

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61429; File No. SR-NASDAQ-2010-009)

January 27, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend its Financial Responsibility Rules To Reflect Changes to Corresponding FINRA Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 21, 2010, The NASDAQ Stock Market LLC (the “Exchange” or “NASDAQ”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 on January 22, 2010. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended.

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

The Exchange is filing this proposed rule change to delete Rule 3130 and IM-3130, to adopt a new Rule 4000A series, and to amend Rules 9557 and 9559 to conform NASDAQ’s rules to recent changes to the rules of the Financial Industry Regulatory Authority (“FINRA”). The Exchange will implement the proposed rule change thirty days after the date of the filing.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available at <http://nasdaqomx.cchwallstreet.com>, at the Exchange's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange 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. The Exchange 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

NASDAQ proposes certain conforming changes to its rules concerning members' financial responsibilities in light of changes made to the rules of FINRA. Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ also has initiated a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it is not possible for the rule numbers of NASDAQ rules to mirror corresponding FINRA rules, because existing or planned NASDAQ rules make use of those numbers. However, wherever possible, NASDAQ plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses changes to NASDAQ rules to conform them to FINRA's new consolidated financial responsibility rules.<sup>4</sup> These rules establish criteria that promote the permanency of member's capital, requiring the review and approval of material financial transactions and establishing criteria intended to identify member firms approaching financial difficulty and to monitor their financial and operational condition. FINRA's new financial responsibility rules incorporate many of the provisions of the prior NASD and NYSE rules, but streamlined and reorganized the provisions. FINRA also tiered many provisions to apply only to those firms that clear or carry customer accounts.

Currently, NASDAQ Rule 3130 and IM-3130 incorporate by reference old NASD Rule 3130 and IM-3130. These rules concerned FINRA's authority to regulate the activities of members experiencing financial or operational difficulties. In adopting the new financial responsibility rules, FINRA eliminated NASD Rule 3130 and IM-3130, and replaced them with several rules that represented a consolidation of the old NASD and NYSE rules concerning financial responsibility. As a consequence, NASDAQ is also deleting Rule 3130 and IM-3130, and replacing them with new rules found under a new Rule 4000A series.<sup>5</sup> These new NASDAQ rules incorporate by reference the analogous newly-adopted financial responsibility rules of FINRA found in FINRA Rules 4110, 4120, 4140 and 4521. Consistent with current NASDAQ Rule 3130(b), NASDAQ is proposing to make clear in proposed Rules 4110A, 4120A and 4140A that references to Rule 9557 are to NASDAQ's Rule 9557.

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<sup>4</sup> Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (SR-FINRA-2008-067).

<sup>5</sup> FINRA also eliminated NASD Rule 3131 and adopted FINRA Rule 4130 in its place. NASD Rule 3131 concerned the regulation of members registered with the SEC pursuant to Section 15C of the Exchange Act. NASDAQ does not have such a class of membership, and as such, did not adopt NASD Rule 3131 and is not proposing to adopt, or incorporate by reference, FINRA Rule 4130.

FINRA also revised FINRA Rule 9557 (Procedures for Regulating Activities Under FINRA Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties) and FINRA Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series). FINRA Rules 9557 and 9559 address service of notice to member firms that are experiencing financial or operational difficulties and the related hearing procedures. FINRA made a number of conforming revisions to Rules 9557 and 9559 in light of several of the new financial responsibility rules. NASDAQ Rules 9557 and 9559 mirror the analogous rules of FINRA in substance, with only minor technical differences.<sup>6</sup> As such, NASDAQ is proposing to make the same changes Rules 9557 and 9559 as FINRA made to its Rules 9557 and 9559, with minor technical differences.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Sections 6(b)(5) of the Act,<sup>8</sup> in particular, in that the proposal is 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 proposed changes will conform NASDAQ rules to recent changes made to corresponding FINRA rules, to promote application of consistent regulatory standards.

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<sup>6</sup> For example, FINRA Rule 9557(c)(5) references “FINRA staff” whereas proposed NASDAQ Rule 9557(c)(5) references instead “Nasdaq Regulation staff.”

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest because the

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to 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. The Commission notes that NASDAQ has satisfied the five-day pre-filing notice requirement.

proposed rule change permits Nasdaq to implement the rule without further delay and in time for the operative date of FINRA's financial responsibility rules.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.<sup>13</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2001-004 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-2010-009. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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<sup>12</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on January 21, 2010, the date Nasdaq filed Amendment No. 1.

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 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2010-009, 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.<sup>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).