

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53428; File No. 4-514)

March 7, 2006

Self-Regulatory Organizations; Notice of Filing of Proposed Minor Rule Violation Plan by The Nasdaq Stock Market LLC

Pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19d-1(c)(2) thereunder,² notice is hereby given that on February 22, 2006, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) copies of a proposed minor rule violation plan (“MRVP”) specifying 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 Act³ 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.⁴ In accordance with paragraph (c)(2) of Rule 19d-1 of the Act, Nasdaq proposes to designate certain specified 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

¹ 15 U.S.C. 78s(d)(1).

² 17 CFR 240.19d-1(c)(2).

³ 17 CFR 240.19d-1(c)(1).

⁴ 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 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.

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)”).⁵

According 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.⁶ 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 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.⁷

⁵ On January 13, 2006, the Commission approved Nasdaq’s application for registration as a national securities exchange, including the rules governing the Nasdaq exchange. 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.

⁶ Consistent with Nasdaq’s rules, Nasdaq noted in its submission to the Commission that the Department of Enforcement, the Department of Market Regulation, and the Office of Disciplinary Affairs will be comprised of NASD Regulation, Inc. (“NASDR”) staff acting on behalf of Nasdaq pursuant to Nasdaq’s contractual arrangement with NASDR. See Nasdaq Rule 9001 and Nasdaq Rule 9120(f), (g) and (x).

⁷ Nasdaq attached a sample form of a minor rule violation letter with its submission to the Commission.

If a member or associated person executes a minor rule violation plan letter, the letter shall be submitted to the Nasdaq Review Council. The Office of Disciplinary Affairs may accept such 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 such 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 violated, the sanction imposed, the number of times the rule violation has occurred and the date of disposition.⁸

The following Nasdaq rule violations currently are included in Rule 9216(b) and IM-9216: Rules 2210, 2211, IM-2210-1 and 2210-4 (Communications with the public); Rule 3360 (Failure to timely file reports of short positions on Form NS-1); Rule 3110 (Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Rules of Nasdaq); Rule 8211 (Failure to submit trading data as requested); Rule 1013 (Failure to timely submit amendments to Form BD); Rule 1031 (Failure to timely submit amendments to Form U4); Rule 1031 (Failure to timely submit amendments to Form U5); Rule 1120 (Failure to comply with the Firm Element of the continuing education requirements); Rule 3010(b) (Failure to timely file reports pursuant to the Taping Rule); Rule 3070 (Failure to timely file reports); Rule 4619(e) (Failure to timely file notifications pursuant to SEC Regulation M); Rules 6954 and

⁸ Nasdaq attached a sample form of the quarterly report with its submission to the Commission.

6955 (Failure to submit data in accordance with the Order Audit Trail System); Rule 11870 (Failure to abide by Customer Account Transfer Contracts); SEC Exchange Act Rule 604 (Failure to properly display limit orders); SEC Exchange Act Rule 602(b)(5) (Failure to properly update published quotations in certain Electronic Communication Networks); SEC Exchange Act Rule 17a-5 (Failure to timely file FOCUS reports and annual reports); and SEC Exchange Act Rule 17a-10 (Failure to timely file Schedule I). Nasdaq represented that modifications may be made to IM-9216. Nasdaq proposes that when amendments to IM-9216 are made pursuant to a rule filing submitted under Rule 19b-4 of the Act,⁹ such a filing would automatically be deemed a request by Nasdaq for Commission approval of a modification to its MRVP.

I. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Nasdaq's proposed Minor Rule Violation Plan, including whether the proposed plan 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/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-514 on the subject line.

Paper comments:

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

All submissions should refer to File Number 4-514. 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

⁹ 17 CFR 240.19b-4.

efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan 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. 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 4-514 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

II. Date of Effectiveness of the Proposed Minor Rule Violation Plan and Timing for Commission Action

Pursuant to Section 19d-1 of the Act and Rule 19d-1(c)(2) thereunder,¹⁰ after [insert date 21 days from publication in the Federal Register], the Commission may, by order, declare Nasdaq's proposed Minor Rule Violation Plan effective if the plan is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission in its order may restrict the categories of violations to be designated as minor rule

¹⁰ 15 U.S.C. 78s(d)(1) and 17 CFR 240.19d-1(c)(2).

violations and may impose any other terms or conditions to the proposed Minor Rule Violation Plan, File No. 4-514, and to the period of its effectiveness which the Commission deems necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris
Secretary

¹¹ 17 CFR 200.30-3(a)(12).