

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62044; File No. SR-NASDAQ-2010-057)

May 5, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rules 9552, 9554 and 9559 to Conform NASDAQ's Rules to Recent Changes to the Rules of FINRA

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 May 3, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") 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. 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 amend Rules 9552, 9554 and 9559 to conform NASDAQ's rules to recent changes to the rules of the Financial Industry Regulatory Authority ("FINRA"). The text of the proposed rule change is below. Proposed new language is italicized and proposed deletions are in brackets.

\* \* \* \* \*

**9550. Expedited Proceedings**

\* \* \* \* \*

**9552. Failure to Provide Information or Keep Information Current**

(a) - (g) No change.

(h) Defaults

---

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

<sup>2</sup> 17 CFR 240.19b-4.

A member or person who is suspended under this Rule and fails to request termination of the suspension within three[six] months of issuance of the original notice of suspension will automatically be expelled or barred.

\* \* \* \* \*

**9554. Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution**

**(a)** Notice of Suspension or[,] Cancellation[ or Bar]

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under the Nasdaq By-Laws, or a FINRA order of restitution or FINRA settlement agreement providing for restitution, Nasdaq Regulation staff may provide written notice to such member or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension [or bar ]from associating with any member.

**(b)** Service of Notice of Suspension or[,] Cancellation[ or Bar]

Nasdaq Regulation staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

**(c)** No change.

**(d)** Effective Date of Suspension or[,] Cancellation[ or Bar]

The suspension or[,] cancellation [or bar ]referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

**(e)** No change.

**(f)** Failure to Request Hearing

If a member or person does not timely request a hearing, the suspension or[,] cancellation [or bar ]specified in the notice shall become effective 21 days after the service of the notice and the notice shall constitute final Nasdaq action.

(g) No change.

\* \* \* \* \*

**9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series**

(a) - (e) No change.

**(f) Time of Hearing**

(1) - (2) No change.

(3) A hearing shall be held within 30[60] days after a respondent subject to a notice issued under Rules 9551 through 9555 files a written request for a hearing with the Office of Hearing Officers.

(4) No change.

(g) No change.

**(h) Transmission of Documents**

**(1)** Not less than two business days before the hearing in an action brought under Rule 9557, not less than seven days before the hearing in an action brought under Rules 9556 and 9558, and not less than 14[40] days before the hearing in an action brought under Rules 9551 through 9555, Nasdaq Regulation staff shall provide to the respondent who requested the hearing, by facsimile or overnight courier, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B) or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained until the date upon which the Nasdaq's final decision is served or, if applicable, upon the conclusion of any review by the Securities and Exchange Commission or the federal courts.

(2) Not less than two business days before the hearing in an action brought under Rule 9557, not less than three days before the hearing in an action brought under Rules 9556 and 9558, and not less than seven[14] days before the hearing in an action brought under Rules 9551 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight courier.

(i) – (s) No change.

\* \* \* \* \*

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 proposes certain conforming changes to its rules concerning expedited hearings in light of changes made to the rules of FINRA. Many of NASDAQ’s rules are based on rules of FINRA (formerly the National Association of Securities Dealers (“NASD”)). NASDAQ endeavors to keep such common rules identical to the extent practicable. FINRA recently amended certain rules under its Rule 9000 Series concerning expedited proceedings, which are closely mirrored in NASDAQ’s Rule 9000

Series.<sup>3</sup> Accordingly, NASDAQ is proposing to amend its analogous rules consistent with the changes made by FINRA, as discussed below.

The expedited proceedings rules of FINRA, and in turn of NASDAQ, address certain types of misconduct more quickly than would be possible under the ordinary disciplinary process, while also affording members numerous procedural protections. In its rule change,<sup>4</sup> FINRA modified various time requirements regarding expedited proceedings, added an expedited proceeding for failure to pay restitution, and harmonized a remedy in an expedited procedure with a remedy in the FINRA By-Laws. With respect to modifying time requirements, FINRA amended Rule 9552 to shorten the period before a suspension automatically turns into an expulsion or bar from six to three months. In addition, FINRA amended Rule 9559 to shorten the timeframe within which a hearing must be held from 60 days after a hearing request to 30 days after the request. As consequence of shortening the timeframe for hearings, FINRA also shortened the timeframes under Rule 9559(h) concerning the pre-hearing exchange of documents between the parties to the expedited proceeding.

FINRA amended Rule 9554, which contains expedited procedures for failure to pay FINRA arbitration awards, to also permit FINRA to take expedited action for failure to comply with a FINRA order of restitution or a FINRA settlement providing for restitution. FINRA noted that it did not have explicit authority to take expedited action against firms or associated persons who fail to pay restitution to a third party (usually investors who have been harmed), and that its only recourse was to initiate an ordinary

---

<sup>3</sup> Securities Exchange Act Release No. 61242 (December 28, 2009), 75 FR 167 (January 4, 2010) (SR-FINRA-2009-076).

<sup>4</sup> Id.

disciplinary action, which can take several months to conclude. In adding the new expedited procedure, FINRA stated it believed that firms and associated persons should not be permitted to continue doing business for prolonged periods when they have failed to pay restitution to third parties.

FINRA also eliminated from Rule 9554 the remedy of barring an individual for failure to pay an arbitration award. FINRA noted that it had no such authority under its by-laws, and as such that it was harmonizing the remedy for this misconduct with the remedy provided in its by-laws. NASDAQ is proposing to incorporate all the changes made by FINRA to its expedited proceedings rules into the analogous NASDAQ Rules 9552, 9554, and 9559.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general and with Section 6(b)(5) of the Act,<sup>6</sup> 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 changes will conform NASDAQ's rules to recent changes made to corresponding FINRA rules, which will promote the application of consistent regulatory standards.

---

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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)<sup>7</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>8</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. 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 of investors or the public interest because it merely eliminates erroneous

---

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

citations that, if left in the rule text, would cause investor confusion.<sup>9</sup>

NASDAQ asks that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>10</sup> 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 differing rule sets.

The Commission acknowledges that the proposal presents no novel issues, and that and it will provide a benefit to market participants by aligning Nasdaq's rules with those of FINRA. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.<sup>11</sup>

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-

---

<sup>9</sup> The Commission believes that this statement is incorrect. The proposed rule change does not simply eliminate erroneous citations; instead, the proposed rule change makes specific changes to align Nasdaq's rules with that of FINRA.

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).



NASDAQ-2010-057 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-2010-057. 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. 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-2010-057 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>12</sup>

Florence E. Harmon  
Deputy Secretary

---

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