

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61151; File No. SR-NASDAQ-2009-109)

December 10, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Update Rule 1160 to Reflect the Availability of the FINRA Contact System to Nasdaq Members That Are Not Also Members of FINRA

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 December 9, 2009, The NASDAQ Stock Market LLC (“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 Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</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 from interested persons.

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

Nasdaq submits this proposed rule change to Rule 1160 to extend the availability of the FINRA Contact System to Nasdaq members that are not also members of FINRA.

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

**1160. Contact Information Requirements**

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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> 15 U.S.C. 78s(b)(3)(A)(iii).

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

(a) Each member shall report to Nasdaq all contact information required by Nasdaq via the FINRA [NASD] Contact System [(in the case of Nasdaq members that are FINRA members) or via electronic mail or paper mail (in the case of Nasdaq members that are not FINRA members)].

(b) – (c) No change.

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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

Nasdaq is proposing to update Rule 1160 to reflect the availability of the FINRA Contact System (“System”) to Nasdaq members that are not also members of FINRA, and to make a technical change to the name of the System. The System maintains contact information records required by both Nasdaq and NASD Rules 1120, 1150, 3011, and 3520. Both Nasdaq and FINRA use this information for regulatory communications, and compliance purposes, among other things. The information is provided to FINRA as part of the membership application. If the applicant is approved for membership, the new member is provided access to the System and is responsible for entering the required information into the System as well as keeping it current thereafter. Historically, FINRA permitted access to the System only to members of FINRA. A

Nasdaq member that was already a member of FINRA could access the System to fulfill its ongoing obligation to keep the required information current; however, Nasdaq members that were not also members of FINRA were not permitted access to the System. As a consequence, such firms could only fulfill their obligation to keep the required information current by submitting the information to Nasdaq via e-mail or paper mail.

FINRA recently made changes to the System so that Nasdaq-only members may also access the System, thus eliminating the need for the existing methods of providing such information. Nasdaq believes that having a central electronic location for this information is superior to the paper and e-mail-based methods of warehousing the information. Nasdaq will have access to the information maintained in the System for Nasdaq-only members in the same way as it has historically had with respect to Nasdaq members that are also members of FINRA. As such, Nasdaq is proposing to eliminate the language from Rule 1160 that requires Nasdaq-only members to provide required information by means other than the System. Nasdaq is also proposing to update the rule to reflect the new name of the System adopted by FINRA.<sup>5</sup>

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general and with Sections 6(b)(5) of the Act,<sup>7</sup> in particular in that it 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

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<sup>5</sup> <http://www.finra.org/Industry/Compliance/RegulatoryFilings/FCS/P005662>.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

national market system, and, in general, to protect investors and the public interest. The proposed rule change is consistent with these provisions in that it will make available to all Nasdaq members an efficient means by which they may provide information required by Nasdaq rules.

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

Nasdaq does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or 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, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

Normally, a proposed rule change filed under 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</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.

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

designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative delay. In its filing, Nasdaq noted that the proposal would provide a means for firms to comply with regulatory requirements more easily and quickly, and that keeping such information in a centralized, electronic location would enhance Nasdaq's and FINRA's oversight of these members.

The Commission believes that waiver of the 30-day operative period is consistent with the protection of investors and the public interest. The proposed rule change would allow contact information, utilized for regulatory communications and compliance purposes, among other things, to be more efficiently collected in a centralized location. In addition, the modification of the rule to reflect the new name of the System will add clarity to Nasdaq's rules. Accordingly, the Commission designates the proposal to be effective upon filing with the Commission.<sup>11</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 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

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<sup>11</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2009-109 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-2009-109. 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 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. 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-2009-109 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 & Markets, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

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