

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68925; File No. SR-NASDAQ-2012-137)

February 14, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment Nos. 1 and 3 Thereto, to Establish the Market Quality Program

On December 7, 2012, The NASDAQ Stock Market LLC (“Exchange” or “NASDAQ”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to establish the Market Quality Program (“MQP” or “Program”) on a pilot basis. On December 20, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the Federal Register on December 31, 2012.<sup>3</sup> The Commission received two comment letters on the proposed rule change.<sup>4</sup> On February 7, 2013, the Exchange submitted Amendment No. 2 to the proposed rule change. On February 8, 2013, the Exchange withdrew Amendment No. 2<sup>5</sup> and filed Amendment No. 3 to the proposed rule change.<sup>6</sup>

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 68515 (Dec. 21, 2012), 77 FR 77141 (Dec. 31, 2012).

<sup>4</sup> See Letter from Rey Ramsey, President & CEO, TechNet, dated January 22, 2013 and Letter from Daniel G. Weaver, Ph.D., Professor of Finance, Rutgers Business School, dated January 30, 2013.

<sup>5</sup> The Exchange withdrew Amendment No. 2 due to a technical error in the amendment.

<sup>6</sup> In Amendment No. 3, the Exchange clarified: (i) that the Exchange may limit on a Program-wide basis the number of Exchange-Traded Funds (“ETFs”) per MQP Company that can participate in the MQP, and that the Exchange would not be limiting the number of actual shares issued by an MQP Company for a particular ETF participating in the

Section 19(b)(2) of the Act<sup>7</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change – or within such longer period up to 90 days (i) as the Commission may designate if it finds the longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents – the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is February 14, 2013. The Commission is extending this 45-day period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that the Commission has sufficient time to consider the proposed rule change and the comments received. The proposed rule change would, among other things, add new Rule 5950 to establish the Market Quality Program and exempt the Market Quality Program from NASDAQ Rule 2460 (Payment for Market Making).

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> designates March 31, 2013, as the date by which the Commission should either approve or disapprove or

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Program; (ii) that the Exchange will provide in the monthly public report to the Commission relating to the MQP (a) information on the market quality of MQP Securities after they exceed the threshold and “graduate” from the Program pursuant to proposed Rule 5950(d)(1)(A), and (b) its analysis of the information to be included in the report and its assessment of the efficacy of the MQP; and (iii) that the Exchange will provide to the Commission data and analyses about comparable ETFs that are listed on the Exchange but that are not in the MQP, as well as any other MQP-related data and analyses requested by Commission staff for the purpose of evaluating the efficacy of the MQP. Amendment No. 3 provides clarification to the proposed rule change, and because it does not materially affect the substance of the proposed rule change, Amendment No. 3 does not require notice and comment. All terms relating to the MQP that are referred to, but not defined in, this Notice of Designation of a Longer Period for Commission Action are defined in the proposed rule change, as amended.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> Id.

institute proceedings to determine whether to disapprove the proposed rule change (File Number SR-NASDAQ-2012-137).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(31).