

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61887; File No. SR-NASDAQ-2010-041]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Conforming Changes to Certain Notification Requirements

April 12, 2010.

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 March 26, 2010, The NASDAQ Stock Market LLC ("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 Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described 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

Nasdaq proposes to modify the Listing Rules to make conforming changes to certain notification requirements.

The text of the proposed rule change is below. Proposed new language is in *italic*; proposed deletions are in [brackets].⁴

5250. Obligations for Companies Listed on The Nasdaq Stock Market

(a) No change.

(b) Obligation to Make Public Disclosure

(1) No change.

(2) As set forth in Rule 5810(b), a Company that receives a notification of deficiency from Nasdaq is required to make a public announcement by filing a Form 8-K, where required by SEC

rules, or by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based. However, note that in the case of a deficiency related to the requirement to file a periodic report contained in Rule 5250(c)(1) or (2), the Company is required to make the public announcement by issuing a press release. As described in Rule 5250(b)(1) and IM-5250-1, [notice to the] *the Company must notify Nasdaq's MarketWatch Department [must be made] about the announcement* through the electronic disclosure submission system available at www.nasdaq.net, *except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during Nasdaq market hours, the Company must notify MarketWatch at least ten minutes prior to the [public] announcement. If the public announcement is made outside of Nasdaq market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET.*

(c)-(f) No change.

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5810. Notification of Deficiency by the Listing Qualifications Department

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

(1)-(4) No change.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a) No change.

(b) Company Disclosure Obligations

A Company that receives a notification of deficiency, Staff Delisting Determination, or Public Reprimand Letter is required to make a public announcement disclosing receipt of the notification and the Rule(s) upon which the deficiency is based. A Company that receives a notification of deficiency or Staff Delisting Determination related to the requirement to file a periodic report contained in Rule 5250(c)(1) or (2) is required to make the public announcement by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based, in addition to filing any Form 8-K required by SEC rules. In all other cases, the Company may make the

public announcement either by filing a Form 8-K, where required by SEC rules, or by issuing a press release. [Before release of the public announcement, Companies must provide a copy of the announcement to Nasdaq's MarketWatch Department.] As described in Rule 5250(b)(1) and IM-5250-1, [notice to the] *the Company must notify Nasdaq's MarketWatch Department [must be made] about the announcement* through the electronic disclosure submission system available at www.nasdaq.net, *except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during Nasdaq market hours, the Company must notify MarketWatch at least ten minutes prior to the [public] announcement. If the public announcement is made outside of Nasdaq market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET.* The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the notification.

(c)-(d) No change.

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5840. Adjudicatory Process: General Information

(a)-(j) No change.

(k) Disclosure of Public Reprimand Letter

A Company that receives an Adjudicatory Body Decision that serves as a Public Reprimand Letter must make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of the Decision, including the Rule(s) upon which the Decision was based. [Prior to the release of the public announcement, the Company must provide such disclosure to Nasdaq's MarketWatch Department.] As described in Rule 5250(b)(1) and IM-5250-1, [notice to the] *the Company must notify Nasdaq's MarketWatch Department [must be made] about the announcement* through the electronic disclosure submission system available at www.nasdaq.net, *except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during Nasdaq market hours, the Company must notify MarketWatch at least ten minutes prior to the [public] announcement. If the public announcement is made outside of Nasdaq market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET.* The Company should make the public announcement [should be made] as

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaq.cchwallstreet.com>.

promptly as possible[,] but not more than four business days following receipt of the Decision.

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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, 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

Nasdaq recently adopted changes to certain of its press release requirements for Nasdaq-listed companies (the "Press Release Filing").⁵ Subsequent to Nasdaq's filing and the Commission's publication of this proposal,⁶ Nasdaq made an immediately effective change to its rules to clarify when listed companies must provide notification to Nasdaq of material information disclosed outside of market hours.⁷ As revised, when the material information is made public outside of Nasdaq market hours, Nasdaq companies must provide notification of the information to MarketWatch by 6:50 a.m. ET. Nasdaq proposes to make conforming changes to the rules modified in the Press Release Filing, such that Rules 5250(b)(2), 5810(b) and 5840(k) would each specify that if a required public announcement is made during market hours, the company must notify Nasdaq's MarketWatch Department at least ten minutes prior to making the announcement to the public; otherwise the company must notify the MarketWatch Department prior to 6:50 am ET. Nasdaq also proposes to clarify that companies are not required to use the electronic disclosure submission system to notify MarketWatch in emergency situations, when notification may instead be provided by telephone

or facsimile.⁸ Finally, Nasdaq proposes to make other non-substantive changes to these rules so that they each use consistent language.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general and with Sections 6(b)(5) of the Act,¹⁰ 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 change will conform Nasdaq's notification requirements in the rules amended in the Press Release Filing with Nasdaq's notification requirements for the disclosure of material information, thereby reducing confusion among listed companies and investors.

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 proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section

19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change would merely conform Rules 5250(b)(2), 5810(b) and 5840(k) to the notification requirements when companies release material information outside of market hours in Nasdaq's other rules,¹⁵ thereby reducing company and investor confusion. As such, the Commission believes that the proposed rule change raises no new regulatory issues. Additionally, Nasdaq's clarification that in emergencies, companies are not required to notify MarketWatch through the electronic disclosure system but may do so via telephone or facsimile aligns the rules to the existing requirements of Nasdaq Rule 5250(b)(1) and IM-5250-1, further reducing confusion for companies.¹⁶ For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.¹⁷

At any time within 60 days of the filing of the proposed rule change, 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,

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give 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 Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ See Nasdaq Rule 5250(b)(1) and IM-5250-1.

¹⁶ See *supra* note 8.

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ Securities Exchange Act Release No. 61713 (March 15, 2010), 75 FR 13629 (March 22, 2010) (SR-NASDAQ-2010-006).

⁶ Securities Exchange Act Release No. 61461 (February 1, 2010), 75 FR 6241 (February 8, 2010) (SR-NASDAQ-2010-006).

⁷ Securities Exchange Act Release No. 61521 (February 16, 2010), 75 FR 8156 (February 23, 2010) (SR-NASDAQ-2010-008).

⁸ IM-5250-1 already provides that companies do not have to use the electronic disclosure submission system in an emergency situation and provides examples of emergency situations, such as the lack of computer or internet access, technical problems, and cases where no draft disclosure document is available.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

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. Please include File No. SR-NASDAQ-2010-041 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 No. SR-NASDAQ-2010-041. 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, 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 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 No. SR-NASDAQ-2010-041 and should be submitted on or before May 10, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61895; File No. SR-NYSEArca-2010-28]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Amending Its Schedule of Fees

April 13, 2010.

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 April 12, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "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 prepared by NYSE Arca. 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

The Exchange proposes to extend the pilot program regarding a cap on transaction fees for strategy executions. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

NYSE Arca proposes to extend the pilot program regarding a cap on transaction fees for strategy executions ("Program"). Under this Program,

strategy executions are capped at \$750 per transaction, and, in addition, transaction fees for these strategies are further capped at \$25,000 per month per initiating firm. This Program previously expired on March 1, 2010. Extending this Program retroactively from March 1, 2010 through April 1, 2010 facilitates consistent treatment with respect to fees for strategy executions.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)³ of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)⁴ 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. In addition, the proposed extension of the Program is reasonable in that the fees are equitable as they apply uniformly to all similarly situated OTP Holders.

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

The Exchange does not believe that the proposed rule change will impose 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

No written comments were solicited or received with respect to the proposed rule change.

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 the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

¹⁸ 17 CFR 200.30-3(a)(12).