

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68694; File No. SR-NASDAQ-2012-129)

January 18, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change to Establish the Retail Price Improvement Program on a Pilot Basis until 12 Months from the Date of Implementation

On November 19, 2012, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) 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 establish a Retail Price Improvement Program to attract additional retail order flow to the Exchange while also providing the potential for price improvement to such order flow. The proposed rule change was published for comment in the Federal Register on December 7, 2012.³ The Commission did not receive any comments on the proposed rule change.

In connection with the proposal, the Exchange requested exemptive relief from Rule 612 of Regulation NMS,⁴ which, among other things, prohibits a national securities exchange from accepting or ranking orders priced greater than \$1.00 per share in an increment smaller than \$0.01.⁵ On January 14, 2013, the Exchange submitted a letter requesting that the staff of the Division of Trading and Markets not recommend any enforcement action under Rule 602 of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 68336 (December 3, 2012), 77 FR 73097 (SR-NASDAQ-2012-129).

⁴ 17 CFR 242.612 (the “Sub-Penny Rule”).

⁵ See Letter from Jeffrey Davis, Deputy General Counsel, The NASDAQ Stock Market LLC, to Elizabeth M. Murphy, Secretary, Commission, dated November 19, 2012).

Regulation NMS (the “Quote Rule”) based on the Exchange’s and its Members’ participation in the Program.⁶

Section 19(b)(2) of the Act⁷ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is January 21, 2013.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period to take action on the proposed rule change so that it has sufficient time to consider the Exchange’s proposal, which would allow the Exchange to utilize non-displayed orders that offer price improvement to retail order flow potentially in sub-penny increments, as well as the Exchange’s attendant requests for exemptive and no-action relief.

Accordingly, pursuant to Section 19(b)(2) of the Act,⁸ the Commission designates March 7, 2013 as the date by which the Commission should either approve or disapprove, or institute

⁶ See Letter from Jeffrey Davis, Deputy General Counsel, The NASDAQ Stock Market LLC, to John Ramsay, Division of Trading and Markets, Commission, dated January 14, 2013.

⁷ 15 U.S.C. 78s(b)(2).

⁸ 15 U.S.C. 78s(b)(2).

proceedings to determine whether to disapprove, the proposed rule change (File Number SR-NASDAQ-2012-129).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O'Neill
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).