

6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed changes to the rule should continue to contribute to the Exchange's ability to maintain a fair and orderly market in a manner that will limit unfair advantage and encourage competition.

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

CBOE does not believe that the proposed rule change will impose any burden on competition 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 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 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-CBOE-2009-009 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-CBOE-2009-009. 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 CBOE. 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-CBOE-2009-009 and should be submitted on or before March 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-4120 Filed 2-25-09; 8:45 am]

**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59424; File No. SR-NASDAQ-2009-009]

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify Nasdaq's Definition of "Controlled Company"**

February 19, 2009.

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 10, 2009, 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,<sup>3</sup> 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 clarify its definition of a "controlled company." Nasdaq will implement the proposed rule upon approval [sic]. The text of the proposed rule change is below. Proposed new language is in *italics*.<sup>4</sup>

\* \* \* \* \*

4350. Qualitative Listing Requirements for Nasdaq Issuers Except for Limited Partnerships.

(a)-(b) No change.

(c) Independent Directors

(1)-(4) No change.

(5) A Controlled Company is exempt from the requirements of this Rule 4350(c), except for the requirements of subsection (c)(2) which pertain to executive sessions of independent directors. A Controlled Company is a company of which more than 50% of the voting power *for the election of directors* is held by an individual, a group or another company. A Controlled Company relying upon this exemption must disclose in its annual meeting proxy statement (or, if the issuer does

<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 <http://nasdaqomx.cchwallstreet.com>.

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

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

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

not file a proxy, in its Form 10-K or 20-F) that it is a Controlled Company and the basis for that determination.

(d)-(n) 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

The purpose of this rule filing is to clarify the definition of a "controlled company."<sup>5</sup> Nasdaq currently allows a "controlled company" to exempt itself from the requirements to have a majority of independent directors on its board and to have independent compensation and nomination committees.<sup>6</sup> Under Nasdaq's rules, a "controlled company" is a company of which more than 50% of the voting power is held by an individual, group, or another company, and, in order for a group to exist, the shareholders comprising the group must have publicly filed a notice that they are acting as a group (e.g., a Schedule 13D).<sup>7</sup>

Under Nasdaq's current practice, in order for a company to be deemed a controlled company, more than 50% of the voting power for the election of directors must be held by an individual, group or another company. Nasdaq proposes to amend its definition of "controlled company" to provide transparency to this interpretation and to provide clarity to companies and investors about the availability of the "controlled company" exception. In applying the rule in this manner, Nasdaq intends to limit the controlled company exception to companies with shareholders who truly control that company and its board composition. For example, the controlled company exception would not apply where a

shareholder agreement exists relating only to the disposition of assets.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general and with Section 6(b)(5) of the Act,<sup>9</sup> in particular. Section 6(b)(5) requires, among other things, that Nasdaq's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 is consistent with these requirements in that it will prevent issuers from relying on the exception when they are not truly a "controlled company." The proposed rule change also will provide a standard that is clear, straightforward and uniform for issuers to understand and apply.

### 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 rule 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 Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<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

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)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq requests that the Commission waive the 30-day waiting period.<sup>13</sup>

Nasdaq believes that the proposed rule change does not significantly affect the protection of investors or the public interest because it provides transparency to Nasdaq's existing interpretation of this Rule. Nasdaq requests the waiver so that companies that file their annual reports and proxy statements with the Commission during that period will have the benefit of this clarification. In that regard, Nasdaq notes that, depending on their filing deadline under the Commission's rules, companies with fiscal year ends between September 30, 2008 and December 31, 2008, either just filed, or are about to file, their annual reports with the Commission and generally file their proxy statements shortly thereafter.

The Commission believes that waiver of the operative date delay is appropriate, particularly because companies whose fiscal year recently ended just filed, or are about to file, their annual reports with the Commission, and proxy statements shortly thereafter, would have clarity regarding the controlled company provision. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change to be operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of such 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,

Commission. The Commission notes that Nasdaq has satisfied the five-day pre-filing notice requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> 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).

<sup>5</sup> Nasdaq previously proposed this change in SR-NASDAQ-2008-005, which was withdrawn as of the date of this current filing.

<sup>6</sup> Nasdaq Rule 4350(c)(5).

<sup>7</sup> Nasdaq Rule 4350(c)(5) and Nasdaq IM-4350-7.

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-NASDAQ-2009-009 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2009-009. 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 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 Number SR-NASDAQ-2009-009 and should be submitted on or before March 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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

[FR Doc. E9-4062 Filed 2-25-09; 8:45 am]

**BILLING CODE 8011-01-P**

**SMALL BUSINESS ADMINISTRATION**

**National Small Business Development Center Advisory Board**

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Notice of open Federal Advisory Committee meeting.

**SUMMARY:** The SBA is issuing this notice to announce the location, date, time and agenda for the next meeting of the National Small Business Development Center (SBDC) Advisory Board.

**DATES:** The meeting will be held on Tuesday, March 17, 2009 at 1 p.m. EST.

**ADDRESSES:** This meeting will be held via conference call.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meeting of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of this meeting is to discuss following issues pertaining to the SBDC Advisory Board:

- Board Wrap-Up of ASBDC Spring Meeting.
- SBA Update.
- Member Roundtable.

**FOR FURTHER INFORMATION CONTACT:** The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to be a listening participant must contact Alanna Falcone by Friday, March 13, 2009, by fax or e-mail in order to be placed on the agenda. Alanna Falcone, Program Analyst, 409 Third Street, SW., Washington, DC 20416, Phone, 202-619-1612, Fax 202-481-0134, e-mail, [alanna.falcone@sba.gov](mailto:alanna.falcone@sba.gov).

Additionally, if you need accommodations because of a disability or require additional information, please contact Alanna Falcone at the information above.

**Bridget E. Bean,**

*Acting Committee Management Officer.*

[FR Doc. E9-4113 Filed 2-25-09; 8:45 am]

**BILLING CODE 8025-01-P**

**SOCIAL SECURITY ADMINISTRATION**

[Docket No. SSA-2009-0002]

**Agreement on Social Security Between the United States and the Republic of Poland; Entry Into Force**

**AGENCY:** Social Security Administration.

**ACTION:** Notice.

**SUMMARY:** We are giving notice that an agreement coordinating the United States (U.S.) and the Polish social security programs will enter into force on March 1, 2009. The agreement with the Republic of Poland, which was signed on April 2, 2008, is similar to U.S. social security agreements already in force with 23 other countries—Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Korea (South), Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom. Agreements of this type are authorized by section 233 of the Social Security Act. 42 U.S.C. 433.

Like the other agreements, the U.S.-Polish agreement eliminates dual social security coverage. This situation exists when a worker from one country works in the other country and is covered under the social security systems of both countries for the same work. When dual coverage occurs without such agreements in force, the worker, the worker's employer, or both may be required to pay social security contributions to the two countries simultaneously. Under the U.S.-Polish agreement, a worker who is sent by an employer in one country to work in the other country for 5 or fewer years remains covered only by the sending country. The agreement includes additional rules that eliminate dual U.S. and Polish coverage in other work situations.

The agreement also helps eliminate situations where workers suffer a loss of benefit rights because they have divided their careers between the two countries. Under the agreement, workers may qualify for partial U.S. benefits or partial Polish benefits based on combined (totalized) work credits from both countries.

Persons who would like a copy of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Programs, Post Office Box 17741, Baltimore, MD 21235-7741 or visit the Social Security Web site at <http://www.socialsecurity.gov/international>.

Dated: February 20, 2009.

**Michael J. Astrue,**

*Commissioner of Social Security.*

[FR Doc. E9-4104 Filed 2-25-09; 8:45 am]

**BILLING CODE 4191-02-P**

<sup>15</sup> 17 CFR 200.30-3(a)(12).