

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61128; File No. SR-NASDAQ-2009-106)

December 8, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 2330 and IM-2330 to Reflect Changes to Corresponding FINRA Rule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 4, 2009, The NASDAQ Stock Market LLC (the “Exchange” or “NASDAQ”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> the NASDAQ Stock Market LLC (the “Exchange” or “NASDAQ”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend NASDAQ Rule 2330 and IM-2330 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority (“FINRA”). The text of the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets:

NASDAQ Stock Market Rules

\* \* \* \* \*

2150. Customers' Securities or Funds

(a) Nasdaq Members and persons associated with a member shall comply with FINRA Rule 2150 as if such Rule were part of Nasdaq's Rules.

(b) Nothing in FINRA Rule 2150, as applied to Nasdaq members and their associated persons, shall be construed to authorize any Nasdaq member or associated person to act in a manner inconsistent with Section 11(a) of the Act.

IM-2150. Segregation of Customers' Securities

(a) Nasdaq Members and persons associated with a member shall comply with FINRA Interpretive Material 2150 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 2150 shall be construed as references to Nasdaq Rule 2150.

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[2330. Customers' Securities or Funds

(a) Nasdaq Members and persons associated with a member shall comply with NASD Rule 2330 as if such Rule were part of Nasdaq's Rules.

(b) Nothing in NASD Rule 2330, as applied to Nasdaq members and their associated persons, shall be construed to authorize any Nasdaq member or associated person to act in a manner inconsistent with Section 11(a) of the Act.]

[IM-2330. Segregation of Customers' Securities

(a) Nasdaq Members and persons associated with a member shall comply with NASD

Interpretive Material 2330 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 2330 shall be construed as references to Nasdaq Rule 2330.]

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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, the Exchange 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. 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

Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ also proposes to initiate a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of NASDAQ rules to mirror corresponding FINRA rules, because existing or

planned NASDAQ rules make use of those numbers. However, wherever possible, NASDAQ plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses NASDAQ Rule 2330 entitled “Customers’ Securities or Funds” and IM-2330 entitled “Segregation of Customers’ Securities.” NASDAQ Rule 2330 and IM-2330 both make reference to NASD Rule 2330 entitled “Improper Use of Customer’s Securities or Funds; Prohibitions Against Guarantees and Sharing in Accounts.” FINRA filed a proposed rule change, which will be effective December 14, 2009, to adopt NASD Rule 2330 as FINRA Rule 2150.<sup>6</sup> FINRA made minor changes to Rule 2150, specifically amending 2150(c). FINRA Rule 2150 prohibits members and associated person from: (a) making improper use of a customer’s securities or funds; (b) guaranteeing a customer against loss in connection with any securities transaction or in any securities account of the customer; and (c) sharing in the profits or losses in the customer’s account except under certain limited conditions specified in the Rule. In addition, FINRA added Supplementary Information to Rule 2150 that codifies existing staff guidance clarifying that: (i) a "guarantee" extended to all holders of a particular security by an issuer as part of that security generally would not be subject to the prohibition against guarantees and that a permissible sharing arrangement remains subject to other applicable FINRA rules; (ii) the rule does not preclude a member from determining on an after-the-fact basis, to reimburse a customer for transaction losses, provided however that the member shall comply with all reporting requirements that may be applicable to such payment; (iii) the rule does not preclude a member from correcting a bona fide error; and (iv) the required written authorization(s) shall be preserved for a period of at least six years after the date the account is closed, which is consistent with the retention period under the Act for similar records.

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<sup>6</sup> Securities Exchange Act Release No. 60701 (September 21, 2009), 74 FR 49425 (September 28, 2009) (SR-FINRA-2009-014).

NASDAQ is proposing to amend NASDAQ Rule 2330 and IM-2330 by renaming Rule 2330 to new Rule 2150 and renaming IM-2330 to new IM-2150, in order to incorporate by reference the FINRA rule. NASDAQ would delete current Rule 2330 and IM-2330. NASDAQ also proposes to amend the references to NASD Rule 2330 to instead state FINRA Rule 2150 in the new Rule 2150 and IM-2150 to reflect the change to the FINRA rules.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Sections 6(b)(5) of the Act,<sup>8</sup> in particular, in that the proposal 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. The proposed changes will conform NASDAQ Rule 2330 and IM-2330 to recent changes made to a corresponding FINRA rule, to promote application of consistent regulatory standards.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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.

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<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

### 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 Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2009-106 on the subject line.

#### Paper Comments:

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

- 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-2009-106. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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 Number SR-NASDAQ-2009-106 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.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).