

MEMO# 26681

November 13, 2012

ICI Comment Letter on NASDAQ Proposal for New ETF Order Type Pegged to INAV

[26681]

November 13, 2012

TO:

ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 40-12

ETF ADVISORY COMMITTEE No. 45-12

EQUITY MARKETS ADVISORY COMMITTEE No. 35-12

RE:

ICI COMMENT LETTER ON NASDAQ PROPOSAL FOR NEW ETF ORDER TYPE PEGGED TO INAV

On October 12, the Securities and Exchange Commission ("SEC") published for comment a proposal by the NASDAQ Stock Market LLC ("NASDAQ") to implement a new order type, pegged to intraday net asset value ("INAV"), for exchange-traded funds ("ETFs") comprised of U.S. component stocks. [*] The proposed new order type would allow market participants to enter a buy or sell order at an ETF's published INAV, plus or minus any specified offset. The order would be priced as of the time it was entered; that price would update as the INAV changed, and the order would execute when or if an offer (for a buy order) or bid (for a sell order) was available at the established price. A market participant could also set a limit price beyond which the INAV pegged order would not be executed.

On November 8, the Institute filed the attached comment letter on the proposal. The letter does not object to the proposal, but questions the purpose and benefit of an INAV pegged order. It notes that proper use of limit orders could solve the problem identified by the Notice as the purpose for the proposed order type. The letter also seeks further clarity on the operation of the proposed order type. Finally, the letter raises a number of concerns about the value of pegging orders to INAV, for two reasons. First, market participants may not fully understand what INAV represents, how it is calculated, and how frequently it is updated. Additionally, the process of calculation, publication, and dissemination of INAV creates several opportunities for errors, which raises concerns both with respect to market participants pegging orders to an inaccurate INAV and with respect to ascertaining any

potential liability resulting from such errors.

The letter recommends that the SEC request additional information from NASDAQ to further explore these questions and concerns, and consider the benefits of the proposed INAV pegged order, before determining whether to approve it.

Mara Shreck
Associate Counsel

[Attachment](#)

endnotes

[*] See NASDAQ Stock Market LLC: Notice of Filing of Proposed Rule Change With Respect to INAV Pegged Orders for ETFs, 77 Fed. Reg. 64167 (October 18, 2012) (“Notice”).

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.