

SECURITIES AND EXCHANGE COMMISSION

[**Securities Exchange Act of 1934; Release No. 68224/November 14, 2012: Investment Company Act of 1940; Release No. 30261/November 14, 2012]**

Order Granting Exemptions From Specified Provisions of the Securities Exchange Act and the Investment Company Act and Certain Rules Thereunder; Order Under Section 17a and Section 36 of the Securities Exchange Act of 1934 Granting Exemptions From Specified Provisions of the Exchange Act and Certain Rules Thereunder; Order Under Section 6(C) and Section 38(A) of the Investment Company Act of 1940 Granting Exemptions From Specified Provisions of the Investment Company Act and Certain Rules Thereunder

Section 36 of the Securities Exchange Act of 1934 (the “Exchange Act”) authorizes the Securities and Exchange Commission (the “Commission”), by rule, regulation or order, to exempt, either conditionally or unconditionally, any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Section 17A(c)(1) of the Exchange Act provides that the appropriate regulatory agency, by rule or by order, upon its own motion or upon application, may conditionally or unconditionally exempt any person or security or class of persons or securities from any provision of that section or any rule or regulation prescribed under Section 17A, if the appropriate regulatory agency finds that such exemption is in the public interest and consistent with the protection of investors and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.¹

¹ Section 3(a)(34)(B) of the Exchange Act defines “appropriate regulatory authority” when used in the context of transfer agents as generally: (1) The Comptroller of the Currency, in the case of a national bank or a subsidiary of such bank; (2) the Board of Governors of the Federal Reserve System, in the case of a state member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company or a subsidiary of a bank holding company; (3) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation; and (4) the Commission, in the case of all other transfer agents. Section 17A(c)(1) also requires that the Commission not object to the use of exemptive authority in

Section 6(c) of the Investment Company Act of 1940 (the “Company Act”) provides that the Commission may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Company Act, or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Company Act. Section 38(a) of the Company Act provides that the Commission may make, issue, amend and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission under the Company Act. The necessity for prompt action of the Commission does not permit prior notice of the Commission’s action.

Hurricane Sandy made landfall along the mid-Atlantic Coast on October 29, 2012. The storm and subsequent flooding have displaced individuals and businesses and disrupted communications and transportation across the mid-Atlantic region. We are issuing this Order to address the needs of companies and individuals directly or indirectly affected by Hurricane Sandy that must comply with the requirements of the federal securities laws.

I. Filing Requirements for Registrants and Other Persons

The lack of communications, transportation, electricity, facilities and available staff and professional advisors as a result of Hurricane Sandy could hamper the efforts of public companies and other persons with filing obligations to meet their filing deadlines. At the same time, investors have an interest in the timely availability of required information about these companies and the activities of persons required to file schedules and reports with respect to these companies. While the Commission believes that the relief from filing requirements provided by this Order is both necessary in the public interest and consistent with the protection of investors, we remind public companies and other persons who are the subjects of this Order to continue to evaluate their obligations to make materially accurate and complete disclosures in

instances where an appropriate regulatory authority other than the Commission is providing exemptive relief.

accordance with the anti-fraud provisions of the federal securities laws.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act, that a registrant (as defined in Exchange Act Rule 12b-2) subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), and any person required to make any filings with respect to such a registrant, is exempt from any requirement to file or furnish materials with the Commission under Exchange Act Sections 13(a), 13(d), 13(f), 13(g), 14(a), 14(c), 15(d) and 16(a), Regulations 13A, 13D, 13G, 14A, 14C and 15D, and Exchange Act Rules 13f-1 and 16a-3, as applicable, for the period from and including October 29, 2012 to November 20, 2012, where the conditions below are satisfied.

Conditions

(a) The registrant or person other than a registrant is not able to meet a filing deadline due to Hurricane Sandy and its aftermath;

(b) The registrant or person other than a registrant files with the Commission any report, schedule or form required to be filed during the period from and including October 29, 2012 to November 20, 2012, on or before November 21, 2012; and (c) In any such report, schedule or form filed pursuant to this Order, the registrant or person other than a registrant must disclose that it is relying on this Order and state the reasons why, in good faith, it could not file such report, schedule or form on a timely basis.

II. Furnishing of Proxy and Information Statements

The conditions in the areas affected by Hurricane Sandy, including displacement of thousands of individuals and the destruction of property, have prevented and will continue to prevent the delivery of mail to the affected areas. In light of these conditions, we believe that relief is warranted for those seeking to comply with our rules imposing requirements to furnish materials to security holders when mail delivery is not possible.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act, that a registrant or any other person is exempt from the requirements to furnish proxy statements, annual reports and other soliciting materials, as applicable (the “Soliciting Materials”), under Exchange Act Rules 14a-3 and 14a-12, and the requirements to furnish information statements and annual reports, as applicable (the “Information Materials”), under Exchange Act Rules 14c-2 and 14c-3, where the conditions below are satisfied.

Conditions

(a) The registrant's security holder has a mailing address located within a zip code where, as a result of Hurricane Sandy, the United States Postal Service has suspended mail service of the type or class customarily used by the registrant;

(b) The registrant or other person making a solicitation has followed normal procedure when furnishing the Soliciting Materials to the security holder in order to ensure that the Soliciting Materials preceded or accompanied the proxy, as required by the rules applicable to the particular form of Soliciting Materials, or, in the case of Information Materials, the registrant has followed normal procedure when furnishing the Information Materials to the security holder in accordance with the rules applicable to Information Materials; and

(c) If requested by the security holder, the registrant or other person provides the Soliciting Materials or Information Materials by a means reasonably designed to furnish the Soliciting Materials or Information Materials to the security holder.

Any registrant or other person unable to meet a deadline (including any shareholder who is unable to meet a deadline applicable to a shareholder proposal) or a delivery obligation as a result of Hurricane Sandy, or in need of other assistance related to their public filings, should contact the Division of Corporation Finance at (202) 551-3500 or at https://tsx.sec.gov/cgi-bin/corp_fin_interpretive. The Division will consider any requests on a case-by-case basis.

III. Relief Relating Specifically to Registered Investment Companies Regarding Transmittal of Annual and Semi-Annual Reports to Investors Required by the Company Act and the Rules Thereunder

For reasons similar to those cited in Section II, we believe that relief is warranted for the transmittal by registered management investment companies and registered unit investment trusts (collectively, "registered investment companies") of annual and semi-annual reports to investors.

Accordingly, *it is ordered*, pursuant to Sections 6(c) and 38(a) of the Company Act that, for the period from and including October 29, 2012 to November 20, 2012, a registered investment company is exempt from the requirements of Section 30(e) of the Company Act and Rule 30e-1 thereunder to transmit annual and semi-

annual reports to investors affected by Hurricane Sandy; and

For the period from and including October 29, 2012 to November 20, 2012, a registered unit investment trust is exempt from the requirements of Section 30(e) of the Company Act and Rule 30e-2 thereunder to transmit annual and semi-annual reports to unitholders affected by Hurricane Sandy,

Provided That

(a) The affected investor's mailing address for transmittal as listed in the records of the registered investment company has a zip code for which the United States Postal Service has suspended mail service, as a result of Hurricane Sandy, of the type or class customarily used by the registered investment company for transmittal of reports; and

(b) The registered investment company or other person promptly transmits the reports to affected investors: (i) If requested by the investor; or (ii) at the earlier of November 21, 2012 or the resumption of the applicable mail service.

Registered investment companies experiencing difficulties in complying with their obligations after November 20, 2012, with the filing of Forms N-SAR or N-MFP, or in need of additional information or assistance regarding issues arising under the Company Act, should contact the Division of Investment Management, Office of Chief Counsel, at (202) 551-6865 or IMOCC@sec.gov. Registered investment advisers experiencing difficulties arising from Hurricane Sandy in complying with their obligations such as the filing of Form PF, or in need of additional information or assistance regarding issues arising under the Investment Advisers Act of 1940, should contact the Division of Investment Management, Office of Investment Adviser Regulation, at (202) 551-6999 or IARDLive@sec.gov.

IV. Transfer Agent Compliance With Sections 17a and 17(f) of the Exchange Act

Exchange Act Section 17A and Section 17(f), as well as the rules promulgated under Sections 17A and 17(f), contain requirements for registered transfer agents relating to, among other things, processing securities transfers, safekeeping of investor and issuer funds and securities, and maintaining records of investor ownership. Following the events of Hurricane Sandy, registered transfer agents located in the affected region may have difficulty complying with

some or all of their obligations as registered transfer agents. In addition, registered transfer agents located outside the affected region in many cases may be unable to conduct business with entities or securityholders inside the region, thereby making it difficult to process securities transactions and corporate actions in conformance with Section 17A, Section 17(f) and the rules thereunder.

While the national clearance and settlement system continues to operate well in light of this emergency, the Commission recognizes that securities transfers and payments to and from securityholders in the affected region may present compliance issues for many transfer agents. Therefore, the Commission is using its authority under Section 17A and Section 36 of the Exchange Act to relax temporarily certain regulatory provisions in order to provide transfer agents with flexibility in coping with the situation.² The Commission finds the following exemption to be in the public interest and consistent with the protection of investors and the purpose of Section 17A of the Exchange Act, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

Accordingly, *it is ordered*, pursuant to Sections 17A and 36 of the Exchange Act, that any registered transfer agent that is unable to comply with Section 17A and Section 17(f) of the Exchange Act and the rules promulgated thereunder, as applicable, due to Hurricane Sandy and its aftermath is hereby temporarily exempted from complying with such provisions for the period from and including October 29, 2012 to December 1, 2012, where the conditions below are satisfied.

Conditions

(a) A registered transfer agent relying on this Order must notify the Commission in writing by November 19, 2012 of the following:

(1) The transfer agent is relying on this Order;

(2) A statement of the reasons why, in good faith, the transfer agent is unable to comply with Section 17A and Section 17(f) of the Exchange Act and the rules promulgated thereunder, as applicable;

(3) If the transfer agent knows or believes that the books and records it is required to maintain pursuant to Section 17A and the rules thereunder were lost, destroyed or materially

² This order temporarily exempts transfer agents from the requirements of (1) Section 17A of the Exchange Act and Rules 17Ad-1 through 17Ad-20 thereunder and (2) Section 17(f) of the Exchange Act and Rules 17f-1 and 17f-2 thereunder.

damaged, information, to the extent reasonably available, as to the type of books and records that were maintained, the names of the issuers for whom such books and records were maintained, the extent of the loss of, or damage to, such books and records, and the steps taken to ameliorate any such loss or damage; and

(4) If the transfer agent knows or believes that funds or securities belonging to either issuers or securityholders and within its possession were, for any reason, lost, destroyed, stolen or unaccounted for, information, to the extent reasonably available, regarding the dollar amount of any such funds and the number of such securities and the steps taken to ameliorate any such loss; and

(b) Transfer agents that have custody or possession of any securityholder or issuer funds or securities shall use all reasonable means available to ensure that all such securities are held in safekeeping and are handled, in light of all facts and circumstances, in a manner reasonably free from risk of theft, loss, or destruction and that all funds are protected against misuse. To the extent possible, all securityholder or issuer funds that remain in the custody of the transfer agent shall be maintained in a separate bank account held for the exclusive benefit of securityholders until such funds are properly remitted.

The notification required under (a) above shall be sent to: U.S. Securities and Exchange Commission, Division of Trading and Markets, 100 F Street NE., Washington, DC 20549-7010.

The Commission encourages registered transfer agents and the issuers for whom they act to inform affected securityholders whom they should contact concerning their accounts, their access to funds or securities, and other shareholder concerns. If feasible, issuers and their transfer agents should consider placing a notice on their Web sites or providing toll free numbers to respond to inquiries.

Transfer agents experiencing difficulties in complying with obligations after December 1, 2012, or in need of additional information, should contact the Division of Trading and Markets at (202) 551-5777 or at tradingandmarkets@sec.gov.

V. Independence—Bookkeeping or Other Services Related to the Accounting Records or Financial Statements of the Audit Client

The conditions in the areas affected by Hurricane Sandy, including displacement of individuals, the destruction of property and loss or destruction of corporate records, may

require extraordinary efforts to reconstruct lost or destroyed accounting records. The Commission understands that in this unique situation an audit client may look to its auditor for assistance in reconstruction of its accounting records because of the auditor's knowledge of the client's financial systems and records. Under Section 10A(g)(1) of the Exchange Act and Rule 2-01(c)(4)(i) of Regulation S-X, auditors are prohibited from providing bookkeeping or other services relating to the accounting records of the audit client, and in Rule 2-01(c)(4)(i) of Regulation S-X, these prohibited services are described as including "maintaining or preparing the audit client's accounting records" or "preparing or originating source data underlying the audit client's financial statements." In light of the conditions in areas affected by Hurricane Sandy, however, we believe that limited relief from these prohibitions is warranted for those registrants and other persons that are required to comply with the independence requirements of the federal securities laws and the Commission's rules and regulations thereunder and that are affected by those conditions. Accordingly, *It Is Ordered*, pursuant to Section 36 of the Exchange Act, that independent certified public accountants engaged to provide audit services to registrants and other persons required to comply with the independence requirements of the federal securities laws and the Commission's rules and regulations thereunder are exempt from the requirements of Section 10A(g)(1) of the Exchange Act and Rule 2-01(c)(4)(i) of Regulation S-X, where the conditions below are satisfied.

Conditions

(a) Services provided by the auditor are limited to reconstruction of previously existing accounting records that were lost or destroyed as a result of Hurricane Sandy and such services cease as soon as the audit client's lost or destroyed records are reconstructed, its financial systems are fully operational and the client can effect an orderly and efficient transition to management or other service provider; and

(b) Services provided by the auditor to its audit client pursuant to this Order are subject to pre-approval by the audit client's audit committee as required by Rule 2-01(c)(7) of Regulation S-X.

Auditors or audit clients with questions about this section of the Order or with other questions relating to auditor independence are encouraged to

call the Office of the Chief Accountant directly at (202) 551-5300.

By the Commission.

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68209; File No. SR-NASDAQ-2012-126]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ's Rebates for Order Execution and Its Fees for Order Entry Ports Through the Introduction of New Market Quality Incentive Programs on a Pilot Basis

November 9, 2012.

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 1, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III 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

NASDAQ is proposing a change to modify rebates for order execution and its fees for order entry ports through the introduction of new market quality incentive programs on a pilot basis. NASDAQ will implement the proposed change on November 1, 2012. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com>, at NASDAQ'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 self-regulatory organization 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.