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Ms. Elizabeth M. Murphy
Secretary
US Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: File No. SR-NASDAQ-2012-117; Release No. 34-68042

Dear Ms. Murphy:

This is in response to the one comment letter received in connection with the Securities and Exchange Commission's (the "SEC" or "Commission") review of rule filing SR-NASDAQ-2012-117 (the "Filing").¹ The Filing proposed by NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") would amend Rule 4751(f)(4) to include a new Intraday Net Asset Value ("INAV") Pegged Order for Exchange-Traded Funds ("ETFs") where the component stocks underlying the ETFs are U.S. Component Stocks as defined by Rule 5705(a)(1)(C) and 5705(b)(1)(D). The new order type would allow market participants to enter a buy or sell order at the prevailing published INAV, plus or minus any specified offset. The order would be priced as of the time it was entered and the price would update as the INAV changed. An execution would occur when and if an offer (for a buy order) or a bid (for a sell order) was available at the established price. A market participant could also set a limit price beyond which the INAV pegged order would not be executed.

NASDAQ believes that this new order type will serve market participants that utilize these ETFs as a vehicle to invest or trade in addition to serving the needs and interests of the Sponsors/Issuers of ETFs.

¹ Securities Exchange Act Release No. 68042 (October 18, 2012), 77 FR 64167 (October 18, 2012)(Notice of Filing of Proposed Rule Change With Respect to INAV Pegged Orders for ETFs).

The Commission received one comment letter in response to publication of the Filing from the Investment Company Institute² (the "Letter"). The Letter sought further clarity on the operation of the proposed order type, and raised some concerns about the value of pegging orders to INAV. Dorothy Donohue expressed in the Letter: "While we do not necessarily object to the creation of a new order type pegged to INAV, we recommend that the Securities and Exchange Commission ("SEC" or "Commission") request additional information from NASDAQ to further explore these questions and concerns". We aim to address those substantive questions and concerns in this response.

Purpose and Benefit of an INAV Pegged Order

The Letter questioned the purpose and benefit of the INAV Pegged Order type, stating that: "Most ETFs comprised of US equities are very liquid and trade with fair price execution." We believe that fair price executions are currently available for the highest volume, most liquid domestic equity products, but not necessarily for other less actively traded products, which make up the majority. Use of the INAV Pegged Order type will be entirely optional, and seeks to offer an additional tool to help investors achieve greater transparency and a fair execution price. For domestic equity products, the published INAV represents the closest calculation of underlying value generally available, and therefore in our view forms the best proxy for fair value.

Questions about the Operation of the INAV Pegged Order

The Letter focused on concerns surrounding "...what constitutes a 'compromised' INAV"? We believe that the Filing was clear in its references to a "compromised" INAV data feed, and not a compromised INAV, but for the avoidance of doubt, we would only suspend use of the order type if we were to detect a technological problem with the relevant data feed. NASDAQ already utilizes a number of systems and processes that aim to detect dissemination or latency issues with data feeds. NASDAQ has processes in place to communicate with market participants in the event of technology issues which impact its own systems or those systems of a third party where there is such a dependency. NASDAQ intends to utilize those current processes in relation to market communications relating to issues with the INAV data feed. Where there are clearly erroneous executions, NASDAQ will process these in accordance with established policies.

Concerns About Pegging Orders to INAV

The Letter, broadly speaking, made three contentions: that the INAV does not represent fair value; that the INAV can get stale leading to poor executions; and that the INAV is susceptible to error. We will aim to deal with each contention below.

First, we believe that for domestic equity products the INAV is a good representation of fair value and the only representation of fair value currently available for individual investors.

² Letter from Dorothy Donohue, Deputy General Counsel, Investment Company Institute, dated November 8, 2012.

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The Letter states that: "Some U.S, component stock ETFs may trade at a consistent premium" and that: "In such cases, an INAV pegged order to sell at INAV would likely disadvantage the seller". We simply disagree with this statement. In the Filing we provided an example (Example 2) that highlighted a hypothetical situation where an ETF was trading at a premium. In this scenario, even if the INAV Peg Order to sell was priced below the best bid, it would only execute at the best bid and in this case, at a premium to the INAV to the benefit of the investor. However, more importantly, a buyer in this scenario would not execute at a premium.

Second, we believe that poor executions are something that is of paramount concern to both issuers and investors. Poor executions diminish the confidence of an investor. The INAV Pegged Order type will offer investors a trade execution tool which should lead to a greater level of transparency as it relates to the ETF's current value, and consequently, should increase investor confidence. Even a data point that is populated at a minimum of every 15 seconds is still of value. It is the most up to date data source that is publicly available, and is a clear improvement over the current state of non-existent data as it relates to real time fund valuation. For that reason we think there is still beneficial to the end investor as the execution will still be benchmarked against the prevailing published INAV. Nonetheless, if an investor is still uncomfortable with the functionality and chooses to prioritize certainty of execution over transparency of price then they are free to elect to use traditional order types as there is no obligation to use the INAV Pegged Order.

Lastly, we agree that it is conceivable that an erroneous INAV may be disseminated by a calculation agent. However, we believe that the risk of a poor execution is mitigated by existing general safeguards in our market place. As previously mentioned, an execution would only ever occur within a prevailing bid-offer spread, however, in the absence of adequate depth of market, the disadvantaged party could utilize the Exchange's existing clearly erroneous procedures.

We appreciate the opportunity to address the Commission regarding the questions and concerns raised, and hope that this response provides the Commission with the information it requires to approve the proposal.

Respectfully submitted,



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