

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71187; File No. SR-NASDAQ-2013-165)

December 26, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify an Aspect of the Implementation of Rule 4626(b)(3)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on December 24, 2013, 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 and II below, which Items have been prepared by the Exchange. 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 the Substance of the Proposed Rule Change

The Exchange is filing a proposal to modify an aspect of the implementation of Rule 4626(b)(3), as previously described in SR-NASDAQ-2013-152,³ and to make a related amendment to the text of Rule 4626(b)(3)(E). The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Rule 4626. Limitation of Liability

(a) No change.

(b) Nasdaq, subject to the express limits set forth below, may compensate users of the Nasdaq Market Center for losses directly resulting from the systems’ actual failure to correctly process

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 71098 (December 17, 2013), 78 FR 77540 (December 23, 2013) (SR-NASDAQ-20134-152).

an order, Quote/Order, message, or other data, provided the Nasdaq Market Center has acknowledged receipt of the order, Quote/Order, message, or data.

(1) – (2) No change.

(3) Notwithstanding subsections (b)(1) and (2) above, for the aggregate of all claims alleged by all market participants related to errors in the Nasdaq Halt and Imbalance Cross Process in connection with the initial public offering of Facebook, Inc. (the “Cross”), including any delay in delivery of confirmations of orders in Facebook, Inc. stock on May 18, 2012, the total amount of Nasdaq's payment shall not exceed \$62 million. Eligibility of claims for payment shall be determined in accordance with the following procedures:

(A) – (D) No change.

(E) FINRA shall provide to the Nasdaq Board of Directors and the Board of Directors of The NASDAQ OMX Group, Inc. an analysis of the total value of eligible claims submitted under this subsection (b)(3). Nasdaq will thereafter file with the Securities and Exchange Commission a rule proposal setting forth the amount of eligible claims under the standards set forth in this Rule and the amount proposed to be paid to members by Nasdaq. In no event shall Nasdaq make any payments on claims pursuant to this subsection (b)(3) until the rule proposal setting forth the amount of eligible claims becomes effective [and final]. All payments shall be made in cash.

(F) –(H) No change.

(4) – (6) No change.

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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 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 IV below. The Exchange 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

Rule 4626(b)(3) established a one-time, voluntary accommodation policy for claims arising from system difficulties that Nasdaq experienced during the initial public offering (“IPO”) of Facebook, Inc. (“Facebook” or “FB”) on May 18, 2012.⁴ The rule describes the methodology for submission, evaluation, and payment of such claims. Among other things, Rule 4626(b)(3)(E) provides that “Nasdaq will ... file with the Securities and Exchange Commission a rule proposal setting forth the amount of eligible claims under the standards set forth in this Rule and the amount proposed to be paid to members by Nasdaq.” On December 9, 2013, Nasdaq submitted SR-NASDAQ-2013-152 to satisfy this requirement.

In SR-NASDAQ-2013-152, Nasdaq described, among other things, the scope of Rule 4626(b)(3), the process used to evaluate claims, the results of that process, and the process for payment of claims. With regard to the latter aspect of the filing, Nasdaq stated that it would pay all valid claims in accordance with the payment instructions provided by the claimant, “immediately upon the expiration of the 60-day time period during which [SR-NASDAQ-2013-152] is subject to suspension by the Commission.” Moreover, Rule 4626(b)(3)(E) provides that “[i]n no event shall Nasdaq make any payments on claims pursuant to this subsection (b)(3) until

⁴ See Securities Exchange Act Release Nos. 69216 (March 22, 2013), 78 FR 19040 (March 28, 2013) (SR-NASDAQ-2012-090) (order approving Nasdaq proposal to adopted Rule 4626(b)(3) (the “Approval Order”)); 67507 (July 26, 2012), 77 FR 45706 (August 1, 2012) (SR-NASDAQ-2012-090) (proposal to adopt Rule 4626(b)(3)).

the rule proposal setting forth the amount of eligible claims becomes effective and final” (emphasis added).

Nasdaq believes that it would be consistent with the protection of investors and the public interest to pay claimants sooner. Accordingly, Nasdaq is submitting this proposed rule change to modify this aspect of the implementation of Rule 4626(b)(3) by deleting the word “final” from Rule 4626(b)(3)(E). In order to implement this modification as quickly as possible, Nasdaq is requesting that the Commission waive the operative delay requirement provided for by Rule 19b-4(f)(6)(iii).⁵ If such waiver is granted, Nasdaq intends to pay all valid claims as soon as practicable thereafter.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ in particular, because the proposal 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, and, in general to protect investors and the public interest. In the Approval Order, the Commission found that Rule 4626(b)(3) is consistent with Act because it “sets forth objective and transparent

⁵ 17 CFR 240.19b-4(f)(6)(iii).

⁶ 15 U.S.C. § 78f(b) (setting forth the prerequisites for registration as a national securities exchange).

⁷ 15 U.S.C. § 78f(b)(5) (requiring that an exchange’s rules be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to 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 not [be] designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the exchange”).

processes to determine eligible claims and how such claims would be paid to Nasdaq members that elect to participate in the accommodation plan.” The Commission further determined that providing compensation pursuant to the rule would be in the public interest and that the rule would encourage members to compensate their customers. Similarly, Nasdaq believes that this proposed rule change is consistent with the Act because it will allow Nasdaq to accomplish the approved objectives of the Rule 4626(b)(3) through final payment of eligible claims without further delay.

B. Self-Regulatory Organization’s Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposed rule change does not relate to the provision of goods or services, nor does it impose regulatory restrictions on the ability of members to compete. Accordingly, the change does not affect competition in any respect.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

⁸ 15 U.S.C. 78s(b)(3)(A).

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange notes that if such waiver is granted, it intends to pay all valid claims as soon as practicable thereafter. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to pay claimants without undue delay. For this reason, the Commission designates the proposed rule change operative upon filing with the Commission.¹¹

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. 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:

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁰ Id.

¹¹ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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. Please include File Number SR-NASDAQ-2013-165 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-2013-165. 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 website (<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 website 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 10:00 a.m. and 3:00 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-2013-165 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Lynn M. Powalski
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).