

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61314; File No. SR-NASDAQ-2009-112)

January 7, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NASDAQ Rules 1140 and 3080 to Reflect Changes to a Corresponding FINRA Rule

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 December 30, 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 and II 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,³ 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 the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend NASDAQ Rules 1140 and 3080 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority (“FINRA”). The Exchange will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at <http://nasdaqomx.cchwallstreet.com>, at the Exchange’s principal office, on the Commission’s Web site at <http://www.sec.gov>, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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")). Beginning in 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 has initiated 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 is not 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 Rules 1140 and 3080 which follow or incorporate by reference former NASD Rules 1140 and 3080. In SR-FINRA-2009-019,⁴ FINRA modified, re-

⁴ See Securities Exchange Act Release No. 60348 (July 20, 2009), 74 FR 37077 (July 27, 2009) (SR-FINRA-2009-019).

numbered, and transitioned these NASD rules into the FINRA Consolidated Rule Manual. This proposal makes conforming changes to the NASDAQ rules but does not re-number them.

Rule 1140 requires each Nasdaq member to file its Forms U4, U5, BR, BDW, and BD amendments (referred to collectively as “Uniform Forms”) via electronic process or such other process as Nasdaq may prescribe to the Web CRD, the centralized database for registration and qualification information for firms and their associated persons. Rule 1140 also requires that the member retain and provide upon regulatory request every original, signed initial and transfer Form U4 that form the basis of the member’s electronically filed Forms U4 and every record of the member’s electronically filed initial and amended Forms U5.

In SR-FINRA-2009-019, FINRA proposed and the Commission approved the following changes to Rule 1140:

- Codified that every initial and transfer electronic Form U4 must be based on an original, manually signed Form U4 provided to the member by the person on whose behalf the Form U4 is being filed.
- Modified the signature requirement with respect to amendments to disclosure information in the Form U4. The new FINRA rule would permit a firm to file amendments to the Form U4 disclosure information without obtaining the registered person’s manual signature if the firm uses reasonable efforts to (1) provide the registered person with a copy of the amended disclosure information prior to filing and (2) obtain the registered person’s written acknowledgment (which may be electronic) prior to filing that the information has been received and reviewed. The proposed rule change also requires a member, as part of its recordkeeping requirements, to retain the written acknowledgment

in accordance with SEA Rule 17a-4(e)(1) and make it available promptly upon regulatory request.

- Clarified that a member must submit disclosure information to which it has knowledge in those cases where the member is not able to obtain an associated person's manual signature or written acknowledgement of the amendment. Proposed supplementary material sets forth examples of reasons why a member may not be able to obtain the associated person's manual signature or written acknowledgement.
- Incorporated Web CRD's current practice of permitting Form U4 administrative information to be amended without obtaining the associated person's signature (manual or otherwise). Proposed supplementary material explains that such administrative information includes items such as the addition of state or self regulatory organization registrations, exam scheduling, and updates to residential, business, and personal history.
- Proposed supplementary material expressly permitted the registered principal(s) or corporate officer(s) who is responsible for supervising a firm's electronic filings to delegate to another associated person (who need not be registered) the electronic filing of the member's forms via Web CRD. The delegatee may also acknowledge, electronically, that he is making the filing on behalf of the member and the member's associated person. The proposed supplementary material makes clear, however, that the principal(s) or corporate officer(s) may not delegate any of his or her supervision, review and approval responsibilities and must take reasonable and appropriate action to ensure that all delegated electronic filing functions are properly executed and supervised.

- Continued to permit firms to enter into third-party agreements for the electronic filing of the required forms. The supplementary material makes clear that the firm remains responsible for complying with the requirements of the rule.
- Made other technical changes, such as making clarifying rule cross-references, replacing the reference to fingerprint “cards” with fingerprint “information,” and noting the applicable retention periods for the forms under SEA Rule 17a-4.

NASDAQ proposes to adopt these approved changes in Nasdaq Rule 1140. NASDAQ does not propose to re-number Rule 1140 to 1010 as did FINRA.

Nasdaq Rule 3080 (Disclosure to Associated Persons When Signing Form U-4) requires members to provide each associated person, whenever the associated person is asked to sign a new or amended Form U4, with certain written disclosures regarding the nature and process of arbitration proceedings. The associated person agrees to be bound by this process upon signing a Form U4. The disclosures required by NASD Rule 3080 may be given by the same member firm to the same associated person on more than one occasion during that person’s employment, if the associated person has reason to re-sign the Form U4. NASD Rule 3080 does not address any private arbitration agreements that the associated person might enter into with the member firm. The disclosure language in NASD Rule 3080 explains that the Form U4 contains a pre-dispute arbitration clause, indicates in which Item of the Form U4 the clause is located and advises the associated person to read the pre-dispute arbitration clause. Rule 3080 was modeled on the disclosure given to customers when signing pre-dispute arbitration agreements with member firms, as contained in NASD Rule 3110(f).

NASDAQ Rule 3080 currently incorporates by reference NASD Rule 3080. In SR-FINRA-2009-019, FINRA transferred NASD Rule 3080 to the FINRA Consolidated Rule

Manual and re-numbered it as FINRA Rule 2263. FINRA’s proposed rule change made the following changes:

- Amended the current title “Disclosure to Associated Person When Signing Form U 4” to clarify that the rule relates to arbitration disclosures. Accordingly, the new proposed title is “Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4.”
- Clarified that a member must provide the required arbitration disclosures whenever a member asks an associated person, pursuant to proposed FINRA Rule 1010 (as described above), to manually sign an initial or amended Form U4, or to otherwise provide written (which may be electronic) acknowledgement of an amendment to the Form.
- Updated the rule language to reflect recent amendments to FINRA’s Code of Arbitration Procedure requiring arbitrators to provide an explained decision to the parties in eligible cases if there is a joint request by all parties at least 20 days before the first scheduled hearing date.

NASDAQ is proposing to continue to incorporate FINRA Rule 2263 in NASDAQ Rule 3080.

This will result in NASDAQ adopting the changes described above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Sections 6(b)(5) of the Act,⁶ 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

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

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 Rules 1140 and 3080 to recent changes made to corresponding FINRA rules, 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.

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, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to 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 Commission notes that Nasdaq satisfied the five-day pre-filing notice requirement.

Normally, a proposed rule change filed under 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)⁹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative delay. In its filing, Nasdaq noted that the proposal would amend NASDAQ Rules 1140 and 3080 to reflect recent changes to a corresponding rule of FINRA.

The Commission believes that waiver of the 30-day operative period is consistent with the protection of investors and the public interest. The proposed rule change would allow greater consistency between NASDAQ and FINRA rules, which should benefit NASDAQ and FINRA members, regulators, and the investing public. In addition, the Commission notes that the changes proposed in this filing are in all material respects the same as changes proposed in FINRA's filing, which was published for comment, and for which no comment letters were received.¹⁰ Accordingly, the Commission designates the proposal to be effective upon filing with the Commission.¹¹

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:

⁹ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ See Securities Exchange Act Release No. 61151 (December 10, 2009)(SR-NASDAQ-2009-109).

¹¹ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2009-112 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-2009-112. 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 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 offices 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-2009-112, 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).