

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59547; File No. SR-NASDAQ-2009-014)

March 10, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish New Rules Applicable to the Nasdaq Market Center and Nasdaq Options Market that Explicitly Require Members to Input Accurate Information into Nasdaq Systems

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 23, 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 filed the proposed rule change as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ 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 Substance of the Proposed Rule Change

Nasdaq proposes to establish new rules applicable to the Nasdaq Market Center and Nasdaq Options Market that explicitly require members to input accurate information into Nasdaq systems. The text of the proposed rule change is available from Nasdaq’s website at <http://nasdaq.cchwallstreet.com>, at Nasdaq’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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 III 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 proposes to adopt new rules that make clear Nasdaq members’ responsibility to input accurate quotation and order information into the Nasdaq Market Center and Nasdaq Options Market (collectively the “Nasdaq Markets”). The Nasdaq Markets require entry of certain information to post a quote or to enter an order. Such information, among other things, identifies the member, the size and price of the order or quote, and the member’s capacity in placing an order. Accurate trade and quote information is fundamental to the operation of an efficient and fair market. Moreover, the information input by members when posting a quote or placing an order is used for purposes of policing the Nasdaq Markets. For example, the Financial Industry Regulatory Authority, Inc. (“FINRA”) conducts trade abuse surveillances of the Nasdaq Markets on Nasdaq’s behalf. The trade abuse surveillances use capacity information input by members. A member’s capacity in a trade concerns whether the member is acting as an agent, principal, or “riskless” principal in the transaction. Accordingly, accurate input of capacity information is of fundamental regulatory importance.

Nasdaq does not have a rule that makes an explicit statement regarding a member’s obligation to input accurate information into the Nasdaq Markets. Notwithstanding, Nasdaq believes that disciplinary cases against members entering inaccurate or incomplete information may be brought appropriately under Nasdaq Rule 2110, which requires members to observe high

standards of commercial honor and just and equitable principles of trade. Rule 2110 protects the investing public and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation. Because of the regulatory importance of accurate information input into the Nasdaq Markets, Nasdaq believes rules that directly address members' obligation to provide accurate information are warranted. The proposed rules make clear members' obligation to input accurate information into the Nasdaq Markets, and that failure to do so would be considered a violation of Nasdaq rules.

Nasdaq notes that FINRA has rules that require the accurate entry of certain trade information into its systems. For example, FINRA Rule 7330(d) requires FINRA members to report to the OTC Reporting Facility certain specific trade-related information. A failure to provide such information represents a violation of FINRA Rules, and may result in disciplinary action. FINRA has substantially similar requirements for other trade reporting systems it operates.⁵

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Section 6(b)(5) of the Act,⁷ 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

⁵ See FINRA Rules 7230A and 7230B.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

national market system, and, in general, to protect investors and the public interest. The amendments proposed herein will serve to promote the accuracy of information input into the Nasdaq Markets. Accurate information is necessary for the efficient and fair operation of the Nasdaq Markets, and will assist Nasdaq in surveilling the markets for fraudulent activity.

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

This 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 Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). The Exchange also provided the Commission with 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 the proposed rule change as required by Rule 19b-4(f)(6).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2009-014 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-2009-014. 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, 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 the 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-2009-014 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.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).