

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61606; File No. SR-NASDAQ-2010-026)

March 1, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate Erroneous Citations from Rule 9557

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 February 24, 2010, The NASDAQ Stock Market LLC (“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 Nasdaq. 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 is proposing to eliminate erroneous citations found under Rule 9557. The text of the proposed rule change is below. Proposed new language is in italics and proposed deletions are in brackets.

9557. Procedures for Regulating Activities Under Rules 4110A[,] and 4120A [and 4130A]
Regarding a Member Experiencing Financial or Operational Difficulties

(a) Notice of Requirements and/or Restrictions; Nasdaq Action

Nasdaq Regulation staff may issue a notice directing a member to comply with the provisions of Rule 4110A[,] or 4120A [or 4130A] or restrict its business activities, either by limiting or ceasing to conduct those activities consistent with Rule 4110A[,] or 4120A [or 4130A], if Nasdaq Regulation staff has reason to believe that a condition specified in Rule 4110A[,] or 4120A [or 4130A] exists. A notice served under this Rule shall constitute Nasdaq action.

(b) – (f) No change.

(g) Additional Requirements and/or Restrictions or the Removal or Reduction of Requirements and/or Restrictions; Letter of Withdrawal of the Notice

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(1) Additional Requirements and/or Restrictions

If a member continues to experience financial or operational difficulty specified in Rule 4110A or 4120A [or 4130A], notwithstanding an effective notice, Nasdaq Regulation staff may impose additional requirements and/or restrictions by serving an additional notice under paragraph (b) of this Rule. The additional notice shall inform the member that it may apply for relief from the additional requirements and/or restrictions by filing a written request for a letter of withdrawal of the notice and/or a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable to such additional notice.

(2) No change.

(A) – (B) No change.

(h) 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. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

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

1. Purpose

Nasdaq is proposing to eliminate erroneous citations found under Rule 9557. Many of Nasdaq's rules are based on rules of Financial Industry Regulatory Authority ("FINRA"). Nasdaq endeavors to keep these common rules consistent with the analogous rules of FINRA, to the extent possible. FINRA recently adopted new consolidated financial responsibility rules found under a new FINRA Rule 4000 series.³ On January 20, 2010, Nasdaq filed a proposed rule change to make conforming changes to its rules, which included the adoption of a new Rule

³ Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (SR-FINRA-2008-067).

4000A series⁴ and certain amendments to Rules 9557 and 9559.⁵ The proposed changes were immediately effective, and became operative on February 19, 2010. In adopting the new consolidated rules, FINRA eliminated Rule 3131 and in its place adopted a new Rule 4130 that concerns the regulation of activities of Section 15C members experiencing financial and/or operational difficulties and made conforming changes to citations found under FINRA Rule 9557. Section 15C of the Exchange Act⁶ applies to government securities brokers and dealers, which does not apply to Nasdaq's membership as no such class of membership exists under Nasdaq rules. As a consequence, Nasdaq did not adopt an analogous Rule 4130A. In revising citations in Rule 9557, however, Nasdaq inadvertently included erroneous references to Rule 4130A. Accordingly, Nasdaq is proposing to eliminate the erroneous references to Rule 4130A found in Rule 9557.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general and with Section 6(b)(5) of the Act,⁸ 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 national market system, and, in general, to protect investors and the public interest. The proposed rule

⁴ Nasdaq currently has rules under its 4000 series, so to mirror the changes made by FINRA as closely as possible, Nasdaq created a new Rule 4000A series.

⁵ See supra, note 3.

⁶ 15 U.S.C. 78o-5.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

change corrects certain erroneous citations inadvertently included in Rule 9557 when adopting the new Rule 4000A series.

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

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)9 of the Act and Rule 19b-4(f)(6) thereunder.¹⁰

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. Nasdaq has provided 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.

Nasdaq believes that the proposed rule change does not significantly affect the protection

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

of investors or the public interest because it merely eliminates erroneous citations that, if left in the rule text, would cause investor confusion.

Nasdaq requests that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).¹¹ Nasdaq requests this waiver so that these corrections can be both immediately effective and operative, thus minimizing any confusion that may be caused by the erroneous citations. The Commission notes the proposed rule changes make technical non-substantive changes to Rule 9557. As noted above on January 20, 2010, Nasdaq filed a proposed rule change to make conforming changes to its rules, which included adopting a new Rule 4000A series¹² and certain amendments to Rules 9557 and 9559.¹³ The proposed changes were immediately effective and became operative on February 19, 2010. The Commission believes the earlier operative date is consistent with the protection of investors and the public interest because the proposed rule change permits Nasdaq to implement the rule without further delay and in a timely manner for the operative date of the financial responsibility rules.¹⁴

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:

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² Nasdaq currently has rules under its 4000 series, so to mirror the changes made by FINRA as closely as possible, Nasdaq created a new Rule 4000A series.

¹³ See supra, note 3.

¹⁴ 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).

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-2010-026 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-2010-026. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, 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-2010-026 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).