



August 21, 2012

Ms. Elizabeth M. Murphy, Secretary
U. S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Rule-comments@sec.gov

Re: File number SR-NASDAQ-2012-90; Release No. 34-67507
Notice of Filing of Proposed Rule Change to Amend Rule 4626-Limitation of Liability

Dear Ms. Murphy:

This letter is in response to the request for comments by the Securities and Exchange Commission (the "Commission") on NASDAQ's proposal of a voluntary accommodation program for claims arising from system difficulties that NASDAQ experienced on 5/18/2012 during the initial public offering ("IPO") of the security FACEBOOK, Inc. ("FB").

Vandham Securities is an SEC registered broker-dealer and a member of FINRA, and NASDAQ. Vandham trades securities as a market maker, agency dealer, and through our electronic trading services.

Vandham appreciates that NASDAQ is willing to increase their liability in response to claims from multiple broker-dealers and is in full support of that component of their proposal.

While Vandham appreciates that NASDAQ has admitted experiencing catastrophic technical difficulties during and after the opening process of the FB IPO, and is attempting to reimburse members for losses that resulted from these failures, we strenuously object to the establishment of a "uniform benchmark price of \$40.527 as described in Section III Accommodation Proposal, Accomodation Standards that will be used for accommodation payments for orders described in (i) for the following reasons:

1. **Customers are entitled to expect that orders that were sent, received, and confirmed by NASDAQ prior to the opening print, would receive the opening print and not a compensation package based on a "benchmark price".**
2. **Vandham was in constant contact with NASDAQ prior to, during , and after the opening price and relied on the instructions of NASDAQ employees in taking actions around executing their customer orders.**
3. **Vandham owes its customers the duty of "best execution" on all orders. To disadvantage any customers because of a technical glitch would negate this duty. As noted historically, technical issues that a firm may encounter do not alleviate the duty/obligation of representing customers and of best execution by the receiving entity nor are they mitigating factors when it comes disciplinary issues.**
4. **NASDAQ continued to give guidance through Monday 5/21/12 that "consideration would be given to any customers that sold their positions by 10:00 AM on Monday the 21st.**

5. We challenge the assertion by NASDAQ that concludes that the price of \$40.527 was the price at which a “Reasonably diligent member could have obtained shares to mitigate any unexpected losses”
 - NASDAQ had indicated to customers that for orders entered in Facebook between 11:11 and 11:30 AM, it was their intention to “reach resolution of those trades today through an offline matching process.” And to contact NASDAQ by 5PM On 5/18 if you would like to be included in the resolution.

NASDAQ May 18,2012 16:23:51 ET For firms that entered orders in Facebook between 11:11 and 11:30 AM and have questions regarding their executions, you must call NASDAQ at 212-231-5100 by 5:00 pm with order information if you would like to be included in the resolution of any questions. Our intention is to reach resolution of those trades today through an offline matching process. If at the end of that process, a firm continues to have questions or concerns, the firm needs to submit a formal accommodation request to us through the normal channels. Those requests will be reviewed and ruled upon and further information will be forthcoming concerning those. This is a voluntary process and the normal accommodation rule process is available to those that do not want to participate will be made available.

Source: NASDAQ Market System Status Search results for 5/18/2012

- With this direction from Nasdaq that there would be a supplemental cross after the market closed, we believe that any “reasonable market practitioner” would not have sold their shares between 1:50 and 2:35. Asserting that someone would have traded in those 45 minutes while NASDAQ employees were directing members to participate in a supplemental cross that was planned for after the close could clearly have been considered a questionable practice by customers if the supplemental crossing session was actually successful
- Only once the message came back from NASDAQ , that the “offline matching process”, “resulted in nothing done” , could a reasonably diligent member be expected to mitigate their losses, hence why the calculation of loss should have begun with trading on Monday May 21,2012. We also believe that all reasonable practitioners would not have acted in exactly the same fashion and should not have been expected to make such a significant judgment call on risk mitigation for an order type that should have had such a high expectation of execution. We therefore believe that members should be reimbursed for actual losses, and should have no negative impacts on their firm when they had done everything as prescribed by NASDAQ.

NASDAQ May 18,2012 18:18:55 ET The offline matching process for orders entered in FB between 11:11 and 11:30 AM resulted in nothing done. As previously noted, clients may submit a formal accommodation request to NASDAQ using the normal process. This must be done in writing by noon on Monday, May 21st. Any offline matching requests will be honored as initial notice of an accommodation request, though further details must be provided. NASDAQ will provide further notice directly to firms regarding their requests.

Source: NASDAQ Market System Status Search results for 5/18/2012

- We would encourage the SEC to survey the “reasonably diligent” of our industry that were involved to see what actions were taken by most practitioners that were handling customer orders on that day, and in addition to estimate what the impact would have been on the stock price had all of those customers taken that approach of mitigating losses in those 45 minutes
6. We believe that there is one class of order types that is not specifically addresses in the proposal and should receive different treatment. Customers with orders in before 11:11 that were cancel/replaced between 11:11 and 11:30:09
- As per NASDAQ they had generated a net short position of 3,070.430 shares due to orders that were live prior to 11:11 and cancelled post 11:11. They do not identify the component of that position which was due to cancel/replace orders. The Cancel/ replace order type exists so that the original order maintains some sort of standing in a book as well as maintains an audit trail. We believe that NASDAQ Should have done more due diligence and delivered the component of that short position to those orders that may have still been live at Nasdaq but just reduced in size. They are taking the profits generated from certain clients to distribute amongst a larger group.
 - *For Example: If you had a market order to sell 50,000 shares entered in FB at 10:50 which was then cancel/replaced down to 40,000 shares at 11:25AM. According to the filing, Nasdaq would have ended up with a short position of 50,000 shares and the order would have been cancelled back with Nothing done to the member at 1:50 PM.*
7. In the execution of the Facebook IPO, according to the proposed accommodation, some customers may be compensated in full for their losses while others may be significantly undercompensated. The proposal requires that the member firm file a formal release of claims against NASDAQ. We would propose that we should be able to opt in to the settlement on an order by order and or on a firm by firm basis, as per the member’s decision. This will allow the ultimate beneficiaries that NASDAQ expects to be paid from the compensation to have an opinion on their specific settlement.

8. The markets in general have been experiencing large amounts of bad publicity over the past decade beginning with the SEC report pursuant to 21a, Madoff, Stanford, Ponzi schemes, pump and dump programs, flash trading, and many more. The average American citizen has grown increasingly hesitant to invest in the markets and punishing investors and firms that followed all Rules and Regulation, Policies and Procedures would certainly be a black eye on the financial system.

It is for these reasons that Vandham requests that the Commission **NOT** approve the portion of NASDAQ's proposal that sets a limit on the amount that customer's losses will be reimbursed, but instead recommends that customers be reimbursed for their losses in full.

We welcome the opportunity to discuss our comments with the Commission and will make ourselves available for such.

Respectfully,



Eugene P. Torpey
Chief Compliance Officer