

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92738; File No. SR-NASDAQ-2021-064)

August 24, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend General 9, Section 51, Research Analysts

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 August 12, 2021, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been 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 General 9, Section 51, Research Analysts.

The Exchange also proposes to amend General 9, Section 10, Recommendations to Customers (Suitability).

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, 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 received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange proposes to amend General 9, Section 51, Research Analysts. Specifically, the Exchange proposes to (1) remove references to FINRA Rules 1120³ and 1250⁴; and (2) add references to FINRA Rules 1240 and 1220(a)(6), (a)(14) and (b)(6).

The Exchange also proposes to amend General 9, Section 10, Recommendations to Customers (Suitability).

³ Nasdaq Rule 1050 (subsequently renumbered as General 9, Section 51) originally referred to NASD Rule 1120, Continuing Education Requirements. See Securities Exchange Act Release Nos. 58069 (June 30, 2008), 73 FR 39360 (July 9, 2008) (SR-NASDAQ-2008-054) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Technical and Conforming Changes to Nasdaq Rules); and 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell) (renumbering Nasdaq Rule 1050 as General 9, Section 51). The SEC approved the adoption of NASD Rule 1120 (Continuing Education Requirements) as new FINRA Rule 1250 (Continuing Education Requirements) subject to certain amendments, effective on October 17, 2011. See Securities Exchange Act Release No. 64687 (June 16, 2011); 76 FR 36586 (June 22, 2011) (SR-FINRA-2011-013) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Establishing a Registration Category, Qualification Examination and Continuing Education Requirements for Certain Operations Personnel, and Adopt FINRA Rule 1250 (Continuing Education Requirements) in the Consolidated FINRA Rulebook). See also note 5 below.

⁴ FINRA Rule 1250 was renumbered as FINRA Rule 1240. See note 5 below.

General 9, Section 51

By way of background, FINRA previously deleted in their entirety the NASD Rule 1000 Series relating to registration of Principals and Representatives and adopted rules relating to qualification and registration requirements in the Consolidated FINRA Rulebook.⁵ In that rule change, FINRA Rule 1250 was renumbered to FINRA Rule 1240.⁶ FINRA Rule 1240 describes continuing education requirements applicable to registered persons and consists of a Regulatory Element and a Firm Element.

Nasdaq subsequently filed a rule change⁷ to amend, reorganize and enhance certain of its corresponding membership, registration and qualification requirements rules in part in response to the FINRA Rule Changes,⁸ and also in order to facilitate the adoption of similar membership, registration and qualification rules by Nasdaq's affiliated exchanges. In that rule change, Nasdaq amended its Rule 1050 (now General 9, Section 51) to remove references to NASD Rules 2711, 1050, 1022 and 1120 and it replaced those references with FINRA Rules 1120, 1250, and 2241.⁹ The reference to FINRA Rule 1120 was in error because, at that time, FINRA Rule 1120 did not

⁵ See Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR-FINRA-2017-007) (Order Approving Proposed Rule Change To Adopt Consolidated Registration Rules, Restructure the Representative-Level Qualification Examination Program, Allow Permissive Registration, Establish Exam Waiver Process for Persons Working for Financial Services Affiliate of Member, and Amend the Continuing Education Requirements).

⁶ Id.

⁷ See Securities Exchange Act Release No. 84386 (October 9, 2018), 83 FR 51988 (October 15, 2018) (SR-NASDAQ-2018-078) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules).

⁸ See note 5 above.

⁹ See note 7 above.

exist. NASD Rule 1120 was adopted as FINRA Rule 1250.¹⁰ Also, the references to FINRA Rule 1250 were in error because FINRA Rule 1250 was renumbered as FINRA Rule 1240.¹¹ Of note, NASD Rules 1050 (Registration of Research Analysts) and 1022 (Categories of Principal Registrations) were superseded by the FINRA Rule 1200 Series but this was not reflected within SR-FINRA-2018-078 [sic].¹²

At this time, Nasdaq proposes to remove the incorrect references to FINRA Rules 1120 and 1250 as such rules do not exist. The Exchange proposes to update the reference to FINRA Rule 1250 with a reference to current FINRA Rule 1240. The Exchange also proposes to add references to FINRA Rules 1220(a)(6), (a)(14), and (b)(6), because they correspond to previous NASD Rules 1050 and 1022. These changes would reflect the current FINRA rules relating to research analysts.

The Exchange proposes to amend General 9, Section 10, Recommendations to Customers (Suitability), to update a citation within subparagraph (b)(3) to NASD Rule IM-2210-6. In 2011, FINRA replaced NASD IM-2210-6 with FINRA Rule 2214.¹³

¹⁰ See note 3 above.

¹¹ See notes 4 and 5 above.

¹² See note 5 above.

¹³ See Securities Exchange Act Release No. 64984 (June 28, 2011), 76 FR 46870 (August 3, 2011) (SR-FINRA-2011-035) (Notice of Filing of Proposed Rule Change To Adopt FINRA Rules 2210 (Communications With the Public), 2212 (Use of Investment Companies Rankings in Retail Communications), 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings), 2214 (Requirements for the Use of Investment Analysis Tools), 2215 (Communications With the Public Regarding Security Futures), and 2216 (Communications With the Public About Collateralized Mortgage Obligations (CMOs)) in the Consolidated FINRA Rulebook).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange's proposal to remove inaccurate FINRA rule references from General 9, Section 51 and replace them with references to current FINRA rules that apply to research analysts and [sic] is consistent with the Act. The Exchange's proposal will align Nasdaq's rule to FINRA rules.

The Exchange's proposal to amend General 9, Section 10, Recommendations to Customers (Suitability), to update a citation within subparagraph (b)(3) to NASD Rule IM-2210-6 is consistent with the Act. Replacing NASD IM-2210-6 with FINRA Rule 2214 will bring greater transparency to the correct FINRA rule.

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. The proposed amendments do not impose an undue burden on competition as the proposal will amend the Exchange's General 9, Section 51 to remove inaccurate FINRA rule references and replace them with references to current FINRA Rules that apply to research analysts.

The Exchange's proposal to amend General 9, Section 10, Recommendations to Customers (Suitability), to update a citation within subparagraph (b)(3) to NASD Rule IM-2210-6 does not impose an undue burden on competition. Replacing NASD IM-2210-6 with FINRA

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

Rule 2214 will bring greater transparency to the correct FINRA rule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

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 Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

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 change 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:

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give 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. The Exchange has satisfied this requirement.

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-2021-064 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2021-064. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NASDAQ-2021-064 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

Jill M. Peterson
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).