

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64215; File No. SR-NASDAQ-2011-045)

April 6, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NASDAQ Rule 3011 to Reflect Changes to a Corresponding Financial Industry Regulatory Authority, Inc. Rule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4² thereunder, notice is hereby given that on March 31, 2011, 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 substantially prepared by the Exchange. 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

The Exchange proposes to amend NASDAQ Rule 3011 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority, Inc. (“FINRA”). The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com>, at NASDAQ’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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 has been 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 3011, which pertains to anti-money laundering compliance programs.³ In SR-FINRA-2009-039,⁴ FINRA adopted: (1) NASD Rule 3011 (AML Compliance Program) as FINRA Rule 3310 (AML Compliance

³ NASDAQ Rule 3011 will remain numbered as Rule 3011, rather than Rule 3310, like FINRA's rule, because NASDAQ already has a different rule operating as NASDAQ Rule 3310.

⁴ Securities Exchange Act Release No. 60645 (September 10, 2009), 74 FR 47630 (September 16, 2009) (SR-FINRA-2009-039).

Program), without substantive change; (2) NASD IM-3011-1 (Independent Testing Requirements) as FINRA Rule 3310.01, subject to certain amendments; and (3) NASD IM-3011-2 (Review of AML Compliance Person Information) as FINRA Rule 3310.02, without substantive change.

FINRA Rule 3310 requires that each AML compliance program must, at a minimum: (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act (“BSA”)⁵ and its implementing regulations promulgated by the Department of the Treasury; (3) provide in most instances for annual (on a calendar-year basis) independent testing for compliance to be conducted by member personnel or a qualified outside party; (4) designate and identify to FINRA an individual or individuals (i.e., AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML compliance program and provide prompt notification to FINRA of any changes to the designation; and (5) provide on-going training for appropriate persons. NASDAQ is proposing to adopt FINRA Rule 3310 in the same form as NASDAQ Rule 3011.

FINRA Rule 3310.01 (Independent Testing Requirements) is substantially similar to NASD IM-3011-1 (the predecessor to FINRA Rule 3310.01) in that: (1) members should undertake more frequent testing than required if circumstances warrant; (2) the person conducting the independent test must have a working knowledge of applicable

⁵ See Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the Bank Secrecy Act), 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330.

requirements under the BSA and its implementing regulations; and (3) the testing cannot be conducted by any person who performs the functions being tested, by the AML compliance person(s), or by any person who reports to any of these persons.

However, NASD IM-3011-1 permitted the AML compliance program testing to be conducted by persons who report to either the AML compliance person or persons performing the functions being tested if: (1) the member has no other qualified internal personnel to conduct the test; (2) the member establishes written policies and procedures to address conflicts that may arise from allowing the test to be conducted by a person who reports to the person(s) whose activities he or she is testing (e.g., anti-retaliation procedures); (3) to the extent possible, the person conducting the test reports the results of the test to someone who is senior to the AML compliance person or persons performing the functions being tested; and (4) the member documents its rationale, which must be reasonable, for determining there is no other alternative than to comply in this manner. In addition, if the person does not report the results consistent with (3) above, the member must document a reasonable explanation for not doing so.

This provision is referred to as the “independent testing exception.” When it renumbered NASD IM-3011-1 as FINRA Rule 3310.01, FINRA eliminated the independent testing exception, because the Financial Crimes Enforcement Network (“FinCEN”), a bureau within the Department of the Treasury that is responsible for administering the BSA and its implementing regulations, has stated that the independent testing provision of the BSA precludes AML program testing by personnel with an interest in the outcome of the testing and that an independent testing exception, such as the one previously in NASD IM-3011-1, is inconsistent with the BSA's independent

testing provision and FinCEN's interpretive guidance on the BSA's independent testing requirement. In light of this, NASDAQ proposes to adopt FINRA Rule 3310.01, which eliminates the independent testing exception, in the same form as NASDAQ Rule 3011.01.

Finally, FINRA Rule 3310.02 (Review of AML Compliance Person Information) requires each member to identify, review, and if necessary, update the information regarding its AML compliance person in the manner prescribed in NASD Rule 1160. NASDAQ is proposing to adopt this in the same form as NASDAQ Rule 3011.02.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 Rule 3011 to recent changes made to a corresponding FINRA rule in order to promote application of consistent regulatory standards.

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

The Exchange 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

⁶ 15 U.S.C. 78f(b)(5).

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6)⁸ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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:

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Exchange has satisfied this requirement.

- 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-2011-045 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-2011-045. 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 website (<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 website 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 the filing also will be available for inspection and copying at the principal office 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-2011-045 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.⁹

Cathy H. Ahn
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).