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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-69792; File No. SR-NASDAQ-2013-032)

June 18, 2013

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

On February 20, 2013, The NASDAQ Stock Market LLC (“NASDAQ”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to require that each listed company establish and maintain an internal audit function to provide management and the audit committee with ongoing assessments of that company’s risk management processes and system of internal control. The proposed rule change was published for comment in the Federal Register on March 8, 2013.³ On April 18, 2013, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to June 6, 2013.⁴ The Commission received 42 comment letters on the proposal.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 69030 (Mar. 4, 2013), 78 FR 15075.

⁴ See Securities Exchange Act Release No. 69402, 78 FR 24281 (Apr. 24, 2013).

⁵ See Letter from William F. Derbyshire, dated Mar. 5, 2013; Letter from Rainer Lenz, Ph.D., dated Mar. 9, 2013; Letter from Raymond A. Link, Chief Financial Officer, FEI Company, dated Mar. 11, 2013; Letter from Ann Marie Kim, dated Mar. 12, 2013; Letter from Jeff A. Killian, Chief Financial Officer, Cascade Microtech, Inc., dated Mar. 14, 2013; Letter from Matthew Hogan, dated Mar. 18, 2013; Letter from Ann Rhoads, Chief Financial Officer, Zogenix, dated Mar. 18, 2013; Letter from Daniel P. Penberthy, Chief Financial Officer, Rand Capital Corporation, dated Mar. 19, 2013; Letter from Jeff Andreson, dated Mar. 19, 2013; Letter from Gary R. Fairhead, dated Mar. 19, 2013; Letter from Roger Hawley, Chief Executive Officer, Zogenix, dated Mar. 20, 2013;

Letter from Vernon A. LoForti, Vice President and Chief Financial Officer, InfoSonics Corporation, dated Mar. 20, 2013; Letter from Howard K. Kaminsky, Chief Financial Officer, Sport Chalet, Inc., dated Mar. 21, 2013; Letter from Stanley P. Wirtheim, Chief Financial Officer, Smartpros.Ltd., dated Mar. 25, 2013; Letter from Simon J. Parker, Head of Business Assurance, Innospec Inc., dated Mar. 26, 2013; Letter from John H. Lowry III, Chief Financial Officer, Perceptron, Inc., dated Mar. 27, 2013; Letter from David L. Nunes, President and Chief Executive Officer, Pope Resources, dated Mar. 27, 2013; Letter from Don Tracy, Chief Financial Officer, MGP Ingredients, Inc., dated Mar. 27, 2013; Letter from Vickie Reed, Sr. Director and Controller, Zogenix, Inc., dated Mar. 27, 2013; Letter from Jay Biskupski, Chief Financial Officer, Peregrine Semiconductor Corporation, dated Mar. 27, 2013; Letter from Alan F. Eisenberg, Executive Vice President, Emerging Companies and Business Development, Biotechnology Industry Organization (BIO), dated Mar. 28, 2013; Letter from Mary Kay Fenton, Senior Vice President and Chief Financial Officer, Achillion Pharmaceuticals, Inc., dated Mar. 28, 2013; Letter from Robert D. Shallish, Jr., Executive Vice President—Finance and Chief Financial Officer, CONMED Corporation, dated Mar. 28, 2013; Letter from Dorothy M. Donohue, Deputy General Counsel—Securities Regulation, Investment Company Institute, dated Mar. 28, 2013; Letter from Richard F. Chambers, President and Chief Executive Officer, The Institute of Internal Auditors, dated Mar. 28, 2013; Letter from Daniel C. Regis, Chairman, Cray Inc. Audit Committee, Cray, Inc., dated Mar. 29, 2013; Letter from Kenneth Bertsch, President and Chief Executive Officer, Society of Corporate Secretaries & Governance Professionals, dated Mar. 29, 2013; Letter from Paul R. Oldham, Chief Financial Officer and Vice President Finance Administration, Electro Scientific Industries, dated Mar. 29, 2013; Letter from Joseph D. Hill, Chief Financial Officer, Metabolix, Inc., dated Mar. 29, 2013; Letter from Grant Thornton LLP, dated Mar. 29, 2013; Letter from Michael McConnell, Executive Vice President and Chief Financial Officer, Digimarc Corporation, dated Mar. 29, 2013; Letter from Elizabeth L. Hougen, Chief Financial Officer, Isis Pharmaceuticals, Inc., dated Mar. 29, 2013; Letter from Julia Reigel, Wilson Sonsini Goodrich & Rosati, dated Mar. 29, 2013; Letter from Sharon Barbari, Executive Vice President Finance and Chief Financial Officer, Cytokinetix, Inc., dated Mar. 29, 2013; Letter from Michael G. Zybala, General Counsel, The InterGroup Corporation, dated Apr. 3, 2013; Letter from Ramy R. Taraboulsi, Chairman and Chief Executive Officer, SyncBASE Inc., dated Apr. 6, 2013; Letter from Matthew C. Wolsfeld, Chief Financial Officer, NTIC, dated Apr. 10, 2013; Letter from Barbara Russell, Chief Financial Officer, TOR Minerals International Inc., dated Apr. 17, 2013; Letter from Todd DeZoort, Ph.D., CFE, Professor of Accounting and Professional Advisory Board Fellow, The University of Alabama, and Dana Hermanson, Ph.D., Dinos Eminent Scholar Chair of Private Enterprise, Director of Research, Corporate Governance Center, Kennesaw State University, dated May 10, 2013; Letter from Paul Nester, Treasurer and CFO, RGC Resources, Inc., dated May 13, 2013; Letter from Neil Lerner, Vice President, Finance, Psychomedics Corporation, dated May 20, 2013; and Letter from Robert C. Kirk, dated May 28, 2013.

On May 7, 2013, NASDAQ withdrew the proposed rule change (SR-NASDAQ-2013-032).⁶

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2013-14957 Filed 06/21/2013 at 8:45 am; Publication Date: 06/24/2013]

⁶ The Commission notes that NASDAQ stated in its withdrawal that it is withdrawing this proposal so that it may fully consider the comments filed. See supra note 5. NASDAQ also stated that it remains committed to the underlying goal of the proposal, to help ensure that listed companies have appropriate processes in place to assess risks and the system of internal controls, and that it intends to file a revised proposal.

⁷ 17 CFR 200.30-3(a)(12).