

Required fields are shown with yellow backgrounds and asterisks.

Filing by **NASDAQ Stock Market**
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) <input type="checkbox"/> Section 806(e)(2) <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Contact Information
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * <input type="text" value="John"/>	Last Name * <input type="text" value="Yetter"/>
Title * <input type="text" value="Vice President and Deputy General Counsel"/>	
E-mail * <input type="text" value="john.yetter@nasdaqomx.com"/>	
Telephone * <input type="text" value="(301) 978-8497"/>	Fax <input type="text" value="(301) 978-8472"/>

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date
By

(Name *)

Persona Not Validated - 1383935917270,

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to describe the implementation of Rule 4626(b)(3).

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. There is no text of the proposed rule change.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of NASDAQ pursuant to authority delegated by the Board of Directors of NASDAQ on July 17, 2013. NASDAQ staff will advise the Board of Directors of NASDAQ of any action taken pursuant to delegated authority. No other action by NASDAQ is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to John Yetter, Vice President and Deputy General Counsel, The NASDAQ OMX Group (“NASDAQ OMX”), at (301) 978-8400.

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR § 240.19b-4.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

I. Introduction

On March 22, 2013, the Commission approved a proposal by Nasdaq to establish 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, 2012.³ Rule 4626 limits the liability of Nasdaq and its affiliates with respect to any losses, damages, or other claims arising out of the Nasdaq Market Center or its use and provides for limited accommodations under the conditions specified in the rule.⁴ Rule 4626(b)(1) provides that for the aggregate of all claims made by market participants related to the use of the Nasdaq Market Center during a single calendar month, Nasdaq’s payments under Rule 4626 shall not exceed the larger of \$500,000 or the amount of the recovery obtained by Nasdaq under any applicable insurance policy. Rule 4626(b)(2) states that for the aggregate of all claims made by market participants related to systems malfunctions or errors of the Nasdaq Market

³ Securities Exchange Act Release No. 69216 (March 22, 2013), 78 FR 19040 (March 28, 2013) (SR-NASDAQ-2012-090) (“Approval Order”). See also Securities Exchange Act Release No. 67507 (July 26, 2012), 77 FR 45706 (August 1, 2012) (SR-NASDAQ-2012-090) (“Proposing Release”).

⁴ Rule 4626(a) provides that except as set forth in the accommodation portion of the rule, “Nasdaq and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Nasdaq Market Center or its use. Any losses, damages, or other claims, related to a failure of the Nasdaq Market Center to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the Nasdaq Market Center shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the Nasdaq Market Center.”

Center concerning locked/crossed compliance, trade through protection, market maker quoting, order protection, or firm quote compliance, during a single calendar month Nasdaq's payments under Rule 4626 shall not exceed the larger of \$3,000,000 or the amount of the recovery obtained by Nasdaq under any applicable insurance policy. Rule 4626(b)(3) establishes a methodology for submission, evaluation, and payment of claims associated with the Facebook IPO.

On May 18, 2012, Nasdaq experienced system difficulties during the Nasdaq Halt and Imbalance Cross Process (the "Cross") for the FB IPO. These difficulties delayed the completion of the Cross from 11:05 a.m. until 11:30 a.m.⁵ Based on its assessment of the information available at the time, Nasdaq concluded that the system issues would not have any effects beyond the delay itself. In an exercise of its regulatory authority, Nasdaq determined to proceed with the IPO at 11:30 a.m. rather than postpone it.

As a result of the system difficulties, however, certain orders for FB stock that were entered between 11:11:00 a.m. and 11:30:09 a.m. in the expectation of participating in the Cross – and that were not cancelled prior to 11:30:09 a.m. – either did not execute or executed after 1:50 p.m. at prices other than the \$42.00 price established by the Cross. (Other orders entered between 11:11:00 a.m. and 11:30:09 a.m., including cancellations, buy orders below \$42.00, and sell orders above \$42.00, were handled without incident.) System issues also delayed the dissemination of Cross transaction reports from 11:30 a.m. until 1:50 p.m. At 1:50 p.m., Nasdaq system difficulties were completely resolved.

Rule 4626(b)(3) provides that, as a result of these unique circumstances, Nasdaq will accommodate members for losses attributable to the system difficulties on May 18,

⁵ All times in this filing are Eastern Time.

2012 in an amount not to exceed \$62 million. Rule 4626(b)(3)(A) provides that all claims for such accommodation must arise solely from realized or unrealized direct trading losses arising from the following specific Cross orders:

- (i) SELL Cross orders that were submitted between 11:11 a.m. and 11:30 a.m. on May 18, 2012, that were priced at \$42.00 or less, and that did not execute;
- (ii) SELL Cross orders that were submitted between 11:11 a.m. and 11:30 a.m. on May 18, 2012, that were priced at \$42.00 or less, and that executed at a price below \$42.00;
- (iii) BUY Cross orders priced at exactly \$42.00 and that were executed in the Cross but not immediately confirmed; and
- (iv) BUY Cross orders priced above \$42.00 and that were executed in the Cross but not immediately confirmed, but only to the extent entered with respect to a customer that was permitted by the member to cancel its order prior to 1:50 p.m. and for which a request to cancel the order was submitted to Nasdaq by the member, also prior to 1:50 p.m.

As originally approved, Rule 4626(b)(3)(D) provided that all claims related to the FB IPO must be submitted in writing not later than 7 days after formal approval of the FB accommodation proposal by the Commission, which occurred on March 22, 2013. In recognition of the fact that the Passover and Good Friday holidays occurred during the week when claim submissions would otherwise be due, Nasdaq submitted an immediately effective proposed rule change to extend the deadline for claim submission until 11:59 p.m. on April 8, 2013.⁶ Nasdaq received claims with respect to 75 market participant identifiers (“MPIDs”) within the deadline. Nasdaq did not receive any claims after the deadline.

⁶ Securities Exchange Act Release No. 69250 (March 28, 2013), 78 FR 20160 (April 3, 2013) (SR-NASDAQ-2013-055).

Rule 4626(d)(3)(D) further provides that all claims shall be processed and evaluated by the Financial Industry Regulation Authority (“FINRA”), applying the standards set forth in Rule 4626. FINRA is authorized to request such supplemental information as it deems necessary to assist its evaluation of claims.

Rule 4626(b)(3)(E) provides that FINRA shall provide to the Nasdaq Board of Directors and the Board of Directors of NASDAQ OMX an analysis of the total value of eligible claims. FINRA has provided the required analysis. The provision further requires that Nasdaq will file with the Commission a rule proposal setting forth the amount of eligible claims under the standards set forth in Rule 4626 and the amount proposed to be paid to members by Nasdaq. This proposed rule change, filed pursuant to authority delegated by the Nasdaq Board of Directors, satisfies this requirement. In addition, the proposed rule change discusses the application of Rule 4626 to certain types of claims. Finally, the proposed rule change discusses the process contemplated for payment of valid claims.

II. FINRA Review Process

For the claim review process, FINRA established a working group consisting of FINRA Market Regulation Department analysts and managers (“FB Claims Team” or “FINRA staff”). During the review process, the designated analysts and managers did not perform any regulatory services for any Nasdaq market, did not purchase FB stock (either in the secondary market or as part of Nasdaq’s IPO opening process) and did not own FB stock.⁷

⁷ A Steering Committee, composed of members of senior management of the Market Regulation Department, provided guidance to the FB Claims Team on the

Following the issuance of the Approval Order, Nasdaq made each claim received by Nasdaq (including associated worksheets) available to FINRA by means of an encrypted shared access folder. The FB Claims Team copied the claims and stored them on a FINRA network folder. Access to the FINRA network folder was limited to FINRA staff directly working on the FB claim review process. Throughout the process, the FB Claims Team reconciled with Nasdaq staff the number of claims. After the window for submitting claims closed on April 8, 2013, the FB Claims Team held a meeting with a representative of Nasdaq to verify that each claim received by Nasdaq had been copied to the FINRA network folder.

Upon receipt of a claim, a manager in the FB Claims Team performed a preliminary review of the claim to determine if the information submitted appeared to be accurate and complete per the criteria set forth in the rule filing. For each claim a matter was opened in a FINRA database and the matter was linked back to the claimant's submission for internal tracking purposes.⁸

In several instances, FB Claims Team staff contacted the firm filing the claim to obtain additional information or confirm certain information provided within its claim worksheet. A dedicated e-mail address was established to facilitate all electronic

resolution of process and substantive issues arising during the course of the FB claim evaluation process, reviewed the form and content of the review summary forms for each claim, and monitored the overall progress of the claim review effort. However, members of the Steering Committee did not participate in the FB Claim Team's assessment of and decisions to recommend the approval or disapproval of individual claims.

⁸ If a member firm submitted a claim with multiple MPIDs, the FB Claims staff opened one matter in the tracking system. In the case of claims involving sponsored access arrangements, the FB Claims staff opened one matter in the tracking system under the sponsoring firm.

communications with firms. Access to the mailbox was limited to those staff directly working on the FB claim review process.

To assist the FB Claims Team, staff within FINRA's Market Regulation Department developed scripts to retrieve order and execution information related to each order listed on the individual claim worksheets. The FB Claims Team was provided with the complete Nasdaq SingleBook order lifecycle, including execution messages, for each IPO Cross order and any corresponding Order Audit Trail System ("OATS") order lifecycles. This information was posted on the same FINRA network where the claim worksheets were stored. Market Regulation staff providing technology support also provided additional data to validate the covering trade information provided by the firms and assisted with ad hoc queries, upon the request of the FB Claims Team. The Market Regulation Department staff providing technology support to the FB Claims Team did not perform any assessment of the eligibility of any individual orders in the claims or make any determination as to whether any such orders were entitled to any accommodation.

The FB Claims Team staff reviewed the information provided by Market Regulation Department technology support staff and compared the information to the order information provided by the firms. In certain instances, staff contacted firms to request additional information or obtain clarification regarding any issues.

After completing the analysis of each order listed in the claim, one of the assigned analysts prepared a review summary memo for supervisory review. The summary memo contained a report of findings, which included sections regarding: a) the order information; b) the direct trading losses calculation by the firm; c) the staff's analysis of

the order information broken out by category; and d) the staff's direct trading losses calculation. Each review summary memo was submitted for two levels of supervisory review.

After receiving FINRA's review summary memos for each claim, Nasdaq reviewed and determined that it concurred with FINRA's analysis. Thereafter, on October 25, 2013, Nasdaq transmitted to members that had submitted claims the results of the analysis for their claims. Based on questions it then received from several members, Nasdaq concluded that there may have been some confusion regarding the scope of permissible claims based on Cross orders to BUY priced at \$42. Accordingly, in an effort to ensure that all potential valid claims were fully considered, on November 4, 2013, Nasdaq contacted all claimants to provide them the opportunity to provide FINRA with additional information to support claims with regard to these orders. As a result of this process, the FB Claims Team prepared supplemental review summary memos with respect to several claims. Nasdaq reviewed and determined that it concurred with FINRA's analysis, and the supplemental review summary memos were transmitted to affected members on December 6, 2013.

III. Results

The first category of covered claims, as provided in Rule 4626(b)(3)(A)(i), is SELL Cross orders that were submitted between 11:11 a.m. and 11:30 a.m. on May 18, 2012, that were priced at \$42 or less, and that did not execute ("Category I"). Sellers who entered orders priced at \$42.00 or less between 11:11 a.m. and 11:30 a.m. would have expected their orders to execute in the Cross, because the Net Order Imbalance Indicator ("NOII") disseminated by Nasdaq indicated that the relative proportion of buy

and sell interest would allow the execution, at a price of \$42, of all sell orders priced at \$42 or less. Accordingly, if such orders did not execute due to Nasdaq's system difficulties, the member entering the order would incur a loss. Under Rule 4626(b)(3)(B), the measure of loss for such orders is the lesser of (i) the differential between the expected execution price of \$42 and the actual execution price received, or (ii) the differential between the expected execution price of \$42 and a benchmark price of \$40.527, which constitutes the volume-weighted average price of FB stock on May 18, 2012, between 1:50 p.m. and 2:35 p.m. (the "Benchmark Price").

Nasdaq received claims with respect to 791 orders in Category I. FINRA's analysis has determined that claims with respect to 784 of these orders were valid under the terms of the rule, and Nasdaq concurs in this determination. The aggregate value of the valid claims is \$20,364,741.96.

The second category of covered claims, as provided in Rule 4626(b)(3)(A)(ii), is SELL Cross orders that were submitted between 11:11 a.m. and 11:30 a.m. on May 18, 2012, that were priced at \$42 or less, and that executed at a price below \$42 ("Category II"). Sellers who entered orders priced at \$42.00 or less between 11:11 a.m. and 11:30 a.m. would have expected their orders to execute in the Cross. Accordingly, if such orders executed at a price less than \$42 due to Nasdaq's system difficulties, the member entering the order would incur a loss. Under Rule 4626(b)(3)(B), the measure of loss for such orders is the differential between the expected execution price of \$42 and the actual execution price received.

Nasdaq received claims with respect to 242 orders in Category II. FINRA's analysis has determined that claims with respect to 238 of these orders were valid under

the terms of the rule, and Nasdaq concurs in this determination. The aggregate value of the valid claims is \$9,990,901.52.

The third category of covered claims, as provided in Rule 4626(b)(3)(A)(iii), is BUY Cross orders priced at exactly \$42 and that were executed in the Cross but not immediately confirmed (“Category III”). Buyers who entered orders priced at exactly \$42 would not have an expectation as to whether their orders would execute in the Cross, since the NOII disseminated by Nasdaq indicated that the relative proportion of buy and sell interest would not allow the execution of all buy orders priced at \$42. Accordingly, due to the delay of the dissemination of confirmations until 1:50 p.m., such buyers may have placed and received fills of orders to buy additional FB stock. Alternatively, given the uncertainty as to whether these orders would be executed in the Cross, a member may have allowed its customer to cancel before 1:50 p.m., such that the member would have excess shares when confirmation that the order was filled was provided at 1:50 p.m.

The text of Rule 4626(b)(3)(A)(iii) does not directly state that having excess shares through a duplicative buy order or a cancel is a necessary condition for compensation to be received under this category. The examples provided in explaining the purpose of SR-NASDAQ-2012-090 make this condition clear, however.⁹

⁹ “Market participants who entered Cross-only eligible buy orders priced exactly at \$42.00 that executed in the Cross but that were not confirmed until 1:50 p.m. could not have been sure whether their orders had been executed because the number of buy and sell limit shares priced at the clearing price and wishing to be matched in the Cross is never exactly equal. Consequently, in the interval between 11:30 a.m. and 1:50 p.m., these buyers may have purchased shares in the continuous market, and upon receiving Cross execution messages at 1:50 p.m., they may have experienced an unexpected long position. The sale of such an unexpected long position at a lower price would have occasioned a loss.”

Specifically, in the absence of one of these conditions resulting in an unexpected long position, the member would either have been able to buy FB at a lower price, if it was not filled in the Cross, or would have received the price it sought in the Cross, and therefore any loss would be purely speculative in nature. See Rule 4626(b)(3)(C) (excluding coverage for “alleged or speculative lost trading opportunities”). Accordingly, Nasdaq has instructed FINRA to apply the rule in a manner that requires cancellations or additional purchase(s) during the period prior to 1:50 p.m. for the claim to be compensable. Under Rule 4626(b)(3)(B), the applicable measure of loss is the lesser of (i) the differential between the expected execution price of \$42 and the actual execution price received, or (ii) the differential between the expected execution price of \$42 and the Benchmark Price.¹⁰

Following the completion of initial assessments of members’ claims, Nasdaq concluded that there may have been some confusion regarding the conditions associated with Category III. Accordingly, in an effort to ensure that all potential valid claims were fully considered, on November 4, 2013, Nasdaq contacted all claimants to provide them the opportunity to provide FINRA with additional information to support claims with regard to these orders. Nasdaq received claims with respect to 13,123 orders. FINRA’s

Proposing Release, 77 FR at 45710. See also Proposing Release, 77 FR at 47511 (Example 6 and Example 7).

¹⁰ The measure is premised on the expectation that the customer or proprietary account on whose behalf the trade was made received a fill or submitted a cancellation prior to 1:50 p.m., making the fill of the Cross order at 1:50 p.m. the unexpected long position that needed to be covered. Thus, the difference between the \$42 price of the Cross order and the lesser of the actual execution price associated with selling this position or the Benchmark Price is an appropriate measure of the member’s covered loss.

analysis has determined that claims with respect to 6,644 of these orders were valid under the terms of the rule,¹¹ and Nasdaq concurs in this determination. The aggregate value of the valid claims is \$2,971,394.13.

The fourth category of covered claims, as provided in Rule 4626(b)(3)(A)(iv), is BUY Cross orders priced above \$42 and that were executed in the Cross but not immediately confirmed, but only to the extent entered with respect to a customer that was permitted by the member to cancel its order prior to 1:50 p.m., and for which a request to cancel the order was submitted by the member, also prior to 1:50 p.m. (“Category IV”). Nasdaq believes that members that took such actions were reasonably attempting to assist their own customers in responding to the delayed dissemination of Cross transaction reports, and that such members further attempted to communicate their actions to Nasdaq through the submission of cancellations. When the member received confirmation of the execution of the customer’s order at 1:50 p.m., the member held shares for which it no longer had a recipient. Under Rule 4626(b)(3)(B), the applicable measure of loss is the lesser of (i) the differential between the expected execution price of \$42 and the actual execution price received, or (ii) the differential between the expected execution price of \$42 and the Benchmark Price. In this category, however, the outcome was affected not only by Nasdaq system issues, but also by the member’s affirmative decision not to await the dissemination of confirmations, despite the fact that the member should reasonably have expected the order to be filled. Accordingly, Rule 4626(b)(3)(B) provides that a portion of the associated losses will be borne by the members, with the amount of compensable loss reduced by 30%.

¹¹ Claims reviewed in the supplemental process were considered under Category III.

Nasdaq received claims with respect to 44,966 orders in Category IV. FINRA's analysis has determined that claims with respect to 40,397 of these orders were valid under the terms of the rule, and Nasdaq concurs in this determination. The aggregate value of the valid claims, as reduced by 30% for the reasons described above, is \$10,702,864.00.

For a particular member, the total of valid claims under Category I, Category II, Category III, and Category IV is referred to as the "Member's Share". The sum of the Member's Share for all members, which constitutes the maximum amount payable under Rule 4626 with respect to the FB IPO, is \$44,029,901.61.

For several reasons, this amount is less than the maximum accommodation pool of \$62 million provided for in the rule. First, as has been widely reported in the press, one member that was eligible to file a claim under Rule 4626 opted to forego participation in the program and instituted an arbitration proceeding against Nasdaq.¹² Second, as detailed above, claims with respect to certain orders did not satisfy the requirements of the rule. Notably, in some instances, claims for compensation under Category III did not satisfy the rule because there were not excess shares at 1:50 p.m., and claims for compensation under Category IV did not satisfy the rule because the member did not permit its customer to cancel its order prior to 1:50 p.m. or did not submit a request to cancel to Nasdaq prior to 1:50 p.m. Although Nasdaq's systems provided it with information about the size, price, and entry time of orders submitted to the Cross, as well as the ultimate disposition of those orders, Nasdaq did not have

¹² See "UBS Challenges Nasdaq's Facebook IPO Plan" (March 25, 2013) (available at <http://blogs.wsj.com/deals/2013/03/25/ubs-challenges-nasdaqs-facebook-ipo-plan>).

information about the customer-facing activities of its members. Accordingly, in establishing the maximum value of an accommodation pool, Nasdaq needed to assume that all orders in the Cross with the price and entry times specified by the rule might provide the basis for a valid claim. However, for the reasons described above, other actions (i.e., duplicative BUYS or customer cancellations) are required for harm to exist. In conducting its analysis, FINRA fully evaluated claims to determine whether such actions were taken. Accordingly, certain orders in the Cross did not actually provide a basis for a claim. Finally, Nasdaq believes that some members with BUY orders in the Cross did not file claims with respect to such orders because they understood that they had not taken actions that would provide the basis for a valid claim, while other members with de minimis potential claims also chose not to file.

IV. Payment Process

As discussed in the Proposing Release, Nasdaq's business and legal relationships are with its members, not its members' customers. Nasdaq has no contractual or other relationships with its members' customers, and generally does not possess information about interactions between a member and its customer that may underlie members' trading activity. Nevertheless, in adopting the FB accommodation rule, Nasdaq was mindful that member's customers were impacted by the processing of member orders in the FB Cross. Accordingly, Rule 4626 requires that to the extent that a member receiving accommodation thereunder had customers that incurred losses, accommodation payments received by members from Nasdaq must be used for the benefit of such customers.

Accordingly, as provided in Rule 4626(b)(3)(F), all accommodation payments are contingent upon a member's submission to Nasdaq, not later than seven days after the effective date of this proposed rule change, an attestation detailing:

(i) the amount of compensation, accommodation, or other economic benefit provided or to be provided by the member to its customers (other than customers that were brokers or dealers trading for their own account) in respect of trading in Facebook Inc. on May 18, 2012 ("Customer Compensation"), and

(ii) the extent to which the losses reflected in the Member's Share¹³ were incurred by the member trading for its own account or for the account of a customer that was a broker or dealer trading for its own account ("Covered Proprietary Losses").

As of October 25, 2013, Nasdaq provided each member that submitted a claim with an initial analysis of the value of its claim, i.e., the value of its Member's Share, along with the required form of attestation. Thereafter, in an effort to ensure that all potential valid claims were fully considered, on November 4, 2013, Nasdaq contacted all claimants to provide them the opportunity to provide FINRA with additional information to support claims, as discussed above. As a result of this process, FINRA prepared supplemental review summary memos with respect to several claims, and the supplemental review summary memos were transmitted to affected members on December 6, 2013. Accordingly, all claimants are in a position to provide the required attestation by December 16, 2013, the deadline mandated by the rule. As provided in Rule 4626(b)(3)(F), failure to provide the required attestation within the specified time

¹³ Defined specifically as a member's direct trading losses calculated in accordance with paragraphs (b)(3)(A) and (B) of the proposed rule.

limit will void the member's eligibility to receive an accommodation under the rule.

Each member is also required to maintain books and records that detail the nature and amount of Customer Compensation and Covered Proprietary Losses. Nasdaq, through FINRA, its regulatory services provider, will examine the accuracy of member's attestation at a later date.

Rule 4626(b)(3)(G) provides that accommodation payments will be made in two tranches of priority:

(i) First, if a member has provided Customer Compensation, the member will receive an amount equal to the lesser of the Member's Share or the amount of Customer Compensation. For example, if a Member's Share was \$1 million, and the member had paid, or had committed to pay, compensation to its customers of at least \$1 million, the member's expected accommodation would be \$1 million. On the other hand, if the Member's Share was \$1 million, but the member had paid, or committed to pay, only \$500,000 in compensation to its customers, the member's accommodation in the first tranche would be only \$500,000.

(ii) Second, the member will receive an amount with respect to Covered Proprietary Losses; provided, however, that the sum of payments to a member under the rule shall not exceed the Member's Share. If a member had both Covered Proprietary Losses and losses associated with customer business, it may receive distributions under both tranches. For example, if a Member's Share was \$1 million, the member had \$300,000 in Covered Proprietary Losses, and the member had provided \$300,000 in Customer Compensation, the member's expected accommodation would be \$600,000 in total. Alternatively, if the member had \$300,000 in Covered Proprietary Losses and had

provided \$700,000 or more in Customer Compensation, the member's expected accommodation would be \$1 million.

Rule 4626(b)(3)(G) further provides that in the event the amounts calculated under the tranches exceed the maximum accommodation pool of \$62 million, amounts paid would be prorated in accordance with the formula described in the rule. Because the total amount of valid claims as determined by FINRA does not exceed \$62 million, Nasdaq expects to pay both tranches simultaneously without proration of claims.

One notable issue that arose in the application of the Rule to certain claims was the appropriate treatment of claims for orders entered into Nasdaq under a sponsored access arrangement. Rule 4626(b)(3)(A) provides that "the term 'customer' shall be construed to include any unaffiliated entity upon whose behalf an order is entered, including any unaffiliated broker or dealer." Nasdaq rules permit the existence of sponsored access arrangements, but require oversight by the sponsor, which is required to be a member. See Nasdaq Rule 4611(d). An order entered under a sponsored access arrangement is entered through an MPID belonging to the sponsor, even though it originates from the sponsoree. Thus, the order may be construed as being entered by the sponsor on behalf of the sponsoree, causing the sponsoree to fit within the definition of "customer." A claim with respect to orders entered under a sponsored access arrangement would be paid to the sponsor, subject to its certification that it would provide the funds as Customer Compensation to the sponsoree.¹⁴

¹⁴ For Category IV claims, if the sponsoree itself had customer(s) permitted to cancel order(s) prior to 1:50 p.m., and the sponsoree in fact submitted a cancellation to NASDAQ prior to 1:50 p.m., the claim would be construed as valid. This fact pattern did not occur in any of the filed claims, however.

Rule 4626(b)(3)(H) provides that final payment of any accommodation payment is contingent upon the execution and delivery to Nasdaq of a release by the member of all claims by it or its affiliates against Nasdaq or its affiliates for losses that arise out of, are associated with, or relate in any way to the FB IPO Cross or to any actions or omissions related in any way to that Cross, including but not limited to the execution or confirmation of orders in FB on May 18, 2012. Failure to provide the release within 14 days after the effective date of this proposed rule change (i.e., by December 23, 2013) will void the member's eligibility to receive an accommodation under the Rule. The release also includes an attachment whereby the claimant may provide Nasdaq with payment instructions. Nasdaq will pay all valid claims in accordance with the payment instructions provided, immediately upon the expiration of the 60-day time period during which this filing is subject to suspension by the Commission. By its terms, the release will be effective on the date on which payment to the member is provided in accordance with the payment instructions provided.

This proposed rule change is not intended to and does not affect the limitations of liability set forth in Nasdaq's agreements or SEC-sanctioned rules,¹⁵ or those limitations or immunities that bar claims for damages against Nasdaq as a matter of law. Rather, they reflect Nasdaq's determination to implement a fair and equitable accommodation

¹⁵ Notably, the Commission has repeatedly determined that rules limiting SRO liability, such as Rule 4626(a), are consistent with the Act. See, e.g., BATS Exchange and BATS-Y Exchange Rules 11.16; C2 Options Exchange Rule 6.42; CBOE Options Exchange Rule 6.7; CME Rule 578; EDGA and EDGX Rules 11.12; ISE Rule 705; NASDAQ OMX PHLX Rule 3226; NASDAQ OMX BX Rule 4626; NYSE Rules 17 and 18; NYSE MKT Rule 905NY; NYSE Arca (Options) Rule 14.2; NYSE Arca (Equity) Rule 13.2; One Chicago Rule 421.

policy that takes into account the impacts of Nasdaq's system issues on the investing public and members.

b. Statutory Basis

Nasdaq believes that the accommodation proposal is consistent with Section 6(b) of the Act¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁷ 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 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. As

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

¹⁷ 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”).

described above, FINRA, in its role as a neutral third party, has conducted an exhaustive analysis of submitted claims, measuring relevant data against the rule's objective benchmarks to ascertain the value of each member's claims, and Nasdaq has reviewed and concurs in FINRA's analysis. Based on this analysis, and subject to completion by claimants of the remaining conditions to payment, Nasdaq will be able to pay the full amount of valid claims immediately upon the expiration of the 60-day time period during which this filing is subject to suspension by the Commission.

4. 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.

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

Not applicable.

6. Extension of Time Period for Commission Action

Nasdaq does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act¹⁸ and paragraph (f)(6) of Rule 19b-4 thereunder,¹⁹ in that the proposed rule

¹⁸ 15 U.S.C. 78s(b)(3)(A).

change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its 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. Nasdaq has complied with the written notice requirement.

Nasdaq believes that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. Specifically, the proposed rule change allows Nasdaq to implement a rule that the Commission has already determined to be in the public interest, and does not affect competition in any respect.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advanced Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

¹⁹ 17 CFR 240.19b-4(f)(6).

11. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2013-152)

December __, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Describe 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 9, 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, II, and III, 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 Substance of the Proposed Rule Change

The Exchange is filing a proposal to describe the implementation of Rule 4626(b)(3). There is no text of the proposed rule change. The complete text of the filing is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

I. Introduction

On March 22, 2013, the Commission approved a proposal by Nasdaq to establish 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, 2012.³ Rule 4626 limits the liability of Nasdaq and its affiliates with respect to any losses, damages, or other claims arising out of the Nasdaq Market Center or its use and provides for limited accommodations under the conditions specified in the rule.⁴ Rule 4626(b)(1) provides that for the aggregate of all claims made by market participants related to the use of the Nasdaq Market Center during a single calendar month, Nasdaq’s payments under Rule 4626 shall not exceed the larger of

³ Securities Exchange Act Release No. 69216 (March 22, 2013), 78 FR 19040 (March 28, 2013) (SR-NASDAQ-2012-090) (“Approval Order”). See also Securities Exchange Act Release No. 67507 (July 26, 2012), 77 FR 45706 (August 1, 2012) (SR-NASDAQ-2012-090) (“Proposing Release”).

⁴ Rule 4626(a) provides that except as set forth in the accommodation portion of the rule, “Nasdaq and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Nasdaq Market Center or its use. Any losses, damages, or other claims, related to a failure of the Nasdaq Market Center to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the Nasdaq Market Center shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the Nasdaq Market Center.”

\$500,000 or the amount of the recovery obtained by Nasdaq under any applicable insurance policy. Rule 4626(b)(2) states that for the aggregate of all claims made by market participants related to systems malfunctions or errors of the Nasdaq Market Center concerning locked/crossed compliance, trade through protection, market maker quoting, order protection, or firm quote compliance, during a single calendar month Nasdaq's payments under Rule 4626 shall not exceed the larger of \$3,000,000 or the amount of the recovery obtained by Nasdaq under any applicable insurance policy. Rule 4626(b)(3) establishes a methodology for submission, evaluation, and payment of claims associated with the Facebook IPO.

On May 18, 2012, Nasdaq experienced system difficulties during the Nasdaq Halt and Imbalance Cross Process (the "Cross") for the FB IPO. These difficulties delayed the completion of the Cross from 11:05 a.m. until 11:30 a.m.⁵ Based on its assessment of the information available at the time, Nasdaq concluded that the system issues would not have any effects beyond the delay itself. In an exercise of its regulatory authority, Nasdaq determined to proceed with the IPO at 11:30 a.m. rather than postpone it.

As a result of the system difficulties, however, certain orders for FB stock that were entered between 11:11:00 a.m. and 11:30:09 a.m. in the expectation of participating in the Cross – and that were not cancelled prior to 11:30:09 a.m. – either did not execute or executed after 1:50 p.m. at prices other than the \$42.00 price established by the Cross. (Other orders entered between 11:11:00 a.m. and 11:30:09 a.m., including cancellations, buy orders below \$42.00, and sell orders above \$42.00, were handled without incident.)

⁵ All times in this filing are Eastern Time.

System issues also delayed the dissemination of Cross transaction reports from 11:30 a.m. until 1:50 p.m. At 1:50 p.m., Nasdaq system difficulties were completely resolved.

Rule 4626(b)(3) provides that, as a result of these unique circumstances, Nasdaq will accommodate members for losses attributable to the system difficulties on May 18, 2012 in an amount not to exceed \$62 million. Rule 4626(b)(3)(A) provides that all claims for such accommodation must arise solely from realized or unrealized direct trading losses arising from the following specific Cross orders:

- (i) SELL Cross orders that were submitted between 11:11 a.m. and 11:30 a.m. on May 18, 2012, that were priced at \$42.00 or less, and that did not execute;
- (ii) SELL Cross orders that were submitted between 11:11 a.m. and 11:30 a.m. on May 18, 2012, that were priced at \$42.00 or less, and that executed at a price below \$42.00;
- (iii) BUY Cross orders priced at exactly \$42.00 and that were executed in the Cross but not immediately confirmed; and
- (iv) BUY Cross orders priced above \$42.00 and that were executed in the Cross but not immediately confirmed, but only to the extent entered with respect to a customer that was permitted by the member to cancel its order prior to 1:50 p.m. and for which a request to cancel the order was submitted to Nasdaq by the member, also prior to 1:50 p.m.

As originally approved, Rule 4626(b)(3)(D) provided that all claims related to the FB IPO must be submitted in writing not later than 7 days after formal approval of the FB accommodation proposal by the Commission, which occurred on March 22, 2013. In recognition of the fact that the Passover and Good Friday holidays occurred during the week when claim submissions would otherwise be due, Nasdaq submitted an immediately effective proposed rule change to extend the deadline for claim submission

until 11:59 p.m. on April 8, 2013.⁶ Nasdaq received claims with respect to 75 market participant identifiers (“MPIDs”) within the deadline. Nasdaq did not receive any claims after the deadline.

Rule 4626(d)(3)(D) further provides that all claims shall be processed and evaluated by the Financial Industry Regulation Authority (“FINRA”), applying the standards set forth in Rule 4626. FINRA is authorized to request such supplemental information as it deems necessary to assist its evaluation of claims.

Rule 4626(b)(3)(E) provides that FINRA shall provide to the Nasdaq Board of Directors and the Board of Directors of NASDAQ OMX an analysis of the total value of eligible claims. FINRA has provided the required analysis. The provision further requires that Nasdaq will file with the Commission a rule proposal setting forth the amount of eligible claims under the standards set forth in Rule 4626 and the amount proposed to be paid to members by Nasdaq. This proposed rule change, filed pursuant to authority delegated by the Nasdaq Board of Directors, satisfies this requirement. In addition, the proposed rule change discusses the application of Rule 4626 to certain types of claims. Finally, the proposed rule change discusses the process contemplated for payment of valid claims.

II. FINRA Review Process

For the claim review process, FINRA established a working group consisting of FINRA Market Regulation Department analysts and managers (“FB Claims Team” or “FINRA staff”). During the review process, the designated analysts and managers did not perform any regulatory services for any Nasdaq market, did not purchase FB stock

⁶ Securities Exchange Act Release No. 69250 (March 28, 2013), 78 FR 20160 (April 3, 2013) (SR-NASDAQ-2013-055).

(either in the secondary market or as part of Nasdaq's IPO opening process) and did not own FB stock.⁷

Following the issuance of the Approval Order, Nasdaq made each claim received by Nasdaq (including associated worksheets) available to FINRA by means of an encrypted shared access folder. The FB Claims Team copied the claims and stored them on a FINRA network folder. Access to the FINRA network folder was limited to FINRA staff directly working on the FB claim review process. Throughout the process, the FB Claims Team reconciled with Nasdaq staff the number of claims. After the window for submitting claims closed on April 8, 2013, the FB Claims Team held a meeting with a representative of Nasdaq to verify that each claim received by Nasdaq had been copied to the FINRA network folder.

Upon receipt of a claim, a manager in the FB Claims Team performed a preliminary review of the claim to determine if the information submitted appeared to be accurate and complete per the criteria set forth in the rule filing. For each claim a matter was opened in a FINRA database and the matter was linked back to the claimant's submission for internal tracking purposes.⁸

⁷ A Steering Committee, composed of members of senior management of the Market Regulation Department, provided guidance to the FB Claims Team on the resolution of process and substantive issues arising during the course of the FB claim evaluation process, reviewed the form and content of the review summary forms for each claim, and monitored the overall progress of the claim review effort. However, members of the Steering Committee did not participate in the FB Claim Team's assessment of and decisions to recommend the approval or disapproval of individual claims.

⁸ If a member firm submitted a claim with multiple MPIDs, the FB Claims staff opened one matter in the tracking system. In the case of claims involving sponsored access arrangements, the FB Claims staff opened one matter in the tracking system under the sponsoring firm.

In several instances, FB Claims Team staff contacted the firm filing the claim to obtain additional information or confirm certain information provided within its claim worksheet. A dedicated e-mail address was established to facilitate all electronic communications with firms. Access to the mailbox was limited to those staff directly working on the FB claim review process.

To assist the FB Claims Team, staff within FINRA's Market Regulation Department developed scripts to retrieve order and execution information related to each order listed on the individual claim worksheets. The FB Claims Team was provided with the complete Nasdaq SingleBook order lifecycle, including execution messages, for each IPO Cross order and any corresponding Order Audit Trail System ("OATS") order lifecycles. This information was posted on the same FINRA network where the claim worksheets were stored. Market Regulation staff providing technology support also provided additional data to validate the covering trade information provided by the firms and assisted with ad hoc queries, upon the request of the FB Claims Team. The Market Regulation Department staff providing technology support to the FB Claims Team did not perform any assessment of the eligibility of any individual orders in the claims or make any determination as to whether any such orders were entitled to any accommodation.

The FB Claims Team staff reviewed the information provided by Market Regulation Department technology support staff and compared the information to the order information provided by the firms. In certain instances, staff contacted firms to request additional information or obtain clarification regarding any issues.

After completing the analysis of each order listed in the claim, one of the assigned analysts prepared a review summary memo for supervisory review. The summary memo contained a report of findings, which included sections regarding: a) the order information; b) the direct trading losses calculation by the firm; c) the staff's analysis of the order information broken out by category; and d) the staff's direct trading losses calculation. Each review summary memo was submitted for two levels of supervisory review.

After receiving FINRA's review summary memos for each claim, Nasdaq reviewed and determined that it concurred with FINRA's analysis. Thereafter, on October 25, 2013, Nasdaq transmitted to members that had submitted claims the results of the analysis for their claims. Based on questions it then received from several members, Nasdaq concluded that there may have been some confusion regarding the scope of permissible claims based on Cross orders to BUY priced at \$42. Accordingly, in an effort to ensure that all potential valid claims were fully considered, on November 4, 2013, Nasdaq contacted all claimants to provide them the opportunity to provide FINRA with additional information to support claims with regard to these orders. As a result of this process, the FB Claims Team prepared supplemental review summary memos with respect to several claims. Nasdaq reviewed and determined that it concurred with FINRA's analysis, and the supplemental review summary memos were transmitted to affected members on December 6, 2013.

III. Results

The first category of covered claims, as provided in Rule 4626(b)(3)(A)(i), is SELL Cross orders that were submitted between 11:11 a.m. and 11:30 a.m. on May 18,

2012, that were priced at \$42 or less, and that did not execute (“Category I”). Sellers who entered orders priced at \$42.00 or less between 11:11 a.m. and 11:30 a.m. would have expected their orders to execute in the Cross, because the Net Order Imbalance Indicator (“NOII”) disseminated by Nasdaq indicated that the relative proportion of buy and sell interest would allow the execution, at a price of \$42, of all sell orders priced at \$42 or less. Accordingly, if such orders did not execute due to Nasdaq’s system difficulties, the member entering the order would incur a loss. Under Rule 4626(b)(3)(B), the measure of loss for such orders is the lesser of (i) the differential between the expected execution price of \$42 and the actual execution price received, or (ii) the differential between the expected execution price of \$42 and a benchmark price of \$40.527, which constitutes the volume-weighted average price of FB stock on May 18, 2012, between 1:50 p.m. and 2:35 p.m. (the “Benchmark Price”).

Nasdaq received claims with respect to 791 orders in Category I. FINRA’s analysis has determined that claims with respect to 784 of these orders were valid under the terms of the rule, and Nasdaq concurs in this determination. The aggregate value of the valid claims is \$20,364,741.96.

The second category of covered claims, as provided in Rule 4626(b)(3)(A)(ii), is SELL Cross orders that were submitted between 11:11 a.m. and 11:30 a.m. on May 18, 2012, that were priced at \$42 or less, and that executed at a price below \$42 (“Category II”). Sellers who entered orders priced at \$42.00 or less between 11:11 a.m. and 11:30 a.m. would have expected their orders to execute in the Cross. Accordingly, if such orders executed at a price less than \$42 due to Nasdaq’s system difficulties, the member entering the order would incur a loss. Under Rule 4626(b)(3)(B), the measure of loss for

such orders is the differential between the expected execution price of \$42 and the actual execution price received.

Nasdaq received claims with respect to 242 orders in Category II. FINRA's analysis has determined that claims with respect to 238 of these orders were valid under the terms of the rule, and Nasdaq concurs in this determination. The aggregate value of the valid claims is \$9,990,901.52.

The third category of covered claims, as provided in Rule 4626(b)(3)(A)(iii), is BUY Cross orders priced at exactly \$42 and that were executed in the Cross but not immediately confirmed ("Category III"). Buyers who entered orders priced at exactly \$42 would not have an expectation as to whether their orders would execute in the Cross, since the NOII disseminated by Nasdaq indicated that the relative proportion of buy and sell interest would not allow the execution of all buy orders priced at \$42. Accordingly, due to the delay of the dissemination of confirmations until 1:50 p.m., such buyers may have placed and received fills of orders to buy additional FB stock. Alternatively, given the uncertainty as to whether these orders would be executed in the Cross, a member may have allowed its customer to cancel before 1:50 p.m., such that the member would have excess shares when confirmation that the order was filled was provided at 1:50 p.m.

The text of Rule 4626(b)(3)(A)(iii) does not directly state that having excess shares through a duplicative buy order or a cancel is a necessary condition for compensation to be received under this category. The examples provided in explaining the purpose of SR-NASDAQ-2012-090 make this condition clear, however.⁹

⁹ "Market participants who entered Cross-only eligible buy orders priced exactly at \$42.00 that executed in the Cross but that were not confirmed until 1:50 p.m. could not have been sure whether their orders had been executed because the

Specifically, in the absence of one of these conditions resulting in an unexpected long position, the member would either have been able to buy FB at a lower price, if it was not filled in the Cross, or would have received the price it sought in the Cross, and therefore any loss would be purely speculative in nature. See Rule 4626(b)(3)(C) (excluding coverage for “alleged or speculative lost trading opportunities”). Accordingly, Nasdaq has instructed FINRA to apply the rule in a manner that requires cancellations or additional purchase(s) during the period prior to 1:50 p.m. for the claim to be compensable. Under Rule 4626(b)(3)(B), the applicable measure of loss is the lesser of (i) the differential between the expected execution price of \$42 and the actual execution price received, or (ii) the differential between the expected execution price of \$42 and the Benchmark Price.¹⁰

Following the completion of initial assessments of members’ claims, Nasdaq concluded that there may have been some confusion regarding the conditions associated with Category III. Accordingly, in an effort to ensure that all potential valid claims were fully considered, on November 4, 2013, Nasdaq contacted all claimants to provide them

number of buy and sell limit shares priced at the clearing price and wishing to be matched in the Cross is never exactly equal. Consequently, in the interval between 11:30 a.m. and 1:50 p.m., these buyers may have purchased shares in the continuous market, and upon receiving Cross execution messages at 1:50 p.m., they may have experienced an unexpected long position. The sale of such an unexpected long position at a lower price would have occasioned a loss.” Proposing Release, 77 FR at 45710. See also Proposing Release, 77 FR at 47511 (Example 6 and Example 7).

¹⁰ The measure is premised on the expectation that the customer or proprietary account on whose behalf the trade was made received a fill or submitted a cancellation prior to 1:50 p.m., making the fill of the Cross order at 1:50 p.m. the unexpected long position that needed to be covered. Thus, the difference between the \$42 price of the Cross order and the lesser of the actual execution price associated with selling this position or the Benchmark Price is an appropriate measure of the member’s covered loss.

the opportunity to provide FINRA with additional information to support claims with regard to these orders. Nasdaq received claims with respect to 13,123 orders. FINRA's analysis has determined that claims with respect to 6,644 of these orders were valid under the terms of the rule,¹¹ and Nasdaq concurs in this determination. The aggregate value of the valid claims is \$2,971,394.13.

The fourth category of covered claims, as provided in Rule 4626(b)(3)(A)(iv), is BUY Cross orders priced above \$42 and that were executed in the Cross but not immediately confirmed, but only to the extent entered with respect to a customer that was permitted by the member to cancel its order prior to 1:50 p.m., and for which a request to cancel the order was submitted by the member, also prior to 1:50 p.m. ("Category IV"). Nasdaq believes that members that took such actions were reasonably attempting to assist their own customers in responding to the delayed dissemination of Cross transaction reports, and that such members further attempted to communicate their actions to Nasdaq through the submission of cancellations. When the member received confirmation of the execution of the customer's order at 1:50 p.m., the member held shares for which it no longer had a recipient. Under Rule 4626(b)(3)(B), the applicable measure of loss is the lesser of (i) the differential between the expected execution price of \$42 and the actual execution price received, or (ii) the differential between the expected execution price of \$42 and the Benchmark Price. In this category, however, the outcome was affected not only by Nasdaq system issues, but also by the member's affirmative decision not to await the dissemination of confirmations, despite the fact that the member should reasonably have expected the order to be filled. Accordingly, Rule 4626(b)(3)(B) provides that a

¹¹ Claims reviewed in the supplemental process were considered under Category III.

portion of the associated losses will be borne by the members, with the amount of compensable loss reduced by 30%.

Nasdaq received claims with respect to 44,966 orders in Category IV. FINRA's analysis has determined that claims with respect to 40,397 of these orders were valid under the terms of the rule, and Nasdaq concurs in this determination. The aggregate value of the valid claims, as reduced by 30% for the reasons described above, is \$10,702,864.00.

For a particular member, the total of valid claims under Category I, Category II, Category III, and Category IV is referred to as the "Member's Share". The sum of the Member's Share for all members, which constitutes the maximum amount payable under Rule 4626 with respect to the FB IPO, is \$44,029,901.61.

For several reasons, this amount is less than the maximum accommodation pool of \$62 million provided for in the rule. First, as has been widely reported in the press, one member that was eligible to file a claim under Rule 4626 opted to forego participation in the program and instituted an arbitration proceeding against Nasdaq.¹² Second, as detailed above, claims with respect to certain orders did not satisfy the requirements of the rule. Notably, in some instances, claims for compensation under Category III did not satisfy the rule because there were not excess shares at 1:50 p.m., and claims for compensation under Category IV did not satisfy the rule because the member did not permit its customer to cancel its order prior to 1:50 p.m. or did not submit a request to cancel to Nasdaq prior to 1:50 p.m. Although Nasdaq's systems

¹² See "UBS Challenges Nasdaq's Facebook IPO Plan" (March 25, 2013) (available at <http://blogs.wsj.com/deals/2013/03/25/ubs-challenges-nasdaqs-facebook-ipo-plan>).

provided it with information about the size, price, and entry time of orders submitted to the Cross, as well as the ultimate disposition of those orders, Nasdaq did not have information about the customer-facing activities of its members. Accordingly, in establishing the maximum value of an accommodation pool, Nasdaq needed to assume that all orders in the Cross with the price and entry times specified by the rule might provide the basis for a valid claim. However, for the reasons described above, other actions (i.e., duplicative BUYS or customer cancellations) are required for harm to exist. In conducting its analysis, FINRA fully evaluated claims to determine whether such actions were taken. Accordingly, certain orders in the Cross did not actually provide a basis for a claim. Finally, Nasdaq believes that some members with BUY orders in the Cross did not file claims with respect to such orders because they understood that they had not taken actions that would provide the basis for a valid claim, while other members with de minimis potential claims also chose not to file.

IV. Payment Process

As discussed in the Proposing Release, Nasdaq's business and legal relationships are with its members, not its members' customers. Nasdaq has no contractual or other relationships with its members' customers, and generally does not possess information about interactions between a member and its customer that may underlie members' trading activity. Nevertheless, in adopting the FB accommodation rule, Nasdaq was mindful that member's customers were impacted by the processing of member orders in the FB Cross. Accordingly, Rule 4626 requires that to the extent that a member receiving accommodation thereunder had customers that incurred losses, accommodation payments received by members from Nasdaq must be used for the benefit of such customers.

Accordingly, as provided in Rule 4626(b)(3)(F), all accommodation payments are contingent upon a member's submission to Nasdaq, not later than seven days after the effective date of this proposed rule change, an attestation detailing:

(i) the amount of compensation, accommodation, or other economic benefit provided or to be provided by the member to its customers (other than customers that were brokers or dealers trading for their own account) in respect of trading in Facebook Inc. on May 18, 2012 ("Customer Compensation"), and

(ii) the extent to which the losses reflected in the Member's Share¹³ were incurred by the member trading for its own account or for the account of a customer that was a broker or dealer trading for its own account ("Covered Proprietary Losses").

As of October 25, 2013, Nasdaq provided each member that submitted a claim with an initial analysis of the value of its claim, i.e., the value of its Member's Share, along with the required form of attestation. Thereafter, in an effort to ensure that all potential valid claims were fully considered, on November 4, 2013, Nasdaq contacted all claimants to provide them the opportunity to provide FINRA with additional information to support claims, as discussed above. As a result of this process, FINRA prepared supplemental review summary memos with respect to several claims, and the supplemental review summary memos were transmitted to affected members on December 6, 2013. Accordingly, all claimants are in a position to provide the required attestation by December 16, 2013, the deadline mandated by the rule. As provided in Rule 4626(b)(3)(F), failure to provide the required attestation within the specified time limit will void the member's eligibility to receive an accommodation under the rule.

¹³ Defined specifically as a member's direct trading losses calculated in accordance with paragraphs (b)(3)(A) and (B) of the proposed rule.

Each member is also required to maintain books and records that detail the nature and amount of Customer Compensation and Covered Proprietary Losses. Nasdaq, through FINRA, its regulatory services provider, will examine the accuracy of member's attestation at a later date.

Rule 4626(b)(3)(G) provides that accommodation payments will be made in two tranches of priority:

(i) First, if a member has provided Customer Compensation, the member will receive an amount equal to the lesser of the Member's Share or the amount of Customer Compensation. For example, if a Member's Share was \$1 million, and the member had paid, or had committed to pay, compensation to its customers of at least \$1 million, the member's expected accommodation would be \$1 million. On the other hand, if the Member's Share was \$1 million, but the member had paid, or committed to pay, only \$500,000 in compensation to its customers, the member's accommodation in the first tranche would be only \$500,000.

(ii) Second, the member will receive an amount with respect to Covered Proprietary Losses; provided, however, that the sum of payments to a member under the rule shall not exceed the Member's Share. If a member had both Covered Proprietary Losses and losses associated with customer business, it may receive distributions under both tranches. For example, if a Member's Share was \$1 million, the member had \$300,000 in Covered Proprietary Losses, and the member had provided \$300,000 in Customer Compensation, the member's expected accommodation would be \$600,000 in total. Alternatively, if the member had \$300,000 in Covered Proprietary Losses and had

provided \$700,000 or more in Customer Compensation, the member's expected accommodation would be \$1 million.

Rule 4626(b)(3)(G) further provides that in the event the amounts calculated under the tranches exceed the maximum accommodation pool of \$62 million, amounts paid would be prorated in accordance with the formula described in the rule. Because the total amount of valid claims as determined by FINRA does not exceed \$62 million, Nasdaq expects to pay both tranches simultaneously without proration of claims.

One notable issue that arose in the application of the Rule to certain claims was the appropriate treatment of claims for orders entered into Nasdaq under a sponsored access arrangement. Rule 4626(b)(3)(A) provides that "the term 'customer' shall be construed to include any unaffiliated entity upon whose behalf an order is entered, including any unaffiliated broker or dealer." Nasdaq rules permit the existence of sponsored access arrangements, but require oversight by the sponsor, which is required to be a member. See Nasdaq Rule 4611(d). An order entered under a sponsored access arrangement is entered through an MPID belonging to the sponsor, even though it originates from the sponsoree. Thus, the order may be construed as being entered by the sponsor on behalf of the sponsoree, causing the sponsoree to fit within the definition of "customer." A claim with respect to orders entered under a sponsored access arrangement would be paid to the sponsor, subject to its certification that it would provide the funds as Customer Compensation to the sponsoree.¹⁴

¹⁴ For Category IV claims, if the sponsoree itself had customer(s) permitted to cancel order(s) prior to 1:50 p.m., and the sponsoree in fact submitted a cancellation to NASDAQ prior to 1:50 p.m., the claim would be construed as valid. This fact pattern did not occur in any of the filed claims, however.

Rule 4626(b)(3)(H) provides that final payment of any accommodation payment is contingent upon the execution and delivery to Nasdaq of a release by the member of all claims by it or its affiliates against Nasdaq or its affiliates for losses that arise out of, are associated with, or relate in any way to the FB IPO Cross or to any actions or omissions related in any way to that Cross, including but not limited to the execution or confirmation of orders in FB on May 18, 2012. Failure to provide the release within 14 days after the effective date of this proposed rule change (i.e., by December 23, 2013) will void the member's eligibility to receive an accommodation under the Rule. The release also includes an attachment whereby the claimant may provide Nasdaq with payment instructions. Nasdaq will pay all valid claims in accordance with the payment instructions provided, immediately upon the expiration of the 60-day time period during which this filing is subject to suspension by the Commission. By its terms, the release will be effective on the date on which payment to the member is provided in accordance with the payment instructions provided.

This proposed rule change is not intended to and does not affect the limitations of liability set forth in Nasdaq's agreements or SEC-sanctioned rules,¹⁵ or those limitations or immunities that bar claims for damages against Nasdaq as a matter of law. Rather, they reflect Nasdaq's determination to implement a fair and equitable accommodation

¹⁵ Notably, the Commission has repeatedly determined that rules limiting SRO liability, such as Rule 4626(a), are consistent with the Act. See, e.g., BATS Exchange and BATS-Y Exchange Rules 11.16; C2 Options Exchange Rule 6.42; CBOE Options Exchange Rule 6.7; CME Rule 578; EDGA and EDGX Rules 11.12; ISE Rule 705; NASDAQ OMX PHLX Rule 3226; NASDAQ OMX BX Rule 4626; NYSE Rules 17 and 18; NYSE MKT Rule 905NY; NYSE Arca (Options) Rule 14.2; NYSE Arca (Equity) Rule 13.2; One Chicago Rule 421.

policy that takes into account the impacts of Nasdaq's system issues on the investing public and members.

2. Statutory Basis

Nasdaq believes that the accommodation proposal is consistent with Section 6(b) of the Act¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁷ 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 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. As

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

¹⁷ 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”).

described above, FINRA, in its role as a neutral third party, has conducted an exhaustive analysis of submitted claims, measuring relevant data against the rule's objective benchmarks to ascertain the value of each member's claims, and Nasdaq has reviewed and concurs in FINRA's analysis. Based on this analysis, and subject to completion by claimants of the remaining conditions to payment, Nasdaq will be able to pay the full amount of valid claims immediately upon the expiration of the 60-day time period during which this filing is subject to suspension by the Commission.

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: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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)(ii) of the Act¹⁸ and subparagraph (f)(6) of Rule 19b-4

¹⁸ 15 U.S.C. 78s(b)(3)(a)(ii).

thereunder.¹⁹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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:

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-2013-152 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-2013-152. 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

¹⁹ 17 CFR 240.19b-4(f)(6).

Commission will post all comments on the Commission's Internet Web site (<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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2013-152 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.²⁰

Kevin M O'Neill
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).