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Leonard J. Amoruso
General Counsel

August 29, 2012

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NW
Washington, DC 20549-1090

Re: SEC Release No. 34-67507; File No. SR-NASDAQ-2012-090; Notice of Filing of Proposed Rule Change to Amend Rule 4626 – Limitation of Liability

Dear Ms. Murphy:

Knight Capital Group, Inc. (Knight)¹ appreciates the opportunity to comment on NASDAQ's proposed rule change to amend Rule 4626 to establish an accommodation plan to address losses suffered by its members as a result of NASDAQ's system failures and conduct on May 18, 2012, the first day of trading in Facebook, Inc. common stock (FB) following its initial public offering (IPO).

The industry losses arising from the FB trading on May 18, 2012 were caused by a number of failures at NASDAQ including, as NASDAQ has publicly acknowledged, its trading system problems. As a result of these failures, NASDAQ did not properly process the opening IPO cross, nor did it deliver trade execution reports on the opening cross for several hours. Because of the delays in reporting, investors did not know if their orders had been filled or if cancel requests had been honored. By the time market participants received their trade execution requests, the market had declined substantially from the price of the opening cross. NASDAQ members served to maintain some measure of market order in the face of NASDAQ's actions and by doing so, helped to shield investors from the full impact of NASDAQ's errors.

NASDAQ's proposal to raise the cap in Rule 4626

We support NASDAQ's efforts to reimburse its member firms for losses caused by NASDAQ's actions and decisions during the first day of trading in FB. Although we would have preferred that the accommodation pool cover all losses sustained by NASDAQ members, we do support NASDAQ's proposal to increase to the accommodation pool from \$40 million to \$62 million, as

¹ Knight Capital Group, Inc., through its subsidiaries, is a major liquidity center for foreign and domestic equities, fixed income securities, and currencies. On active days, Knight can execute in excess of 10 million trades, with volume exceeding 15 billion shares. Knight's clients include more than 3,000 broker/dealers and institutional clients. Knight employs more than 1,400 people worldwide. For more information, please visit: www.knight.com.

well as NASDAQ's proposal to compensate its members for the losses it caused in cash, as opposed to the previously proposed "credits" against future transaction fees.

Exchange Liability and Regulatory Immunity

We support many of the comments made by other market participants as it relates to exchange liability and regulatory immunity. In fact, we respectfully urge the SEC to defer opining on NASDAQ's extensive discussion relating to liability limitations and/or regulatory immunity to another day. We believe these critical issues should be more thoroughly addressed in a broader context (e.g., possibly a separate rule filing, concept release, or roundtable discussion). Limitations on exchange liability affect all exchanges and many market participants. Rule 4626 was adopted in connection with the NASDAQ Exchange filing in 2006, and there was very little discussion on the topic at that time. As exchanges have evolved over the years, with greater and greater emphasis on profits and business expansion, the time is right for a more fulsome discussion on this issue. Thus, we respectfully submit that the SEC should bifurcate the issues, deciding today on NASDAQ's proposal to amend Rule 4626 to effectively increase its cap to \$62 million under proposed Rule 4626(b)(3), and deferring on the issues relating to liability limitations and/or regulatory immunity until there can be a more comprehensive discussion on the matter.

There is, of course, very clear precedent for proceeding in this manner. On April 25, 2011, NASDAQ experienced a serious technology failure in connection with its automated quotation refresh system (AQR). As a result, NASDAQ promptly submitted a rule proposal to the SEC in which it sought expansion of NASDAQ Rule 4626, effectively increasing its cap from \$500,000 to \$3 million under specified circumstances. There was no discussion whatsoever in that filing as to liability limitations and/or regulatory immunity. Rather, NASDAQ appropriately limited its filing to the simple request to raise the cap from \$500,000 to \$3 million.² As a result, we believe the SEC should similarly limit its review to the sole issue of NASDAQ's request to raise the cap from \$3 million to \$62 million under the specified circumstances contained in the proposed Rule 4626(b)(3).

Finally, we also believe that NASDAQ's request to add a release requirement found in proposed Rule 4626(b)(3)(H) is misplaced. In our view, formal releases from claims of civil liability are more akin to commercial terms which should be negotiated at arms-length between two parties to a contract, and should not be part of a rule imposed by a regulatory authority. Setting forth those types of requirements in the context of a rule filing inappropriately mixes commercial issues with regulatory requirements. Thus, we submit that the SEC should reject this section of the rule, as it would set harmful precedent.³ However, if the SEC disagrees and determines that some form of release is appropriate, we agree with other commenters that any such release should only be sought after the NASDAQ member is notified of the amount that NASDAQ is willing to pay under the terms of the accommodation plan.

² See, SEC Release No. 34-64365; File No. SR-NASDAQ-2011-058 (April 28, 2011).

³ Indeed, NASDAQ did not seek a release in connection with its prior rule filing in which the cap was expanded in April 2011. See footnote 2 above and the accompanying text.

Conclusion

To reiterate, we support NASDAQ's proposal as it relates specifically to increasing the liability cap in Rule 4626 to compensate its members for losses beyond the outdated liability limitation currently contained in this rule.

As to the broader issues of exchange liability we believe the SEC should not take action on those items in the context of the current rule proposal.

We welcome the opportunity to discuss our comments with the Commission.

Respectfully submitted,



Leonard J. Amoruso

cc: SEC Chairman Mary L. Schapiro
SEC Commissioner Elisse B. Walter
SEC Commissioner Luis A. Aguilar
SEC Commissioner Troy A. Paredes
SEC Commissioner Daniel M. Gallagher
Robert W. Cook, Director, SEC Division of Trading and Markets
Edward S. Knight, EVP, General Counsel, NASDAQ OMX