

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64713; File No. SR-NASDAQ-2011-082)

June 21, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Align Certain Disclosure Requirements in Nasdaq's Corporate Governance Rules with Similar Disclosure Requirements in the Commission's Rules

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 June 9, 2011, 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. The Exchange filed the proposal 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 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 align certain disclosure requirements in Nasdaq's corporate governance rules with similar disclosure requirements in the Commission's rules. Nasdaq will implement the proposed rule change thirty days after the date of the filing. The text of the

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).

proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.⁵

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5605. Boards of Directors and Committees.

(a) No change.

IM-5605. No change.

(b) Independent Directors

(1) Majority Independent Board

A majority of the board of directors must be comprised of Independent Directors as defined in Rule 5605(a)(2). The Company, other than a Foreign Private Issuer, must [disclose in its annual proxy (or, if the Company does not file a proxy, in its Form 10-K or 20-F) those directors that the board of directors has determined to be independent under Rule 5605(a)(2).] comply with the disclosure requirements set forth in Item 407(a) of Regulation S-K. A Foreign Private Issuer must disclose in its next annual report (e.g., Form 20-F or 40-F) those directors that the board of directors has determined to be independent under Rule 5605(a)(2).

(A) No change.

IM-5605-1. No change.

(2) No change.

IM-5605-2. No change.

(c) – (e) No change.

⁵ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

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5615. Exemptions from Certain Corporate Governance Requirements

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy and Companies transferring from other markets. This rule also describes the applicability of the corporate governance rules to controlled companies and sets forth the phase-in schedule afforded to Companies ceasing to be controlled companies.

(a) – (b) No change.

(c) How the Rules Apply to a Controlled Company

(1) No change.

(2) Exemptions Afforded to a Controlled Company

A Controlled Company is exempt from the requirements of Rules 5605(b), (d) and (e), except for the requirements of subsection (b)(2) which pertain to executive sessions of Independent Directors. A Controlled Company, other than a Foreign Private Issuer, relying upon this exemption must [disclose in its annual meeting proxy statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) that it is a Controlled Company and the basis for that determination.]comply with the disclosure requirements set forth in Instruction 1 to Item 407(a) of Regulation S-K. A Foreign Private Issuer must disclose in its next annual report (e.g., Form 20-F or 40-F) that it is a Controlled Company and the basis for that determination.

(3) 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 proposes to make changes to Rules 5605(b)(1) and 5615(c)(2) to align certain disclosure requirements with the applicable disclosure requirements of Item 407(a) of Regulation S-K⁶ and incorporate those requirements into Nasdaq rules.

Nasdaq currently requires a listed company to disclose in its annual proxy (or if the company does not file a proxy, in its Form 10-K or 20-F) those directors that the board of directors has determined to be independent.⁷ Nasdaq proposes to replace its current disclosure requirement in Listing Rule 5605(b)(1) with a reference to the disclosure requirement in Item 407(a) of Regulation S-K, which requires similar disclosure.⁸ As a result, a listed company, other than a foreign private issuer, that does not make the disclosure required under Item 407(a) of

⁶ 17 CFR 229.407(a).

⁷ Nasdaq Listing Rule 5605(b)(1).

⁸ See 17 CFR 229.407(a) (requiring a company to, among other things, identify each director that is independent and explain the factors considered by the board in making its independence determination).

Regulation S-K will be out of compliance with Nasdaq's rules. A foreign private issuer, which is not subject to Item 407(a) of Regulation S-K, will continue to be required to make the disclosure in its annual report.

Nasdaq believes that the disclosure requirements in current Nasdaq Listing Rule 5605(b)(1) and Item 407(a) of Regulation S-K are substantially similar and, to the extent they differ, Item 407(a) requires more disclosure.⁹ As a result, incorporating these additional disclosure requirements from Item 407(a) of Regulation S-K into Nasdaq's rules will avoid duplication and confusion and enhance overall disclosures by its listed companies.

Nasdaq also currently requires a company to disclose that it is a controlled company, the basis for that determination, and that it is relying on the exemption for a controlled company from the requirements to have a majority independent board and independent director oversight of executive officer compensation and director nominations.¹⁰ Nasdaq proposes to replace this disclosure requirement with a reference to the disclosure requirement in Instruction 1 to Item 407(a) of Regulation S-K, which requires similar disclosure.¹¹ As a result, a controlled company, other than a foreign private issuer, that does not make the disclosure required under Instruction 1 to Item 407(a) of Regulation S-K will be out of compliance with Nasdaq's rules. A foreign private issuer, which is not subject to Item 407(a) of Regulation S-K, will continue to be

⁹ Id. Differences include where Item 407(a)(2) of Regulation S-K requires specific disclosures when a registrant uses its own definitions when determining whether directors and director nominees are independent and where Item 407(a)(3) of Regulation S-K requires specific disclosures of any transactions, relationships or arrangements not disclosed pursuant to Item 404 of Regulation S-K that were considered by the board in determining independence.

¹⁰ Nasdaq Listing Rule 5615(c)(2).

¹¹ See 17 CFR 229.407(a) (in instruction 1, requiring a company that is relying on an exemption to disclose the exemption relied upon and explain the basis for concluding that such exemption is applicable).

required to make the disclosure in its annual report. Nasdaq believes that the disclosure requirements in current Nasdaq Listing Rule 5615(c)(2) and Instruction 1 to Item 407(a) of Regulation S-K are substantially similar.¹²

Nasdaq believes that the proposed changes will avoid duplication and confusion, given that the current Nasdaq disclosure requirements are duplicative of the disclosure required by Item 407(a), and will facilitate compliance for listed companies while continuing to provide transparency to investors. As a result of the changes, Nasdaq rules will be harmonized with the applicable disclosure requirements of Item 407(a) of Regulation S-K without substantively lessening any of Nasdaq's regulatory requirements for listed companies.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹³ in general and with Section 6(b)(5) of the Act,¹⁴ in particular. The proposed rule change would remove disclosure requirements in Nasdaq's rules that are similar to Commission disclosure requirements and provide cross references to Commission requirements. Nasdaq believes the proposed amendments are consistent with the protection of investors and the public interest, as they simply harmonize Nasdaq's disclosure requirements with those of the Commission and, therefore, do not substantively lessen Nasdaq's regulatory requirements for listed companies. As such, the proposed rule change 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.

¹² Id.

¹³ 15 U.S.C. 78f.

¹⁴ 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 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, provided that the self-regulatory organization has given 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,¹⁵ the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

¹⁵ The Exchange has satisfied this requirement.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

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, as amended, 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-2011-082 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-2011-082. 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 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-2011-082 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.¹⁸

Cathy H. Ahn
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).