

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60094; File No. SR-NASDAQ-2009-049)

June 10, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the NASDAQ Listing Rules to Reflect Changes to the Rules of the Commission

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 May 20, 2009, 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 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

Nasdaq proposes a rule change to modify Nasdaq’s Listing Rules to reflect recent changes to Commission rules. The text of the proposed rule change is available from Nasdaq’s website at <http://nasdaq.cchwallstreet.com>, at Nasdaq’s principal office, 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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to conform its rules to reflect two recent changes to the rules of the Commission. On September 23, 2008, the Commission adopted changes to Form 20-F³ that, beginning with the report filed for the first fiscal year ended on or after December 15, 2008, requires companies that file an annual report on Form 20-F to discuss significant differences in their corporate governance practices compared to the corporate governance practices applicable to domestic companies under the relevant exchange's listing standards.⁴ In contrast, Nasdaq Rule 5615(a)(3) allows foreign private issuers to disclose their non-conforming corporate governance practices in their annual reports or registration statements filed with the Commission or on their websites. As a consequence, Nasdaq's requirements regarding annual report disclosure by foreign private issuers who file Form 20-F are inconsistent with those of the Commission. Accordingly, Nasdaq is proposing to eliminate from Rule 5615(a)(3) and IM-5615-3 the option available to foreign private issuers that file a Form 20-F to disclose non-conforming corporate practices solely on their websites.⁵ These changes will ensure that Nasdaq's rules are consistent with the Commission's requirements, and will remove a potential trap for the unwary presented by complying with a more permissive self-regulatory organization rule and unknowingly failing to satisfy the rules of the

³ 17 CFR 249.220f.

⁴ Securities Exchange Act Release No. 58620 (September 23, 2008), 73 FR 58300 (October 6, 2008). This disclosure is required in Item 16G of the Form 20-F.

⁵ Companies will continue to be encouraged to make such disclosures on their websites, in addition to providing the disclosures in their Forms 20-F, so that the non-conforming practices will be as readily transparent to investors and potential investors as possible.

Commission.⁶ Nasdaq also proposes to reorganize Rule 5615(a)(3) to simplify its structure.

In a similar regard, Nasdaq is proposing changes to account for the Commission's amendments to the disclosure and reporting requirements designed to simplify and provide regulatory relief to smaller companies (the "Smaller Reporting Company Amendments").⁷ The Smaller Reporting Company Amendments, which became fully effective March 15, 2009, replaced Item 401(e) of Regulation S-B⁸ and Item 401(h) of Regulation S-K⁹, which previously defined an "audit committee financial expert" with new Items 407(d)(5)(ii) and (iii) of Regulation S-K.¹⁰ Nasdaq proposes to update references in IM-5605-4 relating to the definition of an audit committee financial expert by deleting citations to old Item 401(e) of Regulation S-B and old Item 401(h) of Regulation S-K, and replacing them with citations to new Items 407(d)(5)(ii) and (iii) of Regulation S-K, which now define audit committee financial expert.

The Smaller Reporting Company Amendments also eliminated the term "small business issuer"¹¹ and integrated Item 404 of Regulation S-B,¹² which previously set

⁶ Nasdaq notes that the Commission's rules do not apply to a foreign private issuer that files reports on a form other than Form 20-F, such as Form 40-F, 17 CFR 249.240f. Such companies will continue to be allowed to make the required disclosure solely on their website.

⁷ Securities Exchange Act Release No. 56994 (December 19, 2007), 73 FR 934 (January 4, 2008). These amendments, among other things, integrated the Regulation S-B scaled disclosure requirements into Regulation S-K, and eliminated Forms 10-QSB and 10-KSB, effective October 31, 2008 and March 15, 2009, respectively.

⁸ Formerly, 17 CFR 228.401(e).

⁹ Formerly, 17 CFR 229.401(h).

¹⁰ 17 CFR 229.407(d)(5)(ii) and (iii).

¹¹ Formerly, 17 CFR 228.10.

¹² Formerly, 17 CFR 228.404.

forth the requirements for a small business issuer to disclose transactions with related persons, into Item 404 of Regulation S-K.¹³ Under revised Item 404 of Regulation S-K, the new term “smaller reporting company”¹⁴ replaced the term small business issuer formerly found in Item 404 of Regulation S-B. Currently, Nasdaq Rule 5630, which relates to the review and oversight of related party transactions, references both Item 404 of Regulation S-B and Item 404 of Regulation S-K. As such, Nasdaq is proposing to eliminate reference to Item 404 of Regulation S-B and the term “small business issuer” from Rule 5630.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁵ in general, and with Section 6(b)(5) of the Act,¹⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change is designed to facilitate companies’ compliance with the rules of the Commission by aligning Nasdaq’s disclosure requirements with the newly-adopted and more proscriptive rules of the Commission and to update references to deleted Commission rules. Nasdaq notes that the proposed changes to Rule 5615(a)(3) and IM 5615-3 will not eliminate or reduce information now available to investors, but rather will

¹³ 17 CFR 229.404.

¹⁴ The new term “smaller reporting company” is defined by Item 10(f)(1). See 17 CFR 229.10(f)(1).

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(5).

consolidate the location of such information and may increase the availability of such information to the extent foreign private issuers determine to continue to disclose the non-conforming practices on their websites in addition to the required Form 20-F disclosure. Nasdaq also believes that the proposed changes will assist foreign private issuers in avoiding a trap for the unwary presented by complying with a more permissive self-regulatory organization rule and unknowingly failing to satisfy the rules of the Commission. Similarly, Nasdaq believes that the elimination of references to Regulation S-B and amendments to rule citations to Regulation S-K found in IM-5605-4 and Rule 5630 will serve to avoid confusion with respect to disclosure requirements and definitions applicable to certain Nasdaq companies.

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 change does not: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for thirty days after the date of the filing, or such shorter time as the Commission may

designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed under 19b-4(f)(6) normally does not become operative prior to thirty days after the date of the filing.¹⁹ However, pursuant to Rule 19b-4(f)(6)(iii),²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. Nasdaq has requested that the Commission waive the 30-day pre-operative delay and designate the proposed rule change to become operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the filing corrects inaccuracies in Nasdaq's rules and conforms Nasdaq rules that are currently inconsistent with those of the Commission. The Commission believes that the proposed changes will help certain companies avoid violating the Commission's disclosure rules as they prepare their annual reports, by conforming Nasdaq's disclosure requirements with those of the Commission. In addition, the proposed changes will correct inaccurate rule citations to

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, Nasdaq is required 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. Nasdaq has complied with this requirement.

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

the rules and regulations of the Commission, thereby reducing confusion. Thus, the Commission designates the proposal to become operative upon filing.²¹

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

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:

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-2009-049 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-2009-049. 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

²¹ For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the propose rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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, 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 such filing also will be available for inspection and copying at the principal office of the Exchange. 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 No. SR-NASDAQ-2009-049 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).