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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69030; File No. SR-NASDAQ-2013-032)

March 4, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Require that Listed Companies Have an Internal Audit Function

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 20, 2013, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“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 proposes to require that listed companies establish and maintain an internal audit function. The text of the proposed rule change is below. Proposed new language is in italics.<sup>3</sup>

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**5645. Internal Audit Function**

Each Company must establish and maintain an internal audit function to provide management and the audit committee with ongoing assessments of the Company’s risk management processes and system of internal control. The Company may choose to outsource this function to a third party service provider other than its independent auditor. The audit committee must meet periodically with the internal auditors (or other personnel responsible for this function) and assist the Board in its oversight of the performance of this function. The audit

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

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

<sup>3</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

committee should also discuss with the outside auditor the responsibilities, budget and staffing of the internal audit function.

A Company listed on Nasdaq on or before June 30, 2013, must establish an internal audit function by no later than December 31, 2013. A Company listed after June 30, 2013, must establish an internal audit function prior to listing.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Nasdaq proposes to adopt a new rule to require all listed companies to establish and maintain an internal audit function.<sup>4</sup> The purpose of the rule is to ensure that listed companies have a mechanism in place to regularly review and assess their system of internal control and, thereby, to identify any weaknesses and develop appropriate remedial measures. The rule is also intended to make sure that the listed company's management and audit committee are provided with ongoing information about risk management processes and the system of internal control. Nasdaq also believes that the rule will assist listed companies' efforts to comply with their obligations under federal securities law, including but not limited to Rules 13a-15 and 15d-15 under the Act, which require most companies to maintain and to evaluate, with the participation

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<sup>4</sup> The New York Stock Exchange, in Listed Company Manual Section 303A.07(c), has a similar requirement.

of their principal executive and principal financial officers, or persons performing similar functions, the effectiveness of the internal control over financial reporting.<sup>5</sup>

To preserve flexibility, listed companies may choose to outsource this function to a third party service provider other than their independent auditor. However, in all instances, the audit committee has sole responsibility to oversee the internal audit function and cannot allocate or delegate this responsibility to another board committee.

Finally, while Nasdaq believes that, consistent with best practices, many listed companies have already established and implemented an internal audit function, to allow sufficient time for companies that have not yet done so, each company listed on Nasdaq on or before June 30, 2013, will be required to establish an internal audit function by no later than December 31, 2013. Companies listed after June 30, 2013, will be required to establish an internal audit function prior to listing.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general and with Section 6(b)(5) of the Act,<sup>7</sup> in particular in that it is 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. The proposed rule change will require listed companies to establish and maintain an internal audit function. It is

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<sup>5</sup> 17 CFR 240.13a-15 and 240.15d-15.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

intended to ensure that listed companies have a mechanism in place to regularly review and assess their system of internal control and, thereby, to identify any weaknesses and develop appropriate remedial measures. It is also intended to make sure that management and the audit committee are provided with ongoing information about the company's risk management processes and system of internal control. As such, it is designed to protect investors and the public interest.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. In this regard, Nasdaq notes that the competition among exchanges for listings is robust and vigorous, and the proposed rule change is not intended, nor is it expected, to reduce or diminish such competition.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-032 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-2013-032. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room 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-2013-032, 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.<sup>8</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).