

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61789; File No. SR-NASDAQ-2010-037)

March 26, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Nasdaq's Rules to Eliminate an Outdated Reference

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 March 15, 2010, 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 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 the Substance of the Proposed Rule Change

Nasdaq proposes to modify Rule 5605(c), which contains the audit committee charter requirements, to eliminate an outdated reference to Independence Standards Board Standard 1.

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

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5605. Board of Directors and Committees

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

(a) – (b) No change.

(c) Audit Committee Requirements

(1) Audit Committee Charter

Each Company must certify that it has adopted a formal written audit committee charter and that the audit committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify:

(A) No change.

(B) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the Company, [consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for] actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor; and

(C) – (D) No change.

IM-5605-3. No change.

(2) – (5) No change.

(d) - (e) 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 Rule 5605(c)(1) describes the provisions that are required to be included in the audit committee charter of each Nasdaq-listed company. Among those provisions, Rule 5605(c)(1)(B) requires that the charter specify the audit committee's responsibility for “ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the Company, consistent with Independence Standards Board Standard 1....”

The Independence Standards Board (“ISB”), which was created in 1997 through an agreement between the SEC and the AICPA ceased operations in 2001.⁵ In 2002, Congress adopted Section 103(b) of the Sarbanes-Oxley Act⁶, directing the Public Company Accounting Oversight Board (the “PCAOB”) to establish rules on auditor independence for public companies. Pursuant to that authority, the PCAOB adopted Rule 3526, Communication with

⁵ SEC Press Release 2001-72, available at <http://www.sec.gov/news/press/2001-72.txt>.

⁶ 15 U.S.C. 7213.

Audit Committees Concerning Independence.⁷ This rule was designed to build on ISB Standard 1, and superseded that standard and two related interpretations.

Nasdaq proposes to remove the reference in its rules to the superseded ISB Standard. This proposed change will not change the substantive requirements that must be contained in the audit committee charter.

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 Section 6(b)(5) of the Act⁹, in particular, because 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change is designed to update Nasdaq's requirements concerning auditor independence by eliminating an outdated, redundant reference.

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.

⁷ Exchange Act Release No. 58415 (August 22, 2008), 73 FR 50843 (August 28, 2008) (File No. PCAOB-2008-003). This rule requires auditor's [sic] to deliver certain information concerning their independence to the audit committee and to discuss that information with the committee.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

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 Act¹⁰ and Rule 19b-4(f)(6)(iii) thereunder.¹¹

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:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6)(iii). 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 satisfied the five-day pre-filing notice requirement.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2010-037 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-2010-037. 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 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-2010-037 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).