

Pursuant to the Exchange's proposed MRVP, under Rule 8.15, the Exchange may impose a fine (not to exceed \$2,500) on a member, an associated person of a member, or a registered or non-registered employee of a member with respect to any rule listed in Rule 8.15.01. The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules allegedly violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter under Exchange rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written response, at which point the matter shall become a disciplinary proceeding.

Upon approval of the plan, the Exchange will provide the Commission a quarterly report of actions taken on minor rule violations under the plan. The quarterly report will include the Exchange'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.<sup>7</sup>

The Commission finds that the proposed MRVP is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and national market system, and, in general, to protect

national securities exchange, including the rules governing the EDGX Exchange. See Securities Exchange Act Release No. 61698, 75 FR 13151 (March 18, 2010). In the approval order, the Commission noted that EDGX Exchange Rule 8.15 provides for the imposition of fines for minor rule violations pursuant to a minor rule violation plan. Accordingly, the Commission noted that, EDGX Exchange Rule 8.15 provides 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 EDGX Exchange, the Exchange must file a minor rule violation plan with the Commission.

<sup>7</sup> EDGX Exchange attached a sample form of the quarterly report with its submission to the Commission.

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

investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act<sup>9</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. In addition, because the MRVP offers procedural rights to a person sanctioned under Rule 8.15, the Commission believes that Rule 8.15 provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.<sup>10</sup>

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,<sup>11</sup> because the MRVP strengthens EDGX Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposal, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of sanctions under Rule 8.15. The Commission believes that the violation of an SRO's rules, as well as Commission rules, is a serious matter. However, Rule 8.15 provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that EDGX Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, whether a sanction under the MRVP is appropriate, or whether a violation requires formal disciplinary action.

*It is therefore ordered*, pursuant to Rule 19d-1(c)(2) under the Act,<sup>12</sup> that the proposed MRVP for EDGX Exchange, File No. 4-594, be, and hereby is, approved and declared effective.

<sup>9</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

<sup>10</sup> 15 U.S.C. 78f(b)(7) and 78f(d)(1).

<sup>11</sup> 17 CFR 240.19d-1(c)(2).

<sup>12</sup> *Id.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62044; File No. SR-NASDAQ-2010-057]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 9552, 9554 and 9559 To Conform NASDAQ's Rules to Recent Changes to the Rules of FINRA

May 5, 2010.

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 May 3, 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 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 is proposing to amend Rules 9552, 9554 and 9559 to conform NASDAQ's rules to recent changes to the rules of the Financial Industry Regulatory Authority ("FINRA"). The text of the proposed rule change is below. Proposed new language is italicized and proposed deletions are in brackets.

\* \* \* \* \*

#### 9550. Expedited Proceedings

\* \* \* \* \*

#### 9552. Failure To Provide Information or Keep Information Current

(a)-(g) No change.

(h) Defaults

A member or person who is suspended under this Rule and fails to request termination of the suspension within *three*[six] months of issuance of

<sup>13</sup> 17 CFR 200.30-3(a)(44).

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

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

the original notice of suspension will automatically be expelled or barred.

\* \* \* \* \*

**9554. Failure To Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution**

(a) Notice of Suspension or[,]  
Cancellation[ or Bar]

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under the Nasdaq By-Laws, or a *FINRA order of restitution or FINRA settlement agreement providing for restitution*, Nasdaq Regulation staff may provide written notice to such member or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension [or bar] from associating with any member.

(b) Service of Notice of Suspension or[,]  
Cancellation[ or Bar]

Nasdaq Regulation staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) No change.

(d) Effective Date of Suspension or[,]  
Cancellation[ or Bar]

The suspension or[,]  
cancellation [or bar] referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) No change.

(f) Failure to Request Hearing

If a member or person does not timely request a hearing, the suspension or[,]  
cancellation [or bar] specified in the notice shall become effective 21 days after the service of the notice and the notice shall constitute final Nasdaq action.

(g) No change.

\* \* \* \* \*

**9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series**

(a)–(e) No change.

(f) Time of Hearing

(1)–(2) No change.

(3) A hearing shall be held within 30[60] days after a respondent subject to a notice issued under Rules 9551 through 9555 files a written request for a hearing with the Office of Hearing Officers.

(4) No change.

(g) No change.

(h) Transmission of Documents

(1) Not less than two business days before the hearing in an action brought under Rule 9557, not less than seven days before the hearing in an action brought under Rules 9556 and 9558, and not less than 14[40] days before the hearing in an action brought under Rules 9551 through 9555, Nasdaq Regulation staff shall provide to the respondent who requested the hearing, by facsimile or overnight courier, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B) or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained until the date upon which the Nasdaq's final decision is served or, if applicable, upon the conclusion of any review by the Securities and Exchange Commission or the federal courts.

(2) Not less than two business days before the hearing in an action brought under Rule 9557, not less than three days before the hearing in an action brought under Rules 9556 and 9558, and not less than seven[14] days before the hearing in an action brought under Rules 9551 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight courier.

(i)–(s) No change.

\* \* \* \* \*

**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.

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

**1. Purpose**

NASDAQ proposes certain conforming changes to its rules concerning expedited hearings in light of changes made to the rules of FINRA. Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). NASDAQ endeavors to keep such common rules identical to the extent practicable. FINRA recently amended certain rules under its Rule

9000 Series concerning expedited proceedings, which are closely mirrored in NASDAQ's Rule 9000 Series.<sup>3</sup> Accordingly, NASDAQ is proposing to amend its analogous rules consistent with the changes made by FINRA, as discussed below.

The expedited proceedings rules of FINRA, and in turn of NASDAQ, address certain types of misconduct more quickly than would be possible under the ordinary disciplinary process, while also affording members numerous procedural protections. In its rule change,<sup>4</sup> FINRA modified various time requirements regarding expedited proceedings, added an expedited proceeding for failure to pay restitution, and harmonized a remedy in an expedited procedure with a remedy in the FINRA By-Laws. With respect to modifying time requirements, FINRA amended Rule 9552 to shorten the period before a suspension automatically turns into an expulsion or bar from six to three months. In addition, FINRA amended Rule 9559 to shorten the timeframe within which a hearing must be held from 60 days after a hearing request to 30 days after the request. As consequence of shortening the timeframe for hearings, FINRA also shortened the timeframes under Rule 9559(h) concerning the pre-hearing exchange of documents between the parties to the expedited proceeding.

FINRA amended Rule 9554, which contains expedited procedures for failure to pay FINRA arbitration awards, to also permit FINRA to take expedited action for failure to comply with a FINRA order of restitution or a FINRA settlement providing for restitution. FINRA noted that it did not have explicit authority to take expedited action against firms or associated persons who fail to pay restitution to a third party (usually investors who have been harmed), and that its only recourse was to initiate an ordinary disciplinary action, which can take several months to conclude. In adding the new expedited procedure, FINRA stated it believed that firms and associated persons should not be permitted to continue doing business for prolonged periods when they have failed to pay restitution to third parties.

FINRA also eliminated from Rule 9554 the remedy of barring an individual for failure to pay an arbitration award. FINRA noted that it had no such authority under its by-laws, and as such that it was harmonizing the

<sup>3</sup> Securities Exchange Act Release No. 61242 (December 28, 2009), 75 FR 167 (January 4, 2010) (SR-FINRA-2009-076).

<sup>4</sup> *Id.*

remedy for this misconduct with the remedy provided in its by-laws. NASDAQ is proposing to incorporate all the changes made by FINRA to its expedited proceedings rules into the analogous NASDAQ Rules 9552, 9554, and 9559.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general and with Section 6(b)(5) of the Act,<sup>6</sup> in particular in that 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 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's rules to recent changes made to corresponding FINRA rules, which will promote the application of consistent regulatory standards.

### 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 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. NASDAQ has provided 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.

NASDAQ believes that the proposed rule change does not significantly affect the protection of investors or the public interest because it merely eliminates erroneous citations that, if left in the rule text, would cause investor confusion.<sup>9</sup>

NASDAQ asks that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>10</sup> NASDAQ requests this waiver so that these corrections can be both immediately effective and operative, thus minimizing any confusion that may be caused by the differing rule sets.

The Commission acknowledges that the proposal presents no novel issues, and that it will provide a benefit to market participants by aligning Nasdaq's rules with those of FINRA. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.<sup>11</sup>

## 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-2010-057 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

<sup>9</sup> The Commission believes that this statement is incorrect. The proposed rule change does not simply eliminate erroneous citations; instead, the proposed rule change makes specific changes to align Nasdaq's rules with that of FINRA.

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

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

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2010-057. 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 web site viewing and printing in the Commission's Public Reference Room. Copies of the 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-2010-057 and should be submitted on or before June 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62038; File No. SR-NYSE-2010-22]

### Self-Regulatory Organizations; New York Stock Exchange, LLC; Order Approving Proposed Rule Change To Make Permanent a Unit-of-Count Metric Alternative for NYSE OpenBook Products

May 5, 2010.

## I. Introduction

On March 11, 2010, the New York Stock Exchange, LLC ("NYSE" or the "Exchange") filed with the Securities

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

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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

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