

SECURITIES AND EXCHANGE COMMISSION  
Release No. 34-62554; File No. SR-NASDAQ-2008-014

July 22, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and 2 Thereto, to Amend Certain Corporate Governance Disclosure Requirements for Listed Companies

On February 27, 2008, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend certain of its rules relating to corporate governance standards for listed companies. The proposed rule change, as modified by Amendments No. 1 and 2 thereto, was published for comment in the Federal Register on June 17, 2010.<sup>3</sup> The Commission received no comments on the proposal.

The proposed rule change would remove the disclosure requirements that a listed company must fulfill when it relies on certain exceptions to Nasdaq rules concerning the composition and independence of audit, compensation, and nominating committees, and replace them with references to equivalent disclosure requirements of Regulation S-K under the Securities Act of 1933. The proposal also would add a reference to the disclosures that a listed company must make pursuant to Rule 10A-3 under the Act when a listed company relies on certain exceptions to that rule. The proposal further would allow a listed company the option of disclosing on or through its website, instead of in its annual proxy (or similar document), when it has relied on the exception that permits the appointment of a non-independent director to a

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

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

<sup>3</sup> See Securities Exchange Act Release No. 62285 (June 11, 2010), 75 FR 34506.

company's compensation or nominating committee in exceptional and limited circumstances.<sup>4</sup> Finally, the proposal would permit the disclosure of waivers of a company's code of conduct, as required by Nasdaq Rule 5610, to be made on or through a listed company's website or, in certain circumstances, through a press release.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, in particular, the requirements of Section 6 of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>7</sup> because it would remove disclosure requirements in Nasdaq's rules that duplicate Commission disclosure requirements and replace them with direct references to those Commission requirements. In addition, the proposed rule change would afford Nasdaq-listed companies additional methods to make certain disclosures required by the Exchange's rules, thereby easing compliance for listed companies and allowing them to rely on technology to provide information to investors in a timelier manner, consistent with the goal of investor protection.

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<sup>4</sup> In general, directors serving on the compensation and nominating committees of listed companies must be independent. See Nasdaq Rules 5605(d)(1) and (2) and 5605(e)(1) and (2). Non-independent directors, however, are permitted under exceptional and limited circumstances. See Nasdaq Rules 5605(d)(3) and 5605(e)(3).

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>8</sup>, that the proposed rule change (SR-NASDAQ-2008-014), as modified by Amendments No. 1 and 2 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).