

unnecessary. FINRA is re-proposing the amendment to Rule 2810(c)(2).

## ii. Total Production and Equal Weighting Requirements

In connection with the Original Proposal, NASD stated that it was considering future amendments to Rule 2810 to incorporate the total production and equal weighting conditions for internal sales contests in its Investment Company Rule (Rule 2820) and Variable Contracts Rule (Rule 2830) in the context of a broader non-cash compensation rulemaking initiative.<sup>61</sup>

Two commenters urged NASD to abolish sales contests because they create incentives that are contrary to the obligations broker-dealers have to their customers, such as fair dealing.<sup>62</sup> As noted above, FINRA will consider these issues in future rulemaking.

## e. Effective Date of the Proposed Rule Change

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Regulatory Notice* announcing Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,<sup>63</sup> which require, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change would codify FINRA's longstanding policy of applying certain regulatory requirements in Rule 2810 to REITs. In context of Investment Programs, FINRA believes that clarifying the standards for determining the fairness and reasonableness of compensation, treating the use and allocation of offering proceeds in a more explicit and objective manner, requiring disclosure regarding the liquidity of prior programs offered by the same sponsor, prohibiting sales loads on reinvested dividends and enabling bona fide training and education meetings to take place at appropriate locations, are measures designed to prevent fraudulent practices, promote just and equitable

principles of trade, and protect investors and the public interest.

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

FINRA 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.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Commission published the proposed rule change in the **Federal Register** on July 17, 2006.<sup>64</sup> The comment period closed on August 7, 2006. The Commission received six comments in response to the **Federal Register** publication of the proposal. The comments are summarized in Item II above.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-NASD-2005-114 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2005-114. 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 FINRA. 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-NASD-2005-114 and should be submitted on or before February 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>65</sup>

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

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BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57198; File No. SR-NASDAQ-2007-094]

### Self-Regulatory Organizations; The NASDAQ Stock Market, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Notification Requirements for Issuers Making Distributions to Shareholders

January 24, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>61</sup> See Notice to Members 05-40.

<sup>62</sup> Massachusetts Securities Division and NASAA.

<sup>63</sup> 15 U.S.C. 78o-3(b)(6).

<sup>64</sup> See Securities Exchange Act Release No. 54118 (July 10, 2006), 71 FR 40569 (July 17, 2006).

<sup>65</sup> 17 CFR 200.30-3(a)(12).

(“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 30, 2007, The NASDAQ Stock Market, LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. Nasdaq 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 receipt of this filing by 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**

Nasdaq proposes a rule change to include in the Nasdaq rule manual the notification requirements for issuers making distributions to shareholders.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.<sup>4</sup>

\* \* \* \* \*

#### **4310. Listing Requirements for Domestic and Canadian Securities**

(a)–(b) No Change.

(c)(1)–(24) No Change.

(c)(25) *In the case of any dividend action or action relating to a stock distribution of a listed stock the issuer shall, no later than 10 calendar days prior to the record date of such action:* [[Reserved]]

(i) *Notify Nasdaq by filing the appropriate form as designated by Nasdaq; and*

(ii) *Provide public notice using a Regulation FD compliant method.*

*Notice to Nasdaq should be given as soon as possible after declaration and, in any event, no later than simultaneously with the public notice.*

(c)(26)–(30) No Change.

\* \* \* \* \*

#### **4320. Listing Requirements for Non-Canadian Foreign Securities and American Depositary Receipts**

(a)–(d) No Change.

(e)(1)–(20) No Change.

(e)(21) *In the case of any dividend action or action relating to a stock*

*distribution of a listed stock the issuer shall, no later than 10 calendar days prior to the record date of such action:* [[Reserved]]

(i) *Notify Nasdaq by filing the appropriate form as designated by Nasdaq; and*

(ii) *Provide public notice using a Regulation FD compliant method.*

*Notice to Nasdaq should be given as soon as possible after declaration and, in any event, no later than simultaneously with the public notice.*

(e)(22)–(26) No Change.

(f) 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 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**

Pursuant to SEC Rule 10b-17,<sup>5</sup> a national securities exchange may establish procedures under which an issuer must provide notice to the exchange no later than 10 calendar days prior to the record date of a dividend or other distribution in cash or in kind, including a dividend or distribution of any security. Nasdaq has implemented this requirement through procedures posted on its Web site at <http://www.nasdaq.com/about/FAQsMarketIntegrity.stm>.

Upon receipt of an issuer’s notification information regarding an upcoming distribution to shareholders, and in accordance with Nasdaq Rule 11140, Nasdaq Corporate Data Operations Staff thereafter determines the “ex” date for the distribution and announces that information to the marketplace via a Daily List, which is a daily publication of all newly announced dividends. The information on the Daily List includes, among other things, the record date, payment date, payment amount and all new ex date rulings in order to provide the

marketplace with the information necessary to adjust the price of the security on the ex date to represent the value of the dividend.

The proposed rule text specifically incorporates the 10 day notice period set forth in SEC Rule 10b-17. Additionally, the proposed rule language requires that an issuer provide such notice through the use of appropriate Nasdaq forms and through the use of a Regulation FD compliant method to help ensure that both Nasdaq and the public are appropriately alerted in a timely manner as to any upcoming distributions to shareholders.

Nasdaq believes that adopting a listing standard in this area, rather than relying on procedures described on a Web site, will provide greater transparency to issuers and investors and reduce the likelihood of untimely notification of dividend declarations. Moreover, we note that both the New York Stock Exchange LLC (“NYSE”) and the American Stock Exchange, LLC (“Amex”) have each already adopted rules that implement SEC Rule 10b-17 as to their listed issuers.<sup>6</sup> Thus, adoption of a Nasdaq listing standard will provide uniformity throughout the markets. Nasdaq’s proposed rule is consistent in all respects with the procedures on its Web site.

##### **2. Statutory Basis**

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act<sup>7</sup> in general and furthers the objectives of Section 6(b)(5)<sup>8</sup> in particular in that it is designed 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 mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Untimely notification of dividend declarations may have a negative impact on the marketplace in the form of a late ex date ruling so it is in the best interests of the marketplace that Nasdaq reflect its notification requirements in the Nasdaq manual.

#### **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

<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> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at [www.complinet.com/nasdaq](http://www.complinet.com/nasdaq).

<sup>5</sup> 17 CFR 240.10b-17.

<sup>6</sup> See NYSE Rule 204.12 and Amex Rule 830.

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

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

necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change 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> because it 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 after the date of the filing, or such shorter time as the Commission may designate.

A proposed rule change filed under Rule 19b-4(f)(6) may not become operative prior to 30 days after the date of filing unless the Commission designates a shorter time if such action is consistent with the protection of investors and the public interest.<sup>11</sup> Nasdaq has requested that the Commission waive the 30-day operative delay, which would make the rule change operative immediately upon filing with the Commission. The Commission believes waiving the 30-day operative date is consistent with the protection of investors and the public interest because the proposed rule change provides greater transparency to issuers and investors and may reduce the likelihood of untimely notification of dividend declarations.<sup>12</sup> For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>13</sup> the Commission may summarily abrogate

the 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-2007-094 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2007-094. 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 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-2007-094 and

should be submitted on or before February 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration # 11158 and # 11159]**

**Massachusetts Disaster # MA-00013**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the Commonwealth of Massachusetts dated 01/25/2008.

*Incident:* Fire.

*Incident Period:* 01/21/2008.

*Effective Date:* 01/25/2008.

*Physical Loan Application Deadline Date:* 03/25/2008.

*Economic Injury (Eidl) Loan Application Deadline Date:* 10/27/2008.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:*

Essex.

*Contiguous Counties:*

Massachusetts: Middlesex and Suffolk.

New Hampshire: Hillsborough and Rockingham.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere .....	5.500
Homeowners Without Credit Available Elsewhere .....	2.750
Businesses With Credit Available Elsewhere .....	8.000

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>11</sup> 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 has satisfied the five-day pre-filing notice requirement.

<sup>12</sup> For purposes only of waiving the 30-day pre-operative period, the Commission has considered the impact of the proposed rule change on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).