

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61323; File No. SR-NASDAQ-2009-116)

January 11, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Rule 2240 and 2250 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 December 30, 2009, 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, II, and III below, which Items have been prepared by the Exchange. 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 from interested persons.

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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> The NASDAQ Stock Market LLC (the “Exchange” or “NASDAQ”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend NASDAQ Rule 2240 and 2250 to

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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).

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

reflect recent changes to corresponding rules of the Financial Industry Regulatory Authority (“FINRA”). The text of the proposed rule change is below. Additions are in italics; deletions are in brackets.

## **NASDAQ Stock Market Rules**

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### **[2240. Disclosure of Control Relationship with Issuer**

Nasdaq Members shall comply with NASD Rule 2240 as if such Rule were part of Nasdaq's Rules.]

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### ***[2250. Disclosure of Participation or Interest in Primary or Secondary Distribution***

Nasdaq Members shall comply with NASD Rule 2250 as if such Rule were part of Nasdaq's Rules.]

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### **2262. Disclosure of Control Relationship with Issuer**

Nasdaq Members shall comply with FINRA Rule 2262 as if such Rule were part of Nasdaq's Rules.

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### **2269. Disclosure of Participation or Interest in Primary or Secondary Distribution**

Nasdaq Members shall comply with FINRA Rule 2269 as if such Rule were part of Nasdaq's 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, 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

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 proposes to initiate 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 will not be 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 NASDAQ Rule 2240 entitled "Disclosure of Control Relationship with Issuer" and 2250 entitled "Disclosure of Participation or Interest in Primary or Secondary Distribution." NASDAQ Rule 2262 makes reference to NASD 2240 entitled "Disclosure of Control Relationship with Issuer." FINRA filed a proposed rule change to adopt NASD Rule 2240 as FINRA Rule 2262, NASD Rule 2250 as FINRA Rule 2269 and NASD Rule 3340 as FINRA Rule 5260.<sup>6</sup>

FINRA transferred NASD Rule 2240 unchanged into the Consolidated FINRA Rulebook as FINRA Rule 2262. FINRA Rule 2262 provides that a member controlled

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<sup>6</sup> Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009) (SR-FINRA-2009-044).

by, controlling, or under common control with the issuer of any security must, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to the customer the existence of such control; if such disclosure is not made in writing, it must be supplemented by written disclosure at or before the completion of the transaction.

FINRA transferred NASD Rule 2250 unchanged into the Consolidated FINRA Rulebook as FINRA Rule 2269. FINRA Rule 2269 provides that if a member is acting as a broker for a customer, or is acting for both the customer and some other person, or is acting as a dealer and receives or has promise of receiving a fee from a customer for advising the customer with respect to securities, then the member must, at or before the completion of any transaction for or with the customer in any security in the primary or secondary distribution of which the member is participating or is otherwise financially interested, give the customer written notification of the existence of such participation or interest.

FINRA transferred NASD Rule 3340 without material change into the Consolidated FINRA Rulebook as FINRA Rule 5260. FINRA Rule 5260 prohibits members from, directly or indirectly, effecting transactions or publishing quotations or indications of interest (“IOIs”) in (1) any security with respect to which a trading halt is in effect; or (2) any security future when there is a regulatory trading halt in effect with respect to the underlying security. The trading and quoting conduct prohibited by Rule 3340 is triggered only when a trading halt is in effect. The rule also provides that, in the event that FINRA halts over-the-counter trading and quoting in NMS stocks because the Alternative Display Facility (“ADF”) or a Trade Reporting Facility (“TRF”) is unable to

transmit real-time information to the applicable Securities Information Processor, members are not prohibited from trading through other markets for which trading is not halted.

NASDAQ is proposing to amend NASDAQ Rule 2240 by renaming Rule 2240 to new Rule 2262. Also, NASDAQ is proposing to amend NASDAQ Rule 2250 by renaming Rule 2250 to new Rule 2269. NASDAQ would delete current Rules 2240 and 2250. NASDAQ also proposes to amend the references to NASD Rule 2240 and 2250 to instead state FINRA Rules 2262 and 2269 in the new Rules 2262 and 2269, respectively. No changes are necessary to Rule 3340.

## 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 2240 and 2250 to recent changes made to corresponding FINRA rules and rename Rules 2240 and 2250 to new Rules 2262 and 2269 respectively.

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<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>

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.

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:

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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).

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-2009-116 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2009-116. 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 such 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-2009-116 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>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).