

*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-FINRA-2010-048 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2010-048. 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 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 publicly available. All submissions should refer to File Number SR-FINRA-2010-048 and should be submitted on or before October 22, 2010.

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

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

[FR Doc. 2010-24675 Filed 9-30-10; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62992; File No. SR-NASDAQ-2010-114]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Prohibit Members From Voting Uninstructed Shares on Certain Matters**

September 24, 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 September 14, 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 substantially prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

Nasdaq proposes to modify Rule 2251 to prohibit members from voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, unless instructed by the beneficial owner of the shares. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.<sup>3</sup>

2251. Forwarding of Proxy and Other Issuer-Related Materials

(a)-(c) No change.

(d) *Notwithstanding the foregoing, a Nasdaq Member that is not the beneficial owner of a security registered under Section 12 of the Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an*

*issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.*

\* \* \* \* \*

**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 III 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

Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") adopted new Section 6(b)(10) of the Securities Exchange Act.<sup>4</sup> This new provision requires all national securities exchanges to adopt rules that prohibit their members from voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, unless the member receives voting instructions from the beneficial owner of the shares.

NASDAQ Rule 2251 governs when NASDAQ members may vote shares held for customers by adopting the FINRA rule on this point. The FINRA rule, in turn, prohibits members from voting any uninstructed shares, but also permits the member to follow the rules of another SRO instead.<sup>5</sup> In order to

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

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

<sup>3</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

<sup>4</sup> 15 U.S.C. 78f(b)(10).

<sup>5</sup> The Commission notes that the FINRA rule, and by reference Nasdaq's rule, only allows a member to follow the rules of another SRO of which it is a member, provided that the records of the member

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

assure compliance, in all cases, with newly adopted Section 6(b)(10), NASDAQ proposes to modify Rule 2251 to provide that in no event could a member vote uninstructed shares on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, unless instructed by the beneficial owner of the shares.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general and with Section 6(b)(10) of the Act,<sup>7</sup> in particular. Section 6(b)(10) requires that a national securities exchange's rules must prohibit any member that is not the beneficial owner of a security registered under Section 12 from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission. The proposed rule change will adopt the prohibition required by Section 6(b)(10).

### 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. 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:

clearly indicate the procedure it is following. See FINRA Rule 2251(c)(2).

<sup>6</sup> 15 U.S.C. 78f.

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

### 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-2010-114 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-2010-114. 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 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 Number SR-NASDAQ-2010-114 and should be submitted on or before October 22, 2010.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, Nasdaq requested that the Commission approve the proposal on an accelerated basis so that the Exchange could immediately comply with the requirements imposed by the Dodd-Frank Act. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules

and regulations thereunder applicable to a national securities exchange.<sup>8</sup>

The Commission believes that the proposal is consistent with Section 6(b)(10)<sup>9</sup> of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission by rule. The Commission also believes that the proposal is consistent with Section 6(b)(5)<sup>10</sup> of the Act, which provides, among other things, that the rules of the Exchange must be designed to promote just and equitable principles of trade, 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal is consistent with Section 6(b)(10) of the Act because it adopts revisions that comply with that section. As noted in the accompanying Senate Report, Section 957, which adopts Section 6(b)(10), reflects the principle that "final vote tallies should reflect the wishes of the beneficial owners of the stock and not be affected by the wishes of the broker that holds the shares."<sup>11</sup> The proposed rule change will make Nasdaq compliant with the new requirements of Section 6(b)(10) by specifically prohibiting, in Nasdaq's rule language, broker-dealers, who are not beneficial owners of a security, from voting uninstructed shares in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule, unless the member receives voting instructions

<sup>8</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(10).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> See S. Rep. No. 111-176, at 136 (2010).

from the beneficial owner of the shares.<sup>12</sup>

The Commission believes that the proposal is consistent with Section 6(b)(5) of the Act because the proposal will further investor protection and the public interest by assuring that shareholder votes on the election of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940) and on executive compensation matters are made by those with an economic interest in the company, rather than by a broker that has no such economic interest, which should enhance corporate governance and accountability to shareholders.<sup>13</sup>

Based on the above, the Commission finds that the Nasdaq proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act because it should enhance corporate accountability to shareholders while also serving to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit broker voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule. The Commission believes that good cause exists to grant accelerated approval to the Exchange's proposal, because it will conform Nasdaq Rule 2251 to the requirements of Section 6(b)(10) of the Act.

<sup>12</sup> The Commission has not, to date, adopted rules concerning other significant matters where uninstructed broker votes should be prohibited, although it may do so in the future. Should the Commission adopt such rules, we would expect Nasdaq to adopt coordinating rules promptly to comply with the statute.

<sup>13</sup> As the Commission stated in approving NYSE rules prohibiting broker voting in the election of directors, having those with an economic interest in the company vote the shares, rather than the broker who has no such economic interest, furthers the goal of enfranchising shareholders. See Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR-NYSE-2006-92).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-Nasdaq-2010-114) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-24606 Filed 9-30-10; 8:45 am]

**BILLING CODE 8010-01-P**

## DEPARTMENT OF STATE

[Public Notice 7164]

### Notice of Intent To Establish the President's Emergency Plan for AIDS Relief (PEPFAR) Scientific Advisory Board, Hereinafter Referred to as "the Board"

**SUMMARY:** This is a notice of intent to establish The President's Emergency Plan for AIDS Relief (PEPFAR) Scientific Advisory Board, hereinafter referred to as "the Board."

The Board serves the Global AIDS Coordinator ("the Coordinator") in a solely advisory capacity concerning scientific, implementation, and policy issues related to the global response to HIV/AIDS. These issues will be of concern as they influence the priorities and direction of PEPFAR evaluation and research, the content of national and international strategies and implementation, and the role of PEPFAR in the international discourse regarding appropriate and resourced responses.

The Board will be composed of 25 to 30 members appointed by the Coordinator, representing U.S. Government and non-U.S. Government personnel. The membership will be representative of the HIV/AIDS community, academia, international experts, partner government representatives, multilateral and bilateral agency representatives, foundations, advocates, and non-governmental organizations. Members who are not U.S. employees will be representative members.

Public notice of all meetings of the Panel will be provided in the **Federal Register** in accordance with the FACA.

**FOR FURTHER INFORMATION CONTACT:** Paul D. Bouey, Office of the U.S. Global AIDS Coordinator, Washington, DC 20037, [BoueyPD@state.gov](mailto:BoueyPD@state.gov).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

This certification will be published in the **Federal Register**.

Dated: September 27, 2010.

**Paul D. Bouey,**

*Deputy Coordinator, Office of the U.S. Global AIDS Coordinator, Department of State.*

[FR Doc. 2010-24691 Filed 9-30-10; 8:45 am]

**BILLING CODE 4710-10-P**

## DEPARTMENT OF STATE

[Public Notice: 7184]

### Bureau of Consular Affairs; Registration for the Diversity Immigrant (DV-2012) Visa Program

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** This public notice provides information on how to apply for the DV-2012 Program. This notice is issued pursuant to 22 CFR 42.33(b)(3) which implements sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(I) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1151, 1153, and 1154(a)(1)(I)).

### Instructions for the 2012 Diversity Immigrant Visa Program (DV-2012)

The congressionally mandated Diversity Immigrant Visa Program is administered on an annual basis by the Department of State and conducted under the terms of Section 203(c) of the Immigration and Nationality Act (INA). Section 131 of the Immigration Act of 1990 (Pub. L. 101-649) amended INA 203 and provides for a class of immigrants known as "diversity immigrants." Section 203(c) of the INA provides a maximum of 55,000 Diversity Visas (DV) each fiscal year to be made available to persons from countries with low rates of immigration to the United States.

The annual DV program makes permanent residence visas available to persons meeting the simple, but strict, eligibility requirements. A computer-generated random lottery drawing chooses selectees for Diversity Visas. The visas are distributed among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and with no visas going to nationals of countries sending more than 50,000 immigrants to the United States over the period of the past five years. Within each region, no single country may receive more than seven percent of the available Diversity Visas in any one year.

For DV-2012, natives of the following countries are not eligible to apply because the countries sent a total of