

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61703; File No. SR-NASDAQ-2010-023)

March 12, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NASDAQ Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications

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 February 19, 2010, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) 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 substantially prepared by NASDAQ. NASDAQ has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Section 19 under the Act.<sup>3</sup> 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

NASDAQ proposes to amend the NASDAQ Rule 9520 Series regarding eligibility procedures for persons subject to certain disqualifications. NASDAQ proposes to implement this rule change immediately upon filing. The text of the proposed rule change is available at <http://nasdaqomx.cchwallstreet.com/>, at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

---

<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).

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 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. NASDAQ 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

The Exchange is proposing to amend the NASDAQ Rule 9520 Series, the Exchange's eligibility proceedings section, to conform to recent changes in the rules of the Financial Industry Regulatory Authority, Inc. ("FINRA").<sup>4</sup> The proposal also includes the proposed Statutory Disqualification Regulatory Alert ("SD Regulatory Alert") that outlines the applicable eligibility procedures. The amended rules would incorporate by reference the procedures in the SD Regulatory Alert. As further detailed in the SD Regulatory Alert, the need for a member to file an application with NASDAQ for approval, notwithstanding the disqualification would depend on: (1) the type of disqualification; (2) the date of disqualification; or (3) whether the firm or individual is seeking admission, readmission or continuation in the securities industry.

FINRA recently revised its definition of disqualification to incorporate three additional categories of statutory disqualification, including willful violations of the federal securities or commodities laws, grounds for statutory disqualification that were enacted in the Sarbanes-Oxley

---

<sup>4</sup> See Securities Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (SR-FINRA-2008-045); Securities Exchange Act Release No. 59722 (April 7, 2009), (SR-FINRA-2009-022).

Act, and associations with certain other persons subject to a disqualification. Although NASDAQ's definition has always included these categories, Commission staff informed NASDAQ at the time of its registration as a national securities exchange that, in light of NASDAQ's origin as a subsidiary of FINRA's predecessor, the National Association of Securities Dealers, Inc., staff would not object if NASDAQ applied FINRA's then more-limited definition, pending adoption of procedures by FINRA to process disqualifications under these additional categories.

The proposed rule change would amend NASDAQ Rule 9522 to address the initiation of eligibility proceedings and the authority of NASDAQ's Department of Member Regulation ("NASDAQ Regulation" or "Member Regulation") to approve applications relating to a disqualification where the disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Act or that arise under Section 3(a)(39)(E) of the Act (*i.e.*, the added categories of disqualification). Currently, NASDAQ Rule 9522(a)(1) provides, among other things, that if NASDAQ Regulation staff has reason to believe that a disqualification exists, NASDAQ Regulation staff will issue a written notice to the member or applicant for membership under NASDAQ Rule 1013, specifying the grounds for such disqualification. The proposed rule provides that NASDAQ Regulation staff will not issue a written notice to members or applicants for membership under Rule 1013 with respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Act or arising under Section 3(a)(39)(E) of the Act, unless the member is instructed to do so by the SD Regulatory Alert. Furthermore, a member will not have to file an application or a written request for relief with the Central Registration Depository/Public Disclosure, for any disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Act or arising under

Section 3(a)(39)(E) of the Act, unless the member is instructed to do so by the SD Regulatory Alert.

Additionally, under the current rules, a member is allowed to withdraw its application after the start of a hearing but prior to the issuance of a decision by the NASDAQ Review Council (“NRC”) with prior written consent of the NRC. The proposed rules provide that written consent is no longer required. The member may withdraw its application by filing a written notice with the NRC and the Office of General Counsel pursuant to Rules 9135, 9136 and 9137.

In addition, under the current rules, NASDAQ Regulation is generally responsible for evaluating applications with disqualifications filed by a disqualified member or sponsoring member. The proposed amendments to NASDAQ Rule 9522 would specifically authorize NASDAQ Regulation to approve applications based on the added categories of disqualification that arises from finding or orders specified in Section 15(b)(4)(D), (E), or (H) of the Act or arises under Section 3(a)(39)(E) of the Act.

In addition, if NASDAQ Regulation determines that an application relating to a disqualification that arises from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Act or arises under Section 3(a)(39)(E) of the Act should be approved, but with specific supervisory requirements that have the consent of the disqualified member, sponsoring member and/or disqualified person, then proposed NASDAQ Rule 9523(b) would authorize NASDAQ Regulation to approve a supervisory plan, without submitting a recommendation to the Chairman of the Statutory Disqualification Committee, acting on behalf of the NRC. Consistent with the current rule regarding the submission of supervisory plans, proposed NASDAQ Rule 9523(b)(1) would provide that, by submitting an executed letter consenting to a supervisory plan, a

disqualified member, sponsoring member and/or disqualified person waives the following (in summary):

- (a) the right to a hearing and any right of appeal to challenge the validity of the supervisory plan;
- (b) the right to claim bias or prejudice by NASDAQ Regulation or the General Counsel regarding the supervisory plan; and
- (c) the right to claim a violation of the ex parte prohibitions or the separation of functions provisions of NASDAQ Rules 9143 and 9144, respectively, in connection with participation in the supervisory plan.

If the supervisory plan is rejected, the disqualified member, sponsoring member and/or disqualified person would have the right to proceed under NASDAQ Rule 9524. Furthermore, the proposed rule change would delete all references in NASDAQ Rule 9523 to the “Office of Disciplinary Affairs” as this step will no longer be utilized in the process, consistent with current FINRA rules.

The proposed rule change also would include several technical amendments. For example, the proposed rule change would amend NASDAQ Rule 9522(b) to renumber sections 1, 2, and 3 and NASDAQ Rule 9522(c) to allow a member that has filed a statutory disqualification application to withdraw that application after the start of a hearing but prior to the issuance of a decision by the NRC by filing a written notice with the NRC and NASDAQ’s Office of General Counsel. In addition, for purposes of clarity and consistency, the proposed rule change would amend NASDAQ Rule 9522(e) to replace references that NASDAQ Regulation “may grant” or “may approve” certain matters with “is authorized to approve” such matters.

b. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provision of Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6)<sup>6</sup> thereunder, in that the proposal does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. While the current rules broadly include the proposed categories of disqualification, the proposed rule change merely conforms to FINRA rules by specifically incorporating the additional categories of disqualification that were not previously specified in FINRA rules. Since these categories were already covered in the current rules, this change just delineates the specifics for conforming purposes. All other changes are administrative to effectuate the conforming changes.

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) 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

---

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>8</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-2010-023 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-2010-023. 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,

---

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

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 Web site viewing and printing 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 offices of NASDAQ. 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-2010-023, 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>9</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>9</sup> 17 CFR 200.30-3(a)(12).