For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00874 Filed 1–16–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68629; File No. SR–NASDAQ–2012–059]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Disapproving Proposed Rule Change To Establish ''Benchmark Orders'' Under NASDAQ Rule 4751(f)

January 11, 2013.

I. Introduction

On May 1, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish various ''Benchmark Orders'' under NASDAQ Rule 4751(f). The proposed rule change was published for comment in the **Federal Register** on May 17, 2012.[3] On June 26, 2012, the Commission extended to August 15, 2012, the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[4]

On August 14, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] The Commission thereafter received two comment letters on the proposal.[6] On November 9, 2012, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.[7] On December 17, 2012, NASDAQ submitted a response letter to the comments on the proposal.[8] This order disapproves the proposed rule change.

II. Description of the Proposal

As set forth in more detail in the Notice, the Exchange has proposed to offer Benchmark Orders that would seek to achieve the performance of a specified benchmark—Volume Weighted Average Price (''VWAP''), Time Weighted Average Price (''TWAP''), or Percent of Volume (''POV'')—over a specified period of time for a specified security.[9] The entering party would specify the benchmark, period of time, and security, as well as the other order information common to all order types, such as buy/sell side, shares and price.[10]

Benchmark Orders would be received by NASDAQ but by their terms would not be executable by the NASDAQ matching engine upon entry.[11] Rather, NASDAQ would direct them to a system application (''Application'') that is licensed from a third-party provider and dedicated to processing Benchmark Orders.[12] The Application would process Benchmark Orders by generating ''Child Orders'' in a manner designed to achieve the desired benchmark performance, *i.e.,* VWAP, TWAP or POV, in accordance with the member's instructions.[13] Child Orders would be executed within the NASDAQ system under NASDAQ's existing rules, or made available for routing under NASDAQ's current routing rules.[14] The Application would not be capable of executing Child Orders, but instead would send Child Orders, using the proper system protocol, to the NASDAQ matching engine or to the NASDAQ router as needed to complete the Benchmark Order.[15] Child Orders would be processed in an identical manner to orders generated independently of a Benchmark Order.[16] NASDAQ states that the third-party provider of the Application would have no actionable advantage over NASDAQ members with respect to the NASDAQ system.[17]

NASDAQ represents that it would test the Application rigorously and regularly, monitor the Application performance on a real-time and continuous basis, and have access to the technology, employees, books and records of the third-party provider that are related to the Application and its interaction with NASDAQ.[18] NASDAQ states that it considers the Application to be a functional offering of the NASDAQ Stock Market, and that it would be integrated closely with the NASDAQ system and provided to members subject to NASDAQ's obligations and responsibilities as a self-regulatory organization.[19] In addition, NASDAQ represents that it would maintain control of and responsibility for the Application.[20]

III. Discussion

Under Section 19(b)(2)(C) of the Act, the Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to such organization.[21] The Commission shall disapprove a proposed rule change if it does not make such a finding.[22] The Commission's Rules of Practice, under Rule 700(b)(3), state that the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder * * * is on the self-regulatory organization that proposed the rule change'' and that a ''mere assertion that the proposed rule change is consistent with those requirements * * * is not sufficient.''[23]

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66972 (May 11, 2012), 77 FR 29435 (May 17, 2012) (''Notice'').

[4] *See* Securities Exchange Act Release No. 67258 (June 26, 2012), 77 FR 39314 (July 2, 2012).

[5] *See* Securities Exchange Act Release No. 67655 (August 14, 2012), 77 FR 50191 (August 20, 2012) (''Order Instituting Proceedings'').

[6] *See* Letters to the Commission from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated October 5, 2012 (''SIFMA Letter''); and James J. Angel, dated August 16, 2012 (''Angel Letter'').

[7] *See* Securities Exchange Act Release No. 68199 (November 9, 2012), 77 FR 68873 (November 16, 2012).

[8] *See* Letter to the Commission from Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ, dated December 17, 2012 (''NASDAQ Letter'').

[9] *See* proposed NASDAQ Rule 4751(f)(15).

[10] *Id.; see also* Notice, 77 FR at 29436.

[11] *See* proposed NASDAQ Rule 4751(f)(15); *see also* Notice, 77 FR at 29435–36.

[12] *See* Notice, 77 FR at 29436.

[13] *See* proposed NASDAQ Rule 4751(f)(15); *see also* Notice, 77 FR at 29435–36.

[14] *See* Notice, 77 FR at 29435. Child Orders that require routing would be routed by NASDAQ Execution Services, NASDAQ's wholly-owned routing broker-dealer. *Id.* at 29436 n.8. In addition, fees applicable to existing orders and trades would apply to Child Orders. *Id.* at 29436.

[15] *Id.* at 29435–36.

[16] *Id.* at 29436.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.* at 29437.

[21] *See* 15 U.S.C. 78s(b)(2)(C)(i).

[22] *See* 15 U.S.C. 78s(b)(2)(C)(ii).

[23] *See* 17 CFR 201.700. The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. *See id.* Any failure of a self-regulatory organization to provide the information elicited by Form 19b–4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization. *Id.*

After careful consideration, the Commission does not find 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.[24] In particular, the Commission does not find that the proposed rule change is consistent with: (i) Section 6(b)(5) of the Act,[25] which requires, among other things, that the rules of a national securities exchange be designed 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, to protect investors and the public interest, and not to permit unfair discrimination between customers, issuers, brokers, or dealers; and (ii) Section 6(b)(8) of the Act,[26] which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act.

In the Order Instituting Proceedings, the Commission stressed, among other things, that the application of appropriate risk controls under the Market Access Rule, Rule 15c3–5 under the Act,[27] is critically important to maintaining a robust market infrastructure.[28] The Commission expressed concern as to whether Child Orders, which would be generated solely by the Application and presumably outside the control and supervision of the broker-dealer firm that entered the initial Benchmark Order, would be subject to adequate pre-trade risk checks, and noted that NASDAQ's proposal did not indicate how or whether pre-trade controls would be applied to Child Orders generated by the Application.[29]

The Commission received two comment letters on the proposed rule change and a response from NASDAQ.[30] In its comment letter, SIFMA objects to, and urges the Commission to disapprove, the proposed rule change.[31] SIFMA expresses the belief that NASDAQ's proposed rule change would create a regulatory disparity giving NASDAQ an inappropriate advantage with respect to the Market Access Rule over broker-dealers that provide the same services that NASDAQ proposes.[32] SIFMA notes that NASDAQ is not subject to the Market Access Rule, and its affiliated routing broker-dealer benefits from significant exceptions to the Market Access Rule, whereas broker-dealers unaffiliated with NASDAQ are subject to all of the requirements of the Market Access Rule when they offer similar algorithmic trading services to those NASDAQ proposes to offer, and such requirements are reinforced through regulatory examination and oversight.[33] Accordingly, SIFMA ''urge[s] the Commission to assure that the same regulatory requirements and obligations would apply to Benchmark Orders and Child Orders effected by Nasdaq that would apply to those orders if they were effected by a broker-dealer.'' [34]

SIFMA further states that it shares the concern raised by the Commission in the Order Instituting Proceedings that Child Orders would not be subject to appropriate controls to manage risk, and that NASDAQ has not adequately addressed how or whether the Child Orders would be subject to adequate pre-trade risk controls.[35] SIFMA states that, given that Child Orders would be generated by a third-party Application and outside of the control and supervision of the broker-dealer that submitted the Benchmark Order, Child Orders would not be subject to the risk controls that the entering firm is required to have in place pursuant to the Market Access Rule.[36] SIFMA notes that, while NASDAQ has stated in the proposal that Child Orders will comport with existing NASDAQ rules, including those intended to enforce the Market Access Rule, NASDAQ has provided no details regarding how Child Orders will meet these requirements.[37] According to SIFMA, this lack of detail raises concerns about the potential for market disruptions that NASDAQ's proposed algorithmic functionality could cause.[38] According to the other commenter, Angel, NASDAQ's assurances in the proposal that it will have adequate risk controls are credible.[39]

NASDAQ responds by, among other things, committing to provide additional risk management safeguards for Benchmark Orders.[40] Specifically, NASDAQ states that, unlike existing order types, which are subjected only once to NASDAQ's suite of standardized, system-enforced risk-management checks, including but not limited to duplicative and erroneous order and credit threshold checks, Benchmark Orders will trigger such checks twice—once with respect to the Benchmark Order itself at the time of entry and a second time with respect to each Child Order attributable to the Benchmark Order.[41] In addition, NASDAQ states that it will provide new safeguards, specifically designed for Benchmark Orders, that compare each Child Order to its parent Benchmark Order to ensure that the system cannot mistakenly create excess Child Orders or otherwise ''spray'' orders to the detriment of market participants.[42] According to NASDAQ, if any of these checks fail at any stage in the process, the entire order will be cancelled.[43]

As the Commission noted in the Order Instituting Proceedings, the application of appropriate risk controls under Rule 15c3–5 is critically important to maintaining a robust market infrastructure supporting the protection of investors, investor confidence, and fair, orderly, and efficient markets for all participants.[44] Under the proposal, the risk controls required by Rule 15c3–5 would not be applicable to Child Orders generated by the proposed Application—a facility of NASDAQ—but NASDAQ represents that it would nevertheless impose substantial risk controls to govern its proposed Benchmark Orders, and in particular with respect to the Child Orders to which Rule 15c3–5 would not directly apply. The representations

[24] In disapproving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78f(b)(8).

[27] 17 CFR 240.15c3–5. Rule 15c3–5 is designed to ensure that broker-dealers appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, or the stability of the financial system. *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 at 69794 (November 15, 2010).

[28] *See* Order Instituting Proceedings, 77 FR at 50192.

[29] *Id.*

[30] *See* SIFMA Letter and Angel Letter, *supra* note 6; NASDAQ Letter, *supra* note 8.

[31] *See* SIFMA Letter, *supra* note 6.

[32] *Id.* at 2.

[33] *Id.* at 5.

[34] *Id.* at 2.

[35] *Id.* at 4.

[36] *Id.* at 4–5.

[37] *Id.* at 5.

[38] *Id.*

[39] *See* Angel Letter, *supra* note 6, at 2.

[40] *See* NASDAQ Letter, *supra* note 8, at 3.

[41] *Id.*

[42] *Id.* According to NASDAQ, there are four such ''comparison'' checks: (i) Child Order limit price cannot violate the Parent Order limit price; (ii) Child Order quantity cannot exceed the original Parent Order quantity; (iii) Child Order quantity cannot exceed the ''leaves'' balance of the Parent Order; and (iv) Child Order quantity cannot be greater than the eligible routing quantity. *Id.* at 3–4. NASDAQ represents that it will conduct these checks at four stages of the Benchmark Order process: (i) at the point of entry; (ii) during the processing of any Child Orders; (iii) after the processing of Child Orders; and (iv) when Child Orders are sent to be booked on NASDAQ or routed to an away destination. *Id.* at 4.

[43] *Id.*

[44] *See* Order Instituting Proceedings, 77 FR at 50192.

made in NASDAQ's response letter, if appropriately developed and reflected in NASDAQ's proposed rule change, could potentially address the concerns regarding the risk controls surrounding Benchmark Orders, and whether in this regard the proposal imposes an undue burden on competition under the Act or whether it is designed 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, to protect investors and the public interest, and not to permit unfair discrimination between customers, issuers, brokers, or dealers. NASDAQ, however, has not amended its proposed rule change to address this issue or detail its proposed commitments with respect to the risk controls it proposes to implement with respect to Benchmark Orders. Accordingly, the Commission does not believe that it can make the finding that NASDAQ's proposal is consistent with the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.[45]

In the Order Instituting Proceedings, the Commission also expressed concern that NASDAQ's proposed Benchmark Order functionality could permit unfair discrimination or impose an unnecessary burden on competition.[46] In this regard, SIFMA notes, among other things, that the proposed Benchmark Order functionality would compete with algorithms that broker-dealers and other market participants currently use and offer, and questions whether it is appropriate for NASDAQ, as a national securities exchange, to offer that functionality.[47] SIFMA states that NASDAQ's proposal could create regulatory disparities that would give NASDAQ an inappropriate advantage over broker-dealers providing the same services, both in terms of the Market Access Rule[48] and other regulatory requirements that apply to broker-dealers.[49] Specifically, SIFMA observes that NASDAQ has characterized the Benchmark Order as part of its function as a self-regulatory organization, and states that this characterization is cause for concern that NASDAQ would use the doctrine of regulatory immunity to shield the Exchange from any liability that could arise out of the use of the Benchmark Order functionality.[50] SIFMA suggests that the proposed functionality is not part of NASDAQ's role as a market regulator, but rather is a commercial offering of the Exchange that should not enjoy immunity from liability that is not available to broker-dealers providing identical services.[51] SIFMA further opines that ''it would be an incongruous result if NASDAQ were permitted to use regulatory immunity as a shield against liability, while competing algorithm providers offering the same services may assume unlimited liability [without an] arms-length agreement.'' [52] SIFMA believes that exchanges should not enjoy regulatory immunity that is not available to broker-dealers in providing the same services.[53]

NASDAQ's response letter takes the position that, as a self-regulatory organization, the doctrine of regulatory immunity would apply to the services that it proposes to offer.[54] NASDAQ believes that the proposal would not give NASDAQ an inappropriate advantage over broker-dealers, and that the Application would be a functional offering of the NASDAQ Stock Market similar to other functions, including order types, that process member trading interest.[55] NASDAQ states that it has taken steps to ensure that the Application performs to the standards that the Commission sets for all self-regulatory organizations and complies with applicable SEC regulations and NASDAQ rules.[56] According to NASDAQ, it is beyond dispute that NASDAQ is subject to regulation by the Commission in providing access to a facility of the Exchange such as Benchmark Orders and that NASDAQ must regulate its members' use of such facilities.[57] NASDAQ states that, as a national securities exchange under the Act, it is, by definition, a self-regulatory organization, and that SIFMA's contention that NASDAQ, in making the proposal, is not acting as a self-regulatory organization is illogical and inconsistent with the plain language of the Act.[58] Further, according to NASDAQ, common law immunity is not at issue in connection with the Commission's review of the proposal and there is no need for the Commission to discuss such immunity in analyzing the consistency of the proposal with the Act.[59]

NASDAQ also contends that the proposed Benchmark Orders will operate much like NASDAQ's already-approved order types, and that SIFMA has identified no salient feature of Benchmark Orders that distinguish them from NASDAQ's already-approved order types, nor has SIFMA explained how Benchmark Orders would compete with broker systems any differently than certain features of NASDAQ's system that already compete with broker systems, such as routing and order execution.[60] NASDAQ further argues that Benchmark Orders possess no characteristics that the Commission has described as belonging to broker-dealer functions, and that Benchmark Orders bear little or no resemblance to traditional brokerage functions as defined and applied by the Commission.[61]

NASDAQ has acknowledged, however, that Benchmark Orders are designed to compete with services currently offered by broker-dealers, noting that ''the establishment of Benchmark Orders on NASDAQ will enhance NASDAQ's ability to compete with similar functionality that already is widely dispersed in the industry both among members and trading venues.'' [62] In addition, NASDAQ has stated that ''[t]he Benchmark Order will not itself be available for execution, but instead will be used by a sub-system of the trading system to generate a series of 'Child Orders' of the types that already exist in the current NASDAQ rules.'' [63] NASDAQ has further articulated that ''Benchmark Orders will not be executed by the NASDAQ matching engine, but will upon entry be directed

[45] 15 U.S.C. 78f(b)(5) and (b)(8).

[46] *See* Order Instituting Proceedings, 77 FR at 50192.

[47] *See* SIFMA Letter, *supra* note 6, at 2. In addition, SIFMA notes that it shares an additional concern raised by the Commission in the Order Instituting Proceedings regarding whether Benchmark Orders and Child Orders could receive preferential treatment as compared to orders generated by broker-dealers that choose to use a competing algorithm. *See* SIFMA Letter, *supra* note 6, at 3. The other commenter, Angel, opines that there could be a small time advantage from the proximity of the Benchmark Order application to the order entry gateway of NASDAQ's matching engine, but the amount of time gained by such proximity would not likely result in a major advantage. *See* Angel Letter, *supra* note 6, at 3. In response to SIFMA, NASDAQ states that, as a self-regulatory organization, it is not permitted to give and would not give Benchmark Orders any preferential treatment *vis a vis* other orders entered into NASDAQ systems. *See* NASDAQ Letter, *supra* note 8, at 4.

[48] 17 CFR 240.15c3–5.

[49] *See* SIFMA Letter, *supra* note 6, at 2.

[50] *Id.* at 3.

[51] *Id.* at 4.

[52] *Id.* at 3.

[53] *Id.* at 4.

[54] *See* NASDAQ Letter, *supra* note 8, at 8.

[55] *Id.* at 2, 4, 7–8.

[56] *Id.* at 8.

[57] *Id.*

[58] *Id.*

[59] *Id.* at 7.

[60] *Id.* at 2, 4.

[61] *Id.* at 7.

[62] *See* Notice, 77 FR at 29437. In addition, Angel notes that brokerage firms typically offer their clients the ability to place orders designed to match the VWAP, TWAP or POV, and that NASDAQ's proposal represents another example of the blurring borders between exchanges and broker-dealers, and states that there is nothing inherently wrong with competition between the two. *See* Angel Letter, *supra* note 6, at 2.

[63] *See* Notice, 77 FR at 29435.

to [the Application] dedicated to processing Benchmark Orders.'' [64]

The Commission believes that one significant difference between Benchmark Orders and existing NASDAQ or other exchange orders is that the Benchmark Order is not initially directed to the NASDAQ matching engine for potential execution, but instead is directed to the Application for further processing and the generation of Child Orders, to be routed to the NASDAQ matching engine or another trading center. Thus, NASDAQ's proposed Benchmark Order is not an exchange order in the traditional sense, in that it would not immediately enter the Exchange's order book (*i.e.,* NASDAQ Market Center) [65] for potential execution. Instead, it essentially is an instruction that would reside outside of the matching engine and be processed by an Application, which would then route orders to NASDAQ, or another trading venue, using a selected algorithm, over a particular period of time, to achieve a particular objective.

Because NASDAQ is proposing to offer a novel order type designed to compete with services offered by broker-dealers, the Commission must consider, among other things, whether the proposed rule change would impose an unnecessary or inappropriate burden on competition under Section 6(b)(8) of the Act.[66] As noted above, SIFMA is concerned that NASDAQ's proposal could create regulatory disparities that would give NASDAQ an inappropriate advantage over broker-dealers providing the same services, and that NASDAQ ''would use the doctrine of regulatory immunity to protect itself from any liability that arises out of the Benchmark Order functionality, through systems issues or otherwise.'' [67] In addition, the Commission notes that NASDAQ Rule 4626 generally provides that ''Nasdaq and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Nasdaq Market Center or its use.'' [68]

NASDAQ does not respond to concerns raised by SIFMA with any substantive analysis of whether regulatory immunity, or exchange rules limiting liability, in the context of NASDAQ's proposal to offer a service traditionally provided by broker-dealers, would impose an undue burden on competition under the Act. NASDAQ simply responds that this ''judicially recognized doctrine is not at issue in connection with the Commission's review of NASDAQ's Benchmark Order Proposal'' and that ''[t]here is no need for the Commission to discuss immunity in analyzing the consistency of NASDAQ's Proposal with the Exchange Act.'' [69] Accordingly, the Commission does not believe that it can make the finding that NASDAQ's proposal is consistent with the requirements of Section 6(b)(8) of the Act.[70]

As noted above, Rule 700(b)(3) of the Commission's Rules of Practice states that ''[t]he burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder * * * is on the self-regulatory organization that proposed the rule change'' and that a ''mere assertion that the proposed rule change is consistent with those requirements * * * is not sufficient.'' [71] For the reasons set forth above, the Commission does not believe that NASDAQ has met its burden to demonstrate that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

IV. Conclusion

For the foregoing reasons, the Commission does not find that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Sections 6(b)(5) and 6(b)(8) of the Act.[72]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[73] that the proposed rule change (SR–NASDAQ–2012–059) be, and hereby is, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[74]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00871 Filed 1–16–13; 8:45 am]

BILLING CODE 8011–01–P

[64] *Id.* at 29436.

[65] The term ''NASDAQ Market Center'' is defined in pertinent part as the ''automated system for order execution and trade reporting owned and operated by The NASDAQ Stock Market LLC * * * [comprising] an order execution service that enables Participants to automatically execute transactions in System Securities; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment.'' *See* NASDAQ Rule 4751(a)(1).

[66] 15 U.S.C. 78f(b)(8).

[67] *See* SIFMA Letter, *supra* note 6, at 3.

[68] *See* NASDAQ Rule 4626.

[69] *See* NASDAQ Letter, *supra* note 8, at 7.

[70] 15 U.S.C. 78f(b)(8).

[71] 17 CFR 201.700(b)(3).

[72] 15 U.S.C. 78f(b)(5) and (b)(8).

[73] 15 U.S.C. 78s(b)(2).

[74] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68626; File No. SR–NASDAQ–2012–149]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify NASDAQ's Order Execution Rebates and Investor Support Program

January 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1], and Rule 19b–4 [2] thereunder, notice is hereby given that on December 31, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III, 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 (i) to amend its schedule of execution rebates under Rule 7018(a), and (ii) to modify the Investor Support Program (the ''ISP'') under Rule 7014. While changes pursuant to this proposal are effective upon filing, the Exchange will implement the proposed rule on January 2, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.