

13. The Interfund Lending Committee will monitor the Interfund Loan Rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to each Fund Board concerning the participation of the Funds in the Facility and the terms and other conditions of any extensions of credit under the Facility.

14. Each Fund Board, including a majority of the Independent Fund Board Members, will:

(a) review, no less frequently than quarterly, the relevant Fund's participation in the Facility during the preceding quarter for compliance with the conditions of any order permitting such transactions;

(b) establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula; and

(c) review, no less frequently than annually, the continuing appropriateness of the relevant Fund's participation in the Facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, Lord Abbett promptly will refer such loan for arbitration to an independent arbitrator selected by each Fund Board involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.<sup>2</sup> The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to each Fund Board setting forth a description of the nature of any dispute and the actions taken by the Funds involved to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the Facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transactions, including the amount, the maturity, and the Interfund Loan Rate, the rate of interest available at the time the Interfund Loan is made on overnight repurchase agreements and bank borrowings, and such other information

presented to the Fund Board in connection with the review required by conditions (13) and (14).

17. The Interfund Lending Committee will prepare and submit to each Fund Board for review an initial report describing the operations of the Facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of the Facility, the Interfund Lending Committee will provide quarterly reports on the operations of the Facility to each Fund Board. Each Fund's chief compliance officer, as defined in Rule 38a-1(a)(4) under the Act (a "Fund CCO"), shall prepare an annual report for its Fund Board for each year that the Fund participates in the Facility, which report evaluates the Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

Additionally, each Fund CCO will also annually file a certification pursuant to Item 77Q3 of Form N-SAR, as such Form may be revised, amended, or superseded from time to time ("N-SAR"), for each year that the Fund participates in the Facility, that certifies that the Fund and Lord Abbett have established procedures reasonably designed to achieve compliance with the terms and conditions of the order. In particular, the certification will address procedures designed to achieve the following objectives:

(a) That the Interfund Loan Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate;

(b) compliance with the collateral requirements as set forth in the application;

(c) compliance with the percentage limitations on interfund borrowing and lending;

(d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Fund Board; and

(e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third-party borrowings of a borrowing Fund at the time of the Interfund Loan.

Additionally, each Fund's independent registered public accountants, in connection with their audit examination of the Fund, will review the operation of the Facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N-SAR.

18. No Fund will participate in the Facility upon receipt of the requisite regulatory and shareholder approval

unless it has fully disclosed in its prospectus and/or SAI all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-16038 Filed 7-6-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78223; File No. SR-NASDAQ-2016-013]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Require Listed Companies to Publicly Disclose Compensation or Other Payments by Third Parties to Board of Director's Members or Nominees

July 1, 2016.

#### I. Introduction

On March 15, 2016, 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" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to require listed companies to publicly disclose compensation or other payments by third parties to board of director's members or nominees for director. The proposed rule change was published for comment in the **Federal Register** on April 5, 2016.<sup>3</sup> On May 18, 2016, Nasdaq filed Amendment No. 1 to the proposal.<sup>4</sup> On May 20, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On June 30, 2016, Nasdaq withdrew Amendment No. 1 and filed Amendment No. 2 to the proposal, which replaced and superseded the original proposal in its

<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. 77481 (Mar. 30, 2016), 81 FR 19678 ("Notice").

<sup>4</sup> See Letter to Brent J. Fields, Secretary, Commission, from David Strandberg, Associate Vice President, Nasdaq dated May 18, 2016.

<sup>5</sup> See Securities Exchange Act Release No. 77879 (May 20, 2016), 81 FR 33571 (May 26, 2016).

<sup>2</sup> If the dispute involves Funds with different Fund Boards, the respective Fund Boards will select an independent arbitrator that is satisfactory to each Fund.

entirety.<sup>6</sup> The Commission received eight comments on the proposal by seven commenters, as well as a response to the comment letters from Nasdaq regarding the proposal.<sup>7</sup> This order

<sup>6</sup> See Letter to Brent J. Fields, Secretary, Commission, from David Strandberg, Associate Vice President, Nasdaq dated June 30, 2016. In Amendment No. 2, Nasdaq clarified, among other things, that: The required disclosure must be made no later than the date on which the relevant company files or furnishes a definitive proxy or information statement (or, if the company does not file proxy or information statements, no later than when the company files its next Form 10-K or Form 20-F); the proposed rule does not separately require the initial disclosure of newly entered into agreements or arrangements, provided that disclosure is made pursuant to the rule for the next shareholders' meeting at which directors are elected; a company must make the required disclosure at least annually; the disclosure requirement encompasses non-cash compensation and other forms of payment obligation, such as indemnification; all references in the proposed rule to proxy or information statements are to the definitive versions thereof; remedial disclosure (when a company newly discovers an agreement that should have been disclosed), regardless of its timing, would not satisfy the annual disclosure requirements; and a company that provides disclosure in the current fiscal year pursuant to the requirement in Item 5.02(d)(2) of Form 8-K would not have to make separate disclosure under the proposed rule, although disclosure under Commission rules would not relieve a company of its ongoing obligation under the proposed rule to make annual disclosure. The amendment also explicitly states that, if a company provides disclosure in a definitive proxy or information statement, including to satisfy the Commission's proxy disclosure requirements, sufficient to comply with the proposed rule, the company's obligation to satisfy the rule is fulfilled regardless of the reason for which such disclosure was made.

Amendment No. 2 also revised the proposal to explicitly permit the required disclosure to be made in an information statement in addition to other ways specified in the proposal; limit the required disclosure to the material terms of agreements or arrangements relating to compensation and payments in connection with a person's board service or candidacy; and permit Web site disclosure through a hyperlink to another Web site, provided that the other Web site is continuously accessible. Amendment No. 2 also added that a foreign private issuer would be permitted to follow home country practice in lieu of the proposal's requirements provided that it complies with the conditions set forth in Nasdaq Rule 5615. In addition, the amendment revised the effective date of the disclosure requirements to thirty days after Commission approval of the proposed rule and included a statement from Nasdaq that it would notify listed companies of the effective date.

<sup>7</sup> See Letters to Brent J. Fields, Secretary, Commission, from Andrew A. Schwartz, Associate Professor of Law, University of Colorado Law School, Boulder, Colorado, dated April 25 and 26, 2016 ("Schwartz Letters"); Bobby Franklin, President & CEO, National Venture Capital Association, dated April 26, 2016 ("NVCA Letter"); John Hayes, Chair, Corporate Governance Committee, Business Roundtable, dated April 26, 2016 ("Business Roundtable Letter"); John Endean, President, American Business Conference, dated April 28, 2016 ("American Business Conference Letter"); Marc M. Rossell, Chair, Securities Regulation Committee, Bar of the City of New York, dated May 20, 2016 ("New York City Bar Letter"); Heather C. Briccette, President & CEO, The Business Council of New York State, Inc., dated June 15, 2016 ("NYS Business Council Letter"); Darla

grants approval of the proposed rule change, as amended by Amendment No. 2.

## II. Description of the Proposed Rule Change as Modified by Amendment No. 2

Nasdaq is proposing to adopt Rule 5250(b)(3) to require each listed company to publicly disclose the material terms of all agreements or arrangements between any director or nominee for director on the company's board and any person or entity other than the company relating to compensation or other payment in connection with that person's candidacy or service as a director.<sup>8</sup> The proposal would require disclosure of all such agreements and arrangements by no later than the date on which the company files or furnishes a definitive proxy or information statement subject to Regulation 14A or 14C under the Act in connection with the Company's next shareholders' meeting at which directors are elected (or, if they do not file proxy or information statements, no later than when the Company files its next Form 10-K or Form 20-F).<sup>9</sup>

The proposal as modified by Amendment No. 2 would require a listed company to disclose this information either on or through the company's Web site or in the definitive proxy or information statement<sup>10</sup> for the next shareholders' meeting at which directors are elected (or, if the company does not file proxy or information statements, in its Form 10-K or Form 20-F). The proposed rule provides that a company would not need to make disclosure, however, of agreements and arrangements that: (i) Relate only to reimbursement of expenses in connection with candidacy as a director; (ii) existed prior to the nominee's candidacy (including as an employee of the other person or entity) and the nominees relationship with the third party has been publicly disclosed in a definitive proxy or information statement or annual report (such as in the director or nominee's biography); or (iii) have been disclosed under Item 5(b) of Schedule 14A of the Act or Item 5.02(d)(2) of Form 8-K in the current fiscal year.<sup>11</sup> Such disclosure, however,

pursuant to these provisions under Schedule 14A and Form 8-K in (iii) would not relieve a company of its disclosure obligations under the proposed rule.<sup>12</sup>

The proposed rule states that a Company must make the disclosure required by the rule at least annually until the earlier of the resignation of the director or one year following the termination of the agreement or arrangement.<sup>13</sup> The proposed rule further states that if a Company discovers an agreement or arrangement that should have been disclosed pursuant to the proposed rule but was not disclosed, then the Company must promptly make the required disclosure by filing a Form 8-K or 6-K, where required by Commission rules, or by issuing a press release.<sup>14</sup> However, such remedial disclosure, regardless of its timing, would not satisfy the annual disclosure requirements under the proposed rule.<sup>15</sup>

The proposal further provides that if a company undertakes reasonable efforts to identify all such agreements or arrangements, including asking each director or nominee in a manner designed to allow timely disclosure, and makes the required remedial disclosure promptly if it discovers an agreement or arrangement that should have been disclosed but was not, then the company will not be considered deficient with respect to the rule.<sup>16</sup>

The Exchange also proposes to make a change to Nasdaq Listing Rule 5615, which permits foreign private issuers to follow their home country practice in lieu of certain corporate governance requirements of the Exchange, provided that the issuer fulfills the conditions set forth in that rule. Under the proposal, the required disclosure of third-party payments to directors will be included among the rule provisions where a foreign private issuer would be permitted to follow home country practice.<sup>17</sup> To meet the conditions of Rule 5615, a foreign private issuer would be required to submit to Nasdaq a written statement from an independent counsel in its home country certifying that the company's practices are not prohibited by the home country's laws. The issuer would also be

Stuckey, President & CEO, Society for Corporate Governance, dated June 27, 2016 ("Society for Corporate Governance Letter"). See also Letter to Brent J. Fields, Secretary, Commission, from David Strandberg, Associate Vice President, Nasdaq dated June 30, 2016 ("Response Letter").

<sup>8</sup> See proposed Rule 5250(b)(3)(A).

<sup>9</sup> See proposed Rule 5250(b)(3). See also *supra*, note 6 for a description of changes made in Amendment No 2 as compared to the original filing.

<sup>10</sup> See *supra* note 6.

<sup>11</sup> See proposed Rule 5250(b)(3)(A).

<sup>12</sup> See *id.*

<sup>13</sup> See proposed Rule 5250(b)(3)(B).

<sup>14</sup> See proposed Rule 5250(b)(3)(C).

<sup>15</sup> See *id.* See also *supra* note 6.

<sup>16</sup> See proposed Rule 5250(b)(3)(D). The proposed rule also provides that in, all other cases, the Company must submit a plan that satisfies Exchange staff that the Company has adopted processes and procedures designed to identify and disclose relevant agreements or arrangements.

<sup>17</sup> See *supra* note 6.

required to disclose in its annual filings with the Commission (or, in certain circumstances, on its Web site) that it does not follow the proposed rule's requirements and briefly state the home country practice it follows in lieu of these requirements.

### III. Comments on the Proposed Rule Change and Nasdaq's Response

As previously stated, the Commission received a total of eight comment letters from seven commenters.<sup>18</sup> Four commenters expressed general support for the proposal.<sup>19</sup> One of these commenters stated that third-party payment arrangements of the kind covered by the proposal "present numerous problems besides the obvious potential conflict of interest that shareholders should consider in voting for board members."<sup>20</sup> In addition, the commenter believed that "the ability to keep both arrangement and the terms thereof secret provides 'raiders' and other types of activists an unfair tactical advantage over the incumbent board members," and that "if an insurgent candidate is elected to the board, secrecy around that board member's outside compensation can inhibit the effective functioning of the board of directors."<sup>21</sup> Echoing similar beliefs, another of these commenters stated that full disclosure of the material terms of third party arrangements with a director is "a necessary element of understanding and assessing the ability of directors and director nominees to fulfill their fiduciary duties."<sup>22</sup> Another commenter stated its belief that "investors need to know if there are compensation arrangements for any director in which an entity other than the listed company is paying for that particular director's service."<sup>23</sup>

One comment letter stated its aim as ensuring that Nasdaq was fully informed as it considered whether to move forward with the proposed rule change, in view of what it described as the somewhat complex arrangements that can exist when a board member of an issuer is a general partner of a venture capital fund partnership that owns a substantial interest in the issuer and is also a member or an associate of the venture capital firm that formed the venture capital fund.<sup>24</sup> This commenter

recommended that Nasdaq clarify the conditions of the exemption in the rule for pre-existing relationships as well as the degree of detail needed in disclosures required by the proposed rule.<sup>25</sup>

Finally, two commenters recommended that the proposed rule change not be approved.<sup>26</sup> One of these commenters indicated uncertainty as to whether the issues addressed by the Exchange's proposal are not adequately covered by existing Commission rules.<sup>27</sup> This commenter further believed that the Commission should "promote desirable uniformity in the nature of required disclosures to investors about director compensation arrangements at public companies, without differentiation based on the exchange on which a company's securities are listed."<sup>28</sup>

The other commenter opposing approval of the proposed rule change, similarly, believed that proposal "may be duplicative" because the Commission already has rules that "may already address the disclosures covered in the proposed rule change."<sup>29</sup> This commenter argued that "approving similar rules aimed at the same goal but from a different regulator would make compliance unnecessarily difficult and would not be an efficient use of resources," adding that if more disclosure was required by the proposal than by the Commission's rules, "investors in Nasdaq-listed companies would be receiving different information on these matters than investors in companies listed on other exchanges, which could lead to confusion."<sup>30</sup> The commenter further argued that the Nasdaq proposal would require companies to "unnecessarily incur costs and expend energy without any meaningful benefit to shareholders."<sup>31</sup>

In its Response Letter, Nasdaq cited the letters that had been received in support of its proposed rule change, noting that the submitters of these letters shared the Exchange's view that the proposed disclosures would be meaningful to shareholders and relevant

to their investment and voting decisions. In response to the view of opposing commenters that existing Commission regulations may already require the disclosure mandated by the proposed rule, Nasdaq noted that the proposal would not require separate disclosure when disclosure sufficient to satisfy the proposed rule has been made by a company under existing Commission proxy rules. Acknowledging that there are various Commission rules that may, in some circumstances, apply to third party director payments, Nasdaq stated, nonetheless, that the nature, scope and timing of these required disclosures may not in all cases be the same as the disclosure mandated by its proposal.<sup>32</sup> Nasdaq averred that it had considered the concerns raised in the comment letters, but believes the proposal as amended adequately addresses them.<sup>33</sup>

### IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>34</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>35</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit, among other things, unfair discrimination between issuers.

The development, implementation, and enforcement of standards governing the initial and continued listing of securities on an exchange are activities of critical importance to financial markets and the investing public. Listing requirements, among other things, serve as a means for an exchange to provide listed status only to companies that meet certain initial and continued quantitative and qualitative

<sup>18</sup> See *supra* note 7.

<sup>19</sup> See Schwartz Letters, Business Roundtable Letter, American Business Conference Letter, and Society for Corporate Governance Letter, *supra* note 7.

<sup>20</sup> See American Business Conference Letter.

<sup>21</sup> *Id.*

<sup>22</sup> See Business Roundtable Letter.

<sup>23</sup> See Society for Corporate Governance Letter.

<sup>24</sup> See NVCA Letter, *supra* note 7.

<sup>25</sup> *Id.* The NVCA Letter also noted that potential restrictions on the ability of individuals who receive compensation to serve as a director could adversely affect venture capital firms due to the structure of venture capital funds. See *id.* The Commission knows that this is not within the scope of the Nasdaq proposed rule change.

<sup>26</sup> See New York City Bar Letter and NYS Business Council Letter, *supra* note 7.

<sup>27</sup> See New York City Bar Letter *id.*

<sup>28</sup> *Id.* The commenter cited, in this regard, the Commission's Disclosure Effectiveness Project.

<sup>29</sup> See NYS Business Council Letter, *supra* note 7.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Nasdaq cited its proposal's ongoing annual and remedial disclosure requirements as examples. See *supra* note 7.

<sup>33</sup> In this regard, Nasdaq specifically mentioned the concerns raised in the NVCA Letter around board service by venture capital board members.

<sup>34</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>35</sup> 15 U.S.C. 78f(b)(5).

criteria that help to ensure that fair and orderly markets can be maintained once the company is listed. The corporate governance standards embodied in the listing standards of national securities exchanges, in particular, play an important role in assuring that exchange-listed companies observe good governance practices, including that listed companies provide adequate disclosure to allow investors to make informed investment and voting decisions. The Commission has long encouraged exchanges to adopt and strengthen their corporate governance listing standards in order to, among other things, provide greater transparency into the governance processes of listed issuers and enhance investor confidence in the securities markets.

The majority of the commenters, as described above, were supportive of the proposal and thought it was important to ensure that investors have material information about third party payments to nominees and existing directors. Two commenters, however, requested that the Commission not approve the Nasdaq's proposal.<sup>36</sup> The commenters were concerned that the Exchange requirements may be duplicative of Commission disclosure requirements and that disclosure of director compensation is a matter more suited to uniform regulation by the Commission.

The Commission recognizes that there may be some overlap with Commission disclosure requirements. Depending on the facts and circumstances, various provisions under the federal securities laws, such as Items 401(a) and 402(k) of Regulation S-K, Item 5(b) of Schedule 14A, and Item 5.02(d) of Form 8-K, may require disclosure of third party compensation arrangements with or payments to nominees and/or board members.<sup>37</sup> We note that it is not unusual for national securities exchanges to adopt disclosure requirements in their listing rules that supplement or overlap with disclosure requirements otherwise imposed under the federal securities laws. For example, notwithstanding the requirements imposed by the federal securities laws to report certain material events shortly after they occur on Form 8-K, national

securities exchanges maintain separate, broader disclosure rules that require prompt disclosure of material information.<sup>38</sup> These and other disclosure-related listing standards help to ensure that listed companies maintain compliance with the disclosure requirements under the federal securities laws and contribute to the maintenance of fair and orderly markets by providing investors with material and current information necessary for informed investment and voting decisions.

The proposal contains certain exceptions to address some of the concerns raised by commenters about overlap with Commission rules. For example, an exception is provided for disclosure of arrangements or agreements that have been disclosed under Item 5(b) of Schedule 14A or Item 5.02(d) of Form 8-K in the current fiscal year. In addition, in Amendment No. 2, Nasdaq made clear that if, in response to a Commission disclosure requirement, a company provides disclosure in a definitive proxy or information statement sufficient to comply with the proposed rule, such disclosure would also satisfy the company's disclosure obligation under the Nasdaq rule. Further, the proposal permits listed companies, to the extent the disclosure is not otherwise required in a proxy or information statement, to disclose the information on a Web site, either directly or through a hyperlink. This should help to mitigate any disclosure burden on companies that have already provided the required disclosure in a prior Commission filing because the rule only would require the company to post a link to that filing on its Web site.

To the extent, there are certain factual scenarios that would require disclosure not otherwise required under Commission rules, we believe that it is within the purview of a national securities exchange to impose heightened governance requirements, consistent with the Act, that are designed to improve transparency and accountability into corporate decision making and promote investor confidence in the integrity of the securities markets.<sup>39</sup>

Concerning the instant proposal, to the extent that it would, in certain

situations, provide investors and market participants additional information to make informed investment and voting decisions, we believe it is consistent with the requirements of Section 6(b)(5) of the Act.

Finally, the Commission notes that certain changes and clarifications were made to the proposal by Nasdaq in response to comments. Amendment No. 2 clarified that non-cash compensation includes indemnification and further clarified in the proposed rule language that the material terms of the agreement or arrangement that need to be disclosed are those relating to compensation and not limited to cash payments. Further, Nasdaq amended the rule language concerning an exception to disclosure relating to relationships that existed prior to a nominee's candidacy. That proposed change states that no additional disclosure is required if the prior relationship between the nominee and the third party has been publicly disclosed in a definitive proxy or annual report. The Exchange further clarified in the amended rule language in proposed IM-5250-2 the timing of when the disclosure needs to be made when the disclosure is posted on the Company's Web site. These changes, among the others made in Amendment No. 2, help to clarify the proposal and address some of the concerns expressed by the commenters.

## V. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 2 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-NASDAQ-2016-013 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-013. 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/>

<sup>36</sup> See New York City Bar Letter and Business Council Letter, *supra* note 7.

<sup>37</sup> In addition to these specific disclosure requirements, information about third party compensation arrangements may be required under other provisions of the federal securities laws which require disclosure of any additional material information necessary to make the statements included in the relevant filing, in light of the circumstances under which they are made, not misleading. See, e.g., Exchange Act Rules 10b-5, 14a-9, and 14c-6.

<sup>38</sup> See, e.g., NYSE Section 202.05; Nasdaq Rule 5250(b)(1).

<sup>39</sup> For example, the Commission has previously determined that exchange listing standards relating to audit committee independence requirements that included heightened requirements beyond those specifically mandated by Rule 10A-3 were consistent with the Act. See Securities Exchange Act Release No. 48745 (Nov. 4, 2003), 68 FR 64154 (Nov. 12, 2003).

*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 the 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–NASDAQ–2016–013 and should be submitted on or before July 28, 2016.

#### **VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2**

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the 30th day after the date of publication of the notice of Amendment No. 2 in the **Federal Register**. As noted above, in Amendment No. 2, the exchange clarified various aspects of the proposed rule's applicability and included new provisions that enhance the proposal.<sup>40</sup> The Commission believes the clarifications in Amendment No. 2 would provide market participants with greater transparency regarding the requirements for listed companies to disclose compensation or other payments by third parties to board of director's members or nominees under Nasdaq's rules. In addition, in Amendment No. 2, the Exchange revised the proposed date of effectiveness of the proposed rule change.<sup>41</sup> The Commission believes this revision will allow listed companies appropriate time to comply with the proposed rule change.

Because Amendment No. 2 provided additional transparency to the disclosure requirements imposed by the proposed rule change, enhanced its provisions, and provided a revised date of effectiveness which will allow listed

companies time to comply with the new requirements, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.<sup>42</sup>

#### **VII. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>43</sup> that the proposed rule change (SR–NASDAQ–2016–013), as modified by Amendment No. 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>44</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2016–16123 Filed 7–6–16; 8:45 am]

**BILLING CODE 8011–01–P**

### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–78203; File No. SR–ISE–2016–15]**

#### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program**

June 30, 2016.

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 June 29, 2016, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II 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 ISE proposes to amend its rules to extend a pilot program to quote and to trade certain options classes in penny increments (“Penny Pilot Program”). The text of the proposed rule change is available on the Exchange's Web site *www.ise.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 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 of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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**

Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq–100 Index Tracking Stock (“QQQQ”), the SPDR S&P 500 Exchange Traded Fund (“SPY”) and the iShares Russell 2000 Index Fund (“IWM”), is \$0.01 for all quotations in options series that are quoted at less than \$3 per contract and \$0.05 for all quotations in options series that are quoted at \$3 per contract or greater. QQQQ, SPY and IWM are quoted in \$0.01 increments for all options series. The Penny Pilot Program is currently scheduled to expire on June 30, 2016.<sup>3</sup> The Exchange proposes to extend the Penny Pilot Program through December 31, 2016, and to provide a revised date for adding replacement issues to the Penny Pilot Program. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2016. The replacement issues will be selected based on trading activity for the most recent six month period excluding the month immediately preceding the replacement (*i.e.*, beginning December 1, 2015, and ending May 31, 2016). This filing does not propose any substantive changes to the Penny Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been

<sup>42</sup> 15 U.S.C. 78s(b)(2).

<sup>43</sup> 15 U.S.C. 78s(b)(2).

<sup>44</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Exchange Act Release No. 75312 (June 26, 2015), 80 FR 38251 (July 2, 2015) (SR–ISE–2015–21).

<sup>40</sup> See *supra* note 6.

<sup>41</sup> See *id.*