TRIAD
SECURITIES CORP.

August 20, 2012

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Rule-comments@sec.gov

Re: File number SR-NASDAQ-2012-90; Release No. 34-67507
Notice of Filing of Proposed Rule Change to Amend Rule 4626-Limitation of Liability

Dear Ms. Murphy:

We very much appreciate this opportunity to comment on NASDAQ's proposal (the "Proposed Compensation Rule") to compensate brokerage firms and their customers for claims arising from system difficulties that NASDAQ experienced during the initial public offering ("IPO") of Facebook, Inc. ("FB") on May 18, 2012.

Triad Securities Corp. is an SEC registered broker-dealer and a member of FINRA and NYSE Arca, as well as NASDAQ. Triad introduces customer accounts on a fully disclosed basis to a clearing firm, currently Broadcort, a division of Merrill Lynch, Pierce, Fenner and Smith. Triad does no proprietary trading, does not make markets and executes orders only on an agency basis for its customers.

Triad appreciates that NASDAQ has admitted experiencing technical difficulties during the opening process of the FB IPO and is attempting to reimburse members for losses that resulted from the NASDAQ system failures. Nonetheless, we are writing to propose that NASDAQ expand the amount of liability. Specifically, we vigorously object to the establishment of a "uniform benchmark price of $40.527" based on the 45 minute VWAP for Facebook shares beginning at 1:50 pm on May 18, 2012, as described in Section III of the Proposed Compensation Rule, to determine the amount of compensation paid for the orders described in paragraph (i) of Section III. We think the proper benchmark price would reflect market prices on Monday, May 21, 2012, when NASDAQ made clear that it would not honor its obligations to customers who reasonably expected to participate in the Facebook Cross.

Sixteen of Triad's customers (all non-institutional, retail customers) were adversely affected by NASDAQ's system failures on May 18, 2012. All of them were sellers at the market or at the crossing price of $42 or less with orders submitted between 11:11 am and 11:30 am on May 18, 2012, and therefore would be entitled to some compensation under categories one and two as described on page 5 of the Proposed Compensation Rule. Seven of those customers would receive full compensation if the rule change is adopted as proposed, but nine will not. Triad believes it is unfair that these nine customers will not be fully compensated.

NASDAQ's theory of compensation is based on a factual error. NASDAQ asserts in the Proposed Compensation Rule that a "reasonably diligent broker-dealer" who submitted orders for its customers in the Facebook Cross between 11:11 a.m. and 11:30 a.m. should have known, not later than 1:50 p.m., that

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its orders were either (1) entered into the market at 11:30 a.m. and executed prior to 1:50 p.m.,(2) cancelled or (3) released into the market at 1:50 p.m. However, this is not true.

Three of the orders Triad submitted for its customers between 11:11 a.m. and 11:30 were sell limit orders with a price of $42. These orders were neither entered into the market at 11:30 am, cancelled at 1:50 pm nor released into the market at 1:50 pm. Instead, Triad received a message of "expired" from NASDAQ approximately 2 hours later at 16:00:02 on 5/18/12, too late to take any market action to mitigate damages that day. Until that message was received, Triad and its customers reasonably expected to receive executions from the Cross. This expectation was reasonable because Triad and its customers knew the Crossing price was $42 and trade messages related to the Cross had been delayed during the day. Moreover, in discussions with NASDAQ's representatives during the afternoon of May 18, we were told that NASDAQ was considering an offline cross that would resolve the remaining unexecuted orders. As a result, our customers reasonably instructed us to delay taking actions that would mitigate damages with respect to these orders.

In the other cases where our customers will not be fully compensated, Triad submitted sell market orders for execution at the Cross. NASDAQ sent a "reject" message on these orders at 1:50 pm. However, Triad had never before received a reject message on a market order submitted for execution at the Cross. As a result, our customers reasonably instructed Triad to delay taking action to mitigate damages on these orders. Instead, we sought to determine the status of these orders from NASDAQ. The fact is that in the modern automated trading environment, it is wrong to introduce unusual system messages without allowing for counterparty programming and testing. This sort of reckless behavior leads to unpredictable system failures and enormous trading losses.

Customers are entitled to expect that eligible orders for Facebook shares entered and confirmed by NASDAQ prior to the dissemination of the opening print of $42 at 11:30:09 a.m. would receive an execution at $42 (as opposed to compensation based on the "benchmark price"). As NASDAQ admits in the Proposed Compensation Rule, *"market participants – based on all of the information available at the time, their experience with NASDAQ crosses, and established trading priorities – would reasonably have had certain expectations for the execution or non-execution of their orders."* Moreover, NASDAQ was communicating to market participants up until 11:29 a.m. that orders were still being accepted for the opening cross. As announced in NASDAQ issued Equity Technical Update #2012-18, a market wide conference call was held by NASDAQ beginning at 10:15 a.m. on 5/18/12 to "keep the industry informed leading up to and during the Facebook IPO." The call was intended to last two hours but, because of the problems with the opening, extended much longer. It was led by NASDAQ Vice President Todd Golub who stated throughout the period from 11:11 a.m. until as late as 11:29 a.m. (the period of time currently under scrutiny for orders entered) that orders were still being accepted by NASDAQ for participation in the opening cross. As a result, Triad and its customers reasonably expected that they would be participating in the Facebook opening print of $42. It was unreasonable to expect market participants to take action to mitigate damages in response to an undecipherable and unprecedented "reject" message or no message at all on orders entitled to participate in the NASDAQ Cross.

The precedent set by years of IPO opening crosses cannot be over-emphasized or ignored. Triad and its customers did not understand what a "reject" message meant because an order that was eligible for the IPO cross had never before been "cancelled, "rejected" or "expired" by NASDAQ. Contrary to NASDAQ's assertion, "a reasonably diligent member" would not have attempted to mitigate damages in response to a "reject" message. Instead, the reasonably diligent member would believe that the "reject" message was sent in error since it contradicted, not only all previous experiences with orders submitted for the IPO Cross, but NASDAQ's own procedures governing the opening. Triad continued during the afternoon of May 18 to seek clarification from NASDAQ on the status of these orders, a reasonable course of action under the circumstances, and was told by NASDAQ's representatives that an "offline" cross was being designed to deal with the remaining unexecuted orders. Triad and its customers could not reasonably be expected to mitigate damages at a time when it was receiving assurances from NASDAQ's representatives that its valid orders could be filled.

The establishment of a benchmark price based on the VWAP from 1:50 p.m. to 2:35 p.m. is unreasonable. The benchmark price is based on the theory that firms should have realized that NASDAQ was not going to honor its obligations in the Cross, and should have mitigated damages by selling into the market when some executions were received at 1:50 pm. **However, NASDAQ was issuing guidance up until 18:18:55 ET on 5/18/12 that customer orders may be filled at the opening price of $42.** A NASDAQ Market System Status Message issued at 16:23:51 ET on 5/18/12 stated, in part, that NASDAQ's "intention is to reach resolution of those trades today through an offline matching process." This message merely confirmed the guidance Triad had been receiving all afternoon in response to our inquiries as to the status of unfilled Crossing orders. At 18:18:55 ET the Market System Status Message was updated to say that "the offline matching process for orders entered in FB between 11:11 and 11:30 AM resulted in nothing done." On Monday 5/21/12, it was apparent that customer orders were not going to be filled by NASDAQ at the price of $42. In a conversation at 8:15 a.m., NASDAQ employee T.J. Martuscelli told Triad that the only way a customer could be compensated was to sell the stock. When asked how much time NASDAQ would allow the customer to work out of the position, he answered "within a day or two". Martuscelli then put the phone on hold and came back on the line to say that the "official policy was to sell by Tuesday". Accordingly, it was not until Monday, May 21, 2012, that NASDAQ made clear that it would not honor its obligations in the Cross. Triad reacted by taking immediate action to mitigate damages and liquidated its customers' positions by 10 am on Monday, May 21, 2012, at prices ranging from $36.75 to $34.00. It was not reasonable for Triad to mitigate damages until it was clear that NASDAQ intended to breach its obligations, and this was only clear for the first time on Monday morning, May 21, 2012.

Despite the fact that Triad took all reasonable actions to mitigate damages when it became clear that NASDAQ would not honor its obligations, some of Triad's customers suffered large losses and are seeking compensation. Triad respectfully asks the Commission to consider that all of the losses suffered by Triad's customers are not due to any improper actions of Triad or its customers, but because of NASDAQ's admittedly inefficient internal controls and inadequate testing procedures to ensure that its systems could handle the unprecedented trading volume that was expected for Facebook's IPO. Moreover, when it became apparent that its systems were inadequate, NASDAQ did not take a reasonable course of action and halt the Cross, but attempted to make system adjustments on the fly, resulting in losses for Triad's customers. NASDAQ's CEO, Robert Greifeld, is quoted as having stated that NASDAQ "was unprepared for increasing numbers of cancelled orders in the hours leading up to Facebook's debut" and they "didn't account for the increasing volume at which cancellations can come in", that the IPO Cross software used was of "poor design", and that "we [NASDAQ] did not have enough business judgment in the process". It is not fair for NASDAQ to refuse compensation to the victims of this poor judgment or leave innocent broker-dealers to deal with claims by angry customers resulting from NASDAQ's breach of its obligations.

Triad therefore requests that the Commission require NASDAQ to compensate customers of broker-dealers who were not filled in the Facebook Cross based on the market prices that prevailed on Monday May 21, 2012, when it first became clear that NASDAQ would not honor its execution obligations. These customers liquidated their positions as early as possible on May 21, 2012 during market hours when NASDAQ's employees first made clear that NASDAQ would not execute their sell orders at the crossing price of $42, the price to which our customers are lawfully entitled.

We welcome the opportunity to provide records that support the factual statements in this letter with the Commission, if requested. Please call if you have any questions.

Very truly yours,

Sis DeMarco
Chief Compliance Officer

cc: The Nelson Law Firm, LLC