

of investors and the public interest.<sup>10</sup> The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposal would explicitly state that RLPs could submit RPIs in non-assigned securities, which should allow retail orders additional opportunities to receive price improvement. Therefore, the Commission designates the proposed rule change as operative upon filing.<sup>11</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</sup> of the Act to determine whether the proposed rule change should be approved or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2013-02 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

<sup>10</sup>In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>11</sup>For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup>15 U.S.C. 78s(b)(2)(B).

100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2013-02. This file number should be included on the subject line if email 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-NYSEMKT-2013-02 and should be submitted on or before February 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68707; File No. SR-NASDAQ-2012-090]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend Rule 4626—Limitation of Liability

January 23, 2013.

#### I. Introduction

On July 23, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Exchange Rule 4626—Limitation of Liability ("accommodation proposal"). The proposed rule change was published for comment in the **Federal Register** on August 1, 2012.<sup>3</sup> The Commission received 11 comment letters on the accommodation proposal<sup>4</sup> and a response letter from Nasdaq.<sup>5</sup> On September 12, 2012, the Commission extended the time period in which to

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

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

<sup>3</sup> See Securities Exchange Act Release No. 67507 (July 26, 2012), 77 FR 45706 ("Notice").

<sup>4</sup> See letters to Elizabeth M. Murphy, Secretary, Commission, from Sis DeMarco, Chief Compliance Officer, Triad Securities Corp., dated August 20, 2012 ("Triad Letter"); Eugene P. Torpey, Chief Compliance Officer, Vandham Securities Corp., dated August 21, 2012 ("Vandham Letter"); John C. Nagel, Managing Director and General Counsel, Citadel LLC, dated August 21, 2012 ("Citadel Letter"); Benjamin Bram, Watermill Institutional Trading LLC, dated August 22, 2012 ("Bram Letter"); Daniel Keegan, Managing Director, Citigroup Global Markets Inc., dated August 22, 2012 ("Citi Letter"); Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated August 22, 2012 ("SIFMA Letter I"); Mark Shelton, Group Managing Director and General Counsel, UBS Securities LLC, dated August 22, 2012 ("UBS Letter I"); Andrew J. Entwistle and Vincent R. Cappucci, Entwistle & Cappucci LLP, dated August 22, 2012 ("Entwistle Letter"); Douglas G. Thompson, Michael G. McLellan, and Robert O. Wilson, Finkelstein Thompson LLP, Christopher Lovell, Victor E. Stewart, and Fred T. Isquith, Lovell Stewart Halebian Jacobson LLP, Jacob H. Zamansky and Edward H. Glenn, Zamansky & Associates LLC, dated August 22, 2012 ("Thompson Letter I"); James J. Angel, Associate Professor of Finance, Georgetown University, McDonough School of Business, dated August 23, 2012 ("Angel Letter"); and Leonard J. Amoroso, General Counsel, Knight Capital Group, Inc., dated August 29, 2012 ("Knight Letter").

<sup>5</sup> See letter to Elizabeth M. Murphy, Secretary, Commission, from Joan C. Conley, Senior Vice President and Corporate Secretary, The NASDAQ Stock Market LLC, dated September 17, 2012 ("Nasdaq Letter I").

<sup>13</sup> 17 CFR 200.30-3(a)(12).

either approve the accommodation proposal, disapprove the accommodation proposal, or to institute proceedings to determine whether to approve or disapprove the accommodation proposal, to October 30, 2012.<sup>6</sup> On October 26, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the accommodation proposal.<sup>7</sup> The Commission subsequently received six additional comment letters on the accommodation proposal<sup>8</sup> and a second response letter from Nasdaq.<sup>9</sup>

Section 19(b)(2) of the Act<sup>10</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change.<sup>11</sup> The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.<sup>12</sup> The proposed rule change was published for notice and comment in the **Federal Register** on August 1, 2012. January 28, 2013, is 180 days from that date, and March 29, 2013, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the accommodation proposal, the issues

<sup>6</sup> See Securities Exchange Act Release No. 67842 (September 12, 2012), 77 FR 57171 (September 17, 2012).

<sup>7</sup> See Securities Exchange Act Release No. 68115 (October 26, 2012), 77 FR 66197 (November 2, 2012) (“Order Instituting Proceedings”).

<sup>8</sup> See letters to Elizabeth M. Murphy, Secretary, Commission, from John Robinson dated November 13, 2012 (“Robinson Letter”); Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated November 20, 2012 (“SIFMA Letter II”); Jeremy Abelson, MJA Capital, dated November 21, 2012 (“Abelson Letter”); Douglas G. Thompson, Michael G. McLellan, and Robert O. Wilson, Finkelstein Thompson LLP, Christopher Lovell, Victor E. Stewart, and Fred T. Isquith, Lovell Stewart Halebian Jacobson LLP, Jacob H. Zamansky and Edward H. Glenn, Zamansky & Associates LLC, dated November 23, 2012 (“Thompson Letter II”); Tim Mann dated November 23, 2012 (“Mann Letter”); Mark Shelton, Group Managing Director and General Counsel, UBS Securities LLC, dated November 23, 2012 (“UBS Letter II”).

<sup>9</sup> See letter to Elizabeth M. Murphy, Secretary, Commission, from Joan C. Conley, Senior Vice President and Corporate Secretary, The NASDAQ Stock Market LLC, dated December 7, 2012 (“Nasdaq Letter II”).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B)(ii)(I).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B)(ii)(II).

raised in the comment letters that have been submitted in response to the accommodation proposal, including comment letters submitted in response to the Order Instituting Proceedings, and the Exchange’s responses to such comments.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> designates March 29, 2013 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NASDAQ–2012–090).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O’Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68711; File No. SR–MIAX–2013–01]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Options Fee Schedule

January 23, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on January 14, 2013, Miami International Securities Exchange LLC (“Exchange” or “MIAX”) 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 self-regulatory organization. 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 is filing a proposal to amend the MIAX Options Fee Schedule (the “Fee Schedule”) by adopting additional Transaction Fees and establishing an Options Regulatory Fee applicable to participants trading options on and using services provided by MIAX.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30–3(a)(57).

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

<sup>2</sup> 17 CFR 240.19b–4.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative January 2, 2013.<sup>3</sup>

The text of the proposed rule change is available on the Exchange’s Web site at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), at MIAX’s principal office, and at the Commission’s Public Reference Room.

#### 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

The purpose of the proposed rule change is to establish select transaction and regulatory fees applicable to market participants trading options on and using services provided by the Exchange. These fees will apply to all options traded on MIAX. This proposed rule change replaces previously submitted filing SR–MIAX–2012–06, which was withdrawn, in its entirety.

###### a. Transaction Fees

The proposed Fee Schedule sets forth transaction fees for all options traded on the Exchange in amounts that vary depending upon whether the transaction is for the account of a Market Maker or other market participant, as described more fully below.

###### i. Market Maker Transaction Fees

Transaction fees applicable to Market Makers will be based upon the type of Market Maker and whether the transaction resulted from an order that was directed to the Market Maker. Market Makers are registered in one of three categories: Primary Lead Market Maker (“PLMM”),<sup>4</sup> Lead Market Maker

<sup>3</sup> See File No. MIAX–2012–06, filed December 31, 2012 (withdrawn by MIAX on January 14, 2013).

<sup>4</sup> The term “Primary Lead Market Maker” means a Lead Market Maker appointed by the Exchange to