

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79551; File No. SR-NASDAQ-2016-131]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Enhance the Reopening Auction Process Following a Trading Halt Declared Pursuant to the Plan To Address Extraordinary Market Volatility

December 14, 2016.

On October 13, 2016, The Nasdaq Stock Market LLC (“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 related to the reopening auction process following a trading halt declared pursuant to the Plan to Address Extraordinary Market Volatility. The proposed rule change was published for comment in the *Federal Register* on November 1, 2016.³ On December 5, 2016, the Exchange filed Amendment No. 1 to its proposed rule change.⁴ The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act⁵ 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 after publication of the notice for this proposed rule change is December 16, 2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁶ designates January 30, 2017 as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR-NASDAQ-2016-131).

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

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 10266/ December 14, 2016; Securities Exchange Act of 1934 Release No. 79544/December 14, 2016]

Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2017

The Sarbanes-Oxley Act of 2002, as amended (the “Sarbanes-Oxley Act”),¹ established the Public Company Accounting Oversight Board (“PCAOB”) to oversee the audits of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate and independent audit reports. Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)² amended the Sarbanes-Oxley Act to provide the PCAOB with explicit authority to oversee auditors of broker-dealers registered with the Commission. The PCAOB is to accomplish these goals through registration of public accounting firms and standard setting, inspection, and disciplinary programs.

⁶ *Id.*

⁷ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 7201 *et seq.*

² Public Law 111-203, 124 Stat. 1376 (2010).

The PCAOB is subject to the comprehensive oversight of the Securities and Exchange Commission (the “Commission”).

Section 109 of the Sarbanes-Oxley Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Under Section 109(f) of the Sarbanes-Oxley Act, the aggregate annual accounting support fee shall not exceed the PCAOB’s aggregate “recoverable budget expenses,” which may include operating, capital and accrued items. The PCAOB’s annual budget and accounting support fee are subject to approval by the Commission. In addition, the PCAOB must allocate the annual accounting support fee among issuers and among brokers and dealers.

Section 109(b) of the Sarbanes-Oxley Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB’s internal procedures, subject to approval by the Commission. Rule 190 of Regulation P governs the Commission’s review and approval of PCAOB budgets and annual accounting support fees.³ This budget rule provides, among other things, a timetable for the preparation and submission of the PCAOB budget and for Commission actions related to each budget, a description of the information that should be included in each budget submission, limits on the PCAOB’s ability to incur expenses and obligations except as provided in the approved budget, procedures relating to supplemental budget requests, requirements for the PCAOB to furnish on a quarterly basis certain budget-related information, and a list of definitions that apply to the rule and to general discussions of PCAOB budget matters.

In accordance with the budget rule, in March 2016 the PCAOB provided the Commission with a narrative description of its program issues and outlook for the 2017 budget year. In response, the Commission provided the PCAOB with economic assumptions and budgetary guidance for the 2017 budget year. The PCAOB subsequently delivered a preliminary budget and budget justification to the Commission. Staff from the Commission’s Office of the Chief Accountant and Office of Financial Management dedicated a substantial amount of time to the review and analysis of the PCAOB’s programs, projects and budget estimates; reviewed the PCAOB’s estimates of 2016 actual spending; and attended several meetings with management and staff of the

³ 17 CFR 202.190.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 79158 (October 26, 2016), 81 FR 75879.

⁴ In Amendment No. 1, the Exchange proposed to use the Auction Reference Price in determining whether or not a security was priced at \$3 or less for purposes of calculating the Auction Collar. In addition, the Exchange proposed to amend Rule 4754(b)(6) to make a conforming change to state that the rule applies to Trading Pauses in existence at or after 3:50 p.m. and before 4:00 p.m. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nasdaq-2016-131/nasdaq2016131-1.pdf>.

⁵ 15 U.S.C. 78s(b)(2).

PCAOB to further develop their understanding of the PCAOB's budget and operations. During the course of this review, Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this review, the Commission issued a "pass back" letter to the PCAOB. On November 17, 2016, the PCAOB approved its 2017 budget during an open meeting, and subsequently submitted that budget to the Commission for approval.

After considering the above, the Commission did not identify any proposed disbursements in the 2017 budget adopted by the PCAOB that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2017 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2017. The Commission also acknowledges the PCAOB's updated strategic plan and encourages the PCAOB to continue keeping the Commission and its staff apprised of significant new developments. The Commission looks forward to providing views to the PCAOB as future updates are made to the plan. In addition, the PCAOB should submit its 2016 annual report to the Commission by April 1, 2017.

We understand that the Board continues to take steps to implement improvements to the performance and management of the PCAOB's standard-setting process. The Commission directs the PCAOB to continue to provide timely updates throughout the year on the progress of this initiative as well as on any significant recommended or anticipated changes to processes or funding.

The Commission emphasizes the importance of the PCAOB's identifying efficiencies, process improvements, and cost savings wherever possible. Accordingly, the Commission directs the Board to conduct a study assessing its operational efficiency and budgetary needs and submit a supplemental report to the Commission of the Board's assessment in connection with the start of the 2018 budget cycle. The report should identify any areas where specific savings may be achieved while continuing to enable the PCAOB to fully perform its mission. The PCAOB should submit the report to the Commission along with its 2018 budgetary outlook letter.

As part of its review of the 2017 budget, the Commission notes that the Board's management of the Center for Economic Analysis ("Center") should continue to advance the PCAOB's

mission. The Commission directs the PCAOB during 2017 to continue providing quarterly updates to the Commission on the Center's activities and progress towards its stated goals.

The Commission directs the Board during 2017 to continue to provide in its quarterly reports to the Commission detailed information about the state of the PCAOB's information technology ("IT") program, including planned, estimated, and actual costs for IT projects, and the level of involvement of consultants. These reports also should continue to include: (a) A discussion of the Board's assessment of the IT program; and (b) the quarterly IT report that is prepared by PCAOB staff and submitted to the Board.

The Commission also directs the Board during 2017 to continue to include in its quarterly reports to the Commission information about the PCAOB's inspections program. Such information is to include: (a) Statistics relative to the numbers and types of firms budgeted and expected to be inspected in 2017, including by location and by year the inspections are required to be conducted in accordance with the Sarbanes-Oxley Act and PCAOB rules; (b) information about the timing of the issuance of inspections reports for domestic and non-U.S. inspections; and (c) updates on the PCAOB's efforts to establish cooperative arrangements with respective non-U.S. authorities for inspections required in those countries.

The Commission understands that the Office of Management and Budget ("OMB") has determined the 2017 budget of the PCAOB to be sequesterable under the Budget Control Act of 2011.⁴ For 2016, the PCAOB sequestered \$16 million. That amount will become available in 2017. For 2017, the sequestration amount will be \$17 million. Accordingly, the PCAOB should submit a revised spending plan for 2017 reflecting a \$1 million reduction to budgeted expenditures as a result of the increase in sequestration amount from 2016 to 2017.

The Commission has determined that the PCAOB's 2017 budget and annual accounting support fee are consistent with Section 109 of the Sarbanes-Oxley Act. Accordingly,

It is ordered, pursuant to Section 109 of the Sarbanes-Oxley Act, that the PCAOB budget and annual accounting support fee for calendar year 2017 are approved.

⁴ See "OMB Report to the Congress on the Joint Committee Reductions for Fiscal Year 2017", Appendix page 15 of 16 at: https://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/sequestration/jc_sequestration_report_2017_house.pdf.

By the Commission.

Brent J. Fields,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79549; File No. SR-BX-2016-067]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4770 (Compliance With Regulation NMS Plan To Implement a Tick Size Pilot)

December 14, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 30, 2016, NASDAQ BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II 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 amend BX Rule 4770 to modify the Web site data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan") and to clarify the timing and format of publishing Market Maker registration statistics.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqbx.cchwallstreet.com/>, at the principal office of the Exchange, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.