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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68378; File No. SR-NASDAQ-2012-043)

December 6, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Withdrawal of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, to Establish the Market Quality Program

On March 23, 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 1934¹ and Rule 19b-4 thereunder,² a proposed rule change to establish the Market Quality Program (“MQP”). On March 29, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the Federal Register on April 12, 2012.³ The Commission initially received fifteen comment letters on the proposed rule change.⁴ On May 18, 2012, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 66765 (April 6, 2012), 77 FR 22042.

⁴ See Letter from Frank Choi, dated April 13, 2012; Letter from Christopher J. Csicsko, dated April 14, 2012; Letter from Jeremiah O’Connor III, dated April 14, 2012; Letter from Dezso J. Szalay, dated April 15, 2012; Letter from Kathryn Keita, dated April 18, 2012; Letter from Anonymous, dated April 18, 2012; Letter from Mark Connell, dated April 19, 2012; Letter from Timothy Quast, Managing Director, Modern Networks IR LLC, dated April 26, 2012; Letter from Daniel G. Weaver, Ph.D., Professor of Finance, Rutgers Business School, dated April 26, 2012; Letter from Amber Anand, Associate Professor of Finance, Syracuse University, dated April 29, 2012; Letter from Albert J. Menkveld, Associate Professor of Finance, VU University Amsterdam, dated May 2, 2012; Letter from James J. Angel, Associate Professor of Finance, Georgetown University, dated May 2, 2012; Letter from Ari Burstein, Senior Counsel, Investment Company Institute, dated May 3, 2012; Letter from Gus Sauter, Managing Director and Chief Investment Officer, Vanguard, dated May 3, 2012; and Letter from Leonard J.

determine whether to disapprove the proposed rule change, to July 11, 2012.⁵ The Commission subsequently received three additional comment letters on the proposed rule change and a response letter from the Exchange.⁶

On July 11, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁷ The Commission thereafter received six comment letters and two response letters and one email response from the Exchange.⁸ On October 2, 2012, the Commission issued a notice of designation of longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change.⁹ On November 6, 2012, the Exchange submitted

Amoruso, General Counsel, Knight Capital Group, Inc., dated May 4, 2012.

⁵ See Securities Exchange Act Release No. 67022 (May 18, 2012), 77 FR 31050 (May 24, 2012).

⁶ See Letter from Gary L. Gastineau, Managing Member, ETF Consultants LLC, dated June 11, 2012; Letter from Rey Ramsey, President & CEO, TechNet, dated June 20, 2012; and Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, dated July 3, 2012. See also Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ, dated July 6, 2012.

⁷ See Securities Exchange Act Release No. 67411, 77 FR 42052 (July 17, 2012).

⁸ See Letter from Joseph Cavatoni, Managing Director, and Joanne Medero, Managing Director, BlackRock, Inc., dated July 11, 2012; Letter from Stanislav Dolgoplov, Assistant Adjunct Professor, UCLA School of Law, dated August 15, 2012; Letter from James E. Ross, Global Head, SPDR Exchange Traded Funds, State Street Global Advisors, dated August 16, 2012; Letter from Ari Burstein, Senior Counsel, Investment Company Institute, dated August 16, 2012; Letter from F. William McNabb, Chairman and Chief Executive Officer, Vanguard, dated August 16, 2012; and Letter from Andrew Stevens, Legal Counsel, IMC Chicago, LLC d/b/a IMC Financial Markets, dated August 16, 2012. See also Letters from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ OMX LLC, dated August 30, 2012 and Jurij Trypupenko, Esq., NASDAQ, dated September 7, 2012, and e-mail from Ed Knight, NASDAQ, dated September 19, 2012.

⁹ See Securities Exchange Act Release No. 67961, 77 FR 61452 (October 9, 2012).

Amendment No. 2 to the proposed rule change.¹⁰ On December 6, 2012, the Exchange withdrew

¹⁰ In Amendment No. 2, the Exchange proposed to amend its proposed rule text to: (i) add provisions requiring it to disclose on its website: (a) the dates that MQP Securities commence participation in and withdraw or are terminated from the MQP, (b) a statement about the MQP that sets forth a general description of the MQP as implemented on a pilot basis and a fair and balanced summation of the potentially positive aspects of the MQP (e.g., enhancement of liquidity and market quality in MQP Securities) as well as the potentially negative aspects and risks of the MQP (e.g., possible lack of liquidity and negative price impact on MQP Securities that withdraw or are terminated from the MQP), and indicates how interested parties can get additional information about products in the MQP, and (c) when it receives notification that an MQP Company or MQP Market Maker intends to withdraw from the MQP, and the date of actual withdrawal or termination from the MQP; (ii) add a requirement that during such time that an MQP Company lists an MQP Security, the MQP Company must, on a product-specific website for each product, indicate that the product is in the MQP and provide the link to the Exchange's MQP webpage; (iii) add a provision clarifying that the MQP Fee in respect of an ETF shall be paid by the sponsor(s) of such ETF, and the MQP Fee in respect of a TIR shall be paid by the sponsor(s) of such TIR, as applicable; (iv) amend the termination provision to provide that the MQP will terminate in respect of an MQP Security if such MQP Security sustains an average daily trading volume (consolidated trades in all U.S. markets) ("ATV") of 1.0 million shares or more for three consecutive months (the previously proposed termination threshold was average daily trading volume of 2.0 million shares or more traded on NASDAQ for three consecutive months); and (v) amend the definition of "MQP Company" to clarify that such term means a fund sponsor or issuer, as applicable, that lists an MQP Security on the Exchange pursuant to the MQP (the previously proposed definition defined an "MQP Company" as a fund sponsor or "other entity" that lists an MQP Security on the Exchange pursuant to the MQP).

In Amendment No. 2, the Exchange further proposed to amend the filing to state that while the Exchange originally proposed a termination threshold of 2.0 million shares or more ATV for three consecutive months, it is scaling back the threshold to better provide an opportunity to observe the impact, if any, on MQP Securities that exceed the threshold and "graduate" from the MQP. The Exchange notes that it has compiled statistics indicating that "graduation" from the MQP may occur more frequently at a 1.0 million ATV threshold than at a 2.0 million ATV threshold, and includes a chart showing from years 2001 to 2012 the number of ETFs that would have graduated from the MQP under the 2.0 million and 1.0 million ATV thresholds. Finally, in Amendment No. 2, the Exchange proposed to amend the filing to make the following additional representations: (i) the Exchange represents that it will post on its website the monthly reports that it provides to the Commission relating to the MQP during the pilot period; (ii) the Exchange represents that it will endeavor to provide similar data to the Commission about comparable products that are listed on the Exchange that are not in the MQP and any other MQP-related data and analysis requested by Commission staff for the purpose of evaluating the efficacy of the MQP; and (iii) the Exchange represents that it will issue to its members an information bulletin about the MQP prior to operation of the MQP.

the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto (SR-NASDAQ-2012-043).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin M. O'Neill
Deputy Secretary

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¹¹ 17 CFR 200.30-3(a)(12).