

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53623; File No. 4-514)

April 10, 2006

Self-Regulatory Organizations; Order Approving Minor Rule Violation Plan for The NASDAQ Stock Market LLC

On February 22, 2006, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed minor rule violation plan (“MRVP”) pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19d-1(c)(2) thereunder.² The proposed MRVP was published for public comment on March 16, 2006.³ The Commission received no comments on the proposal. This order approves Nasdaq’s proposed MRVP.

Nasdaq’s MRVP specifies those uncontested minor rule violations with sanctions not exceeding \$2,500 which would not be subject to the provisions of Rule 19d-1(c)(1) under the Act⁴ requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.⁵ In accordance with paragraph (c)(2) of Rule 19d-1 of the Act, Nasdaq proposes to designate certain specified

¹ 15 U.S.C. 78s(d)(1).

² 17 CFR 240.19d-1(c)(2).

³ See Securities Exchange Act Release No. 53428 (March 7, 2006), 71 FR 13645.

⁴ 17 CFR 240.19d-1(c)(1).

⁵ The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations (“SROs”) to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with the Commission shall not be considered “final” for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

rule violations as minor rule violations, and requests that it be relieved of the reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. Nasdaq proposes to include in its proposed MRVP the policies and procedures currently included in Nasdaq Rule 9216(b) (“Procedure for Violations Under Plan Pursuant to SEC Rule 19d-1(c)(2)”) and the rule violations currently included in Nasdaq Rule IM-9216 (“Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)”).⁶

Pursuant to Nasdaq’s proposed MRVP, under Rule 9216(b) and IM-9216, Nasdaq or the Nasdaq Review Counsel may impose a fine (not to exceed \$2,500) and/or a censure on a member or an associated person with respect to any rule listed in IM-9216. If the person against whom the fine or censure is imposed does not dispute the violation, the Department of Enforcement or the Department of Market Regulation may prepare and request that such person execute a minor rule violation plan letter. In such a letter, the member or associated person accepts a finding of violation, consents to the imposition of sanctions, and agrees to waive the right to a hearing before a Hearing Panel (or, if applicable, an Extended Hearing Panel); any right of appeal to the Nasdaq Review Council, the Commission, or the courts; and any other challenge to the validity

⁶ On January 13, 2006, the Commission approved Nasdaq’s application for registration as a national securities exchange, including the rules governing the Nasdaq exchange. Securities Exchange Act Release No. 53128, 71 FR 3550 (January 23, 2006). In the approval order, the Commission noted that Nasdaq Rule 9216(b) and IM-9216 provided for the imposition of fines for minor rule violations pursuant to a minor rule violation plan. Accordingly, the Commission noted that as a condition to the operation of the Nasdaq Exchange, Nasdaq must file a minor rule violation plan with the Commission. Nasdaq represented that modifications may be made to IM-9216 in the future. Nasdaq proposed that when amendments to IM-9216 are made pursuant to a rule filing submitted under Rule 19b-4 of the Act, such a filing would automatically be deemed a request by Nasdaq for Commission approval of a modification to its MRVP.

of the letter. The letter will describe the act or practice engaged in or omitted; the rule, regulation, or statutory provision violated; and the sanction or sanctions to be imposed.

If a member or associated person executes the minor rule violation plan letter, the letter is submitted to the Nasdaq Review Council. The Office of Disciplinary Affairs may accept the letter or refer it to the Nasdaq Review Council for acceptance or rejection. Similarly, the Review Subcommittee of the Nasdaq Review Council may accept or reject the letter or refer it to the Nasdaq Review Council for acceptance or rejection. If the letter is rejected, Nasdaq may take any other appropriate disciplinary action with respect to the alleged violation or violations.

Nasdaq proposed that the quarterly report of actions taken on minor rule violations under Rule 9216(b) and IM-9216 would list for each violation: Nasdaq's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision(s) violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition.

The Commission finds that the proposed MRVP is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁷ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to 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 Commission also believes that that proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act⁸ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. In addition,

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

because the MRVP offer procedural rights to a person sanctioned under Rule 9216(b), the Commission believes that Rule 9216(b) provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.⁹

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,¹⁰ because the MRVP strengthens Nasdaq's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposal, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of sanctions under Rule 9216(b). The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, Rule 9216(b) provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that Nasdaq will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a sanction under the MRVP is appropriate, or whether a violation requires formal disciplinary action.

⁹ 15 U.S.C. 78f(b)(7) and 78f(d)(1).

¹⁰ 17 CFR 240.19d-1(c)(2).

IT IS THEREFORE ORDERED, pursuant to Rule 19d-1(c)(2) under the Act,¹¹ that the proposed MRVP for Nasdaq, File No. 4-514, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Nancy M. Morris
Secretary

¹¹ Id.

¹² 17 CFR 200.30-3(a)(44).