posting of information on [its own] the company's website [is] may not by itself be considered a sufficient method of public disclosure under Regulation FD and SEC guidance and releases thereunder, and as a result, under Nasdaq rules.

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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 such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Rule 5250(b)(1) and IM-5250-1, a Nasdaq-listed company is required, except in unusual circumstances, to make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. These rules also require the company to, prior to the release of the information; provide notice of such disclosure to Nasdaq's MarketWatch Department if the information involves any of the events set forth in IM-5250-1. This prior notice, which must be made through the electronic disclosure submission system available at www.nasdaq.net, except in emergency situations, allows the MarketWatch Department to assess whether it is appropriate to implement a trading halt to allow full dissemination of the news by the public and to maintain an orderly trading market.⁵ IM-5250-1 currently provides that Nasdaq recommends companies provide such notification at least ten minutes before release.

Nasdaq proposes to amend Rule 5250(b)(1) and IM-5250-1 to require notification to the Exchange of such announcements at least ten minutes prior to public release. Nasdaq believes that mandating pre-notification ten minutes before public release of news is appropriate to enable the Exchange to consider whether trading in the security should be temporarily halted.⁶

The proposed rule change also modifies language in IM-5250-1 that, as currently written, may be inconsistent with an interpretive release recently published by the Commission providing

⁵ See Rule 4120 for the Exchange's procedures with respect to trading halts pending dissemination of material news.

⁶ The proposed ten-minute pre-notification requirement is consistent with Section 202.06(B) of the NYSE Listed Company Manual, which requires that a company notify the NYSE ten minutes prior to announcing material information.

guidance on the use of company websites.⁷ Under that guidance, the posting of information on a company website could be considered a sufficient method of public disclosure under Regulation FD. The language currently contained in IM-5250-1 indicates that a website posting alone does not by itself satisfy the public disclosure requirements of Regulation FD. Nasdaq proposes to modify this language to instead provide that a website posting alone may not by itself satisfy those requirements. Finally, the proposed rule change would make non-substantive changes to Rule 5250(b)(1) and IM-52501-1 to clarify the language of those rules and reinforce the existing requirement for electronic notification to Nasdaq.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general and with Section 6(b)(5) of the Act,⁹ in particular. The proposed change would enhance Nasdaq's ability to conduct timely reviews of company disclosures and will eliminate an inconsistency between Nasdaq's rules and guidance set forth by the Commission, thereby facilitating the operation of a free and open market, and protecting investors and the public interest.

B. 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

⁷ See Securities Exchange Act Release No. 58288 (August 1, 2008), 73 FR 45862 (August 7, 2008) (Commission Guidance on the Use of Company Web Sites).

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission,¹⁰ it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

The proposed rule change to require ten minutes prior notification of material news is closely modeled after similar rules of another national securities exchange¹³ and therefore Nasdaq believes that it does not significantly affect the protection of investors or the public interest or raise any novel or significant regulatory issues. The proposed rule change to modify text discussing the use of a company website as a Regulation FD method of disclosure is designed to eliminate an inconsistency with guidance published by the Commission¹⁴ and therefore Nasdaq believes that it also does not significantly affect the protection of investors or the public interest or raise any novel or significant regulatory issues.

¹⁰ 17 CFR 240.19b-4(f)(6). The Exchange has satisfied this requirement.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ Section 202.06(B) of the NYSE Listed Company Manual, supra, note 6.

¹⁴ Commission Guidance on the Use of Company Web Sites, supra, note 7.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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-2009-094 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-2009-094. 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 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 inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2009-094 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).