UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PHILIP GOLDBERG, DAVID KENTON, RANDY and TERESA MIELKE, NUHKET KAYAHAN, GEORGE MICHALITSIANOS, CRYSTAL McMAHON, BENJAMIN LEVI, STEVE JARVIS, ATISH GANDHI, DMITRI BOUGAKOV, ERIC HAMRICK, COLIN SUZMAN, KATERHINE LOIACONO, MEREDITH BAILEY, FAISAL SAMI, RYAN CEFALU, SANJEEV SHARMA, DENNIS KUHN, LORRAIN CHIN, JACINTO RIVERA and JOE JOHNSON, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

NASDAQ OMX GROUP, INC and THE NASDAQ STOCK MARKET LLC,

Defendants.

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12-CV-4054 (RAS)

AMENDED CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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INTRODUCTION

Plaintiffs Philip Goldberg, David Kenton, Randy and Teresa Mielke, Nuhket Kahayan, George Michalitsianos, Crystal McMahon, Benjamin Levi, Steve Jarvis, Atish Gandhi, Dmitri Bougakov, Eric Hamrick, Colin Suzman, Katherine Loiacono, Meredith Bailey, Faisal Sami, Ryan Cefalu, Sanjeev Sharma, Dennis Kuhn, Lorrain Chin, Jacinto Rivera and Joe Johnson, for their class action complaint against NASDAQ OMX Group, Inc. and The NASDAQ Stock Market LLC (together "Defendants" or "NASDAQ"), allege upon personal knowledge as to their own acts and upon information and belief as to all other matters, based upon the investigation of their attorneys, which included, *inter alia*, consultation with persons knowledgeable of stock exchange trading and of the circumstances of the NASDAQ trading on Friday, May 18, 2012, and review of news articles, analyst reports, NASDAQ's website, marketing materials and SEC filings, interviews and public statements by NASDAQ, and other materials, as follows:

1. As set forth more fully herein, this action stems from Facebook, Inc.'s ("Facebook") May 18, 2012 initial public offering ("IPO").

2. This is a federal class action brought on behalf of all individuals or entities who made retail purchases of Facebook stock on May 18 and May 21, 2012, whose retail orders to buy, sell or cancel were not promptly, timely, correctly and efficiently processed; who did not receive execution at accurate and fair prices; whose trades and cancellations were not promptly and accurately confirmed; or who otherwise suffered losses on their purchases of Facebook shares as a proximate result of the negligence of Defendants as described herein.

3. Defendants NASDAQ OMX Group, Inc. and The NASDAQ Stock Market LLC are private, non-governmental entities which, together, operate a national electronic

stock exchange known as "NASDAQ". NASDAQ touts itself as the "inventor of the electronic exchange", and crows that its technology "drives more than 70 marketplaces in 50 developed and emerging countries"; "powers 1 in 10 of the world's securities transactions; and is "able to process more than 1 million messages per second at sub-40 microsecond speeds with 99.999% uptime."

4. NASDAQ holds itself out as providing a transparent, highly efficient public market available for securities transactions. As such, NASDAQ has duties to exercise reasonable care in the operation and facilitation of securities trading conducted through its electronic exchange. NASDAQ also is responsible for adhering to the commercially reasonable expectations that investors have for a public securities market, based upon NASDAQ's own stated high level of expertise in providing a highly efficient and transparent electronic securities marketplace.

5. Facebook trades on the NASDAQ under the stock symbol "FB", and has done so since its IPO. Trading of Facebook shares commenced on the NASDAQ on or about 11:30 AM on May 18, 2012.

6. Facebook's IPO was one of the most hotly anticipated and discussed offerings in several years. Huge numbers of investors—both retail and institutional—expressed interest in purchasing shares in that IPO and/or trading shares on the first day, a fact widely reported well in advance of the start of trading on May 18, 2012. However, due to Defendants' negligence, that IPO and the trading in Facebook shares thereafter were badly mishandled, beginning with a largely unexplained half-hour delay in the start of trading and continuing throughout the May 18 trading day.

7. NASDAQ's negligence caused pervasive disruptions and failures in the public securities market and trading in Facebook stock. As a result, NASDAQ's problems led to problems with the opening of Facebook for public trading, problems with quotations in Facebook received by all market participants, problems with the processing and reporting of transactions, and disruption in the processing, order routing and execution throughout the entire market. Indeed, NASDAQ's negligence resulted in investors' experiencing orders to purchase or cancel trades that remained unconfirmed for hours (and even days), and losses from actions taken by investors resulting from not knowing if they owned Facebook stock or at what price, or if their cancellations were executed.

8. NASDAQ's negligence damaged Plaintiffs and class members in a variety of similar and common ways experienced by all class members. As one market participant put it, all persons who traded Facebook were "flying blind." Most class members placed buy orders which NASDAQ failed to promptly and efficiently execute and confirm to them. Without notice that their orders were in fact executed, class members did not know if they owned Facebook shares, or at what price. This created confusion among investors and some class members placed duplicate or repeat buy or sell orders that also were not promptly and efficiently executed, causing more confusion. When notice was belatedly received that their orders were filled, most class members received executions and/or confirmations which occurred after Facebook had declined in value and at prices higher than they reasonably expected, desired or had seen quoted. These class members were denied any opportunity to timely sell those shares before or while Facebook declined in value, thereby suffering losses.

9. Some class members, when they did not receive prompt execution, placed timely cancellation orders that were not promptly and efficiently executed. These class members saw that Facebook stock was declining and wanted to cancel their purchases. Because they did not know if they owned Facebook stock (as they had not received timely notice that their purchases were executed), they submitted cancellation orders, rather than sell orders. In many instances, NASDAQ's negligence caused delays in the execution or notice that the cancellations were executed, which caused some class members to place sell orders or purchase orders at lower prices that also were not promptly and efficiently executed, causing more confusion. In some cases, these class members never in fact received executions of their cancellations. These class members received buy orders that were executed after Facebook shares had declined in value at prices that they were not willing to purchase the shares and/or they were unable to sell to avoid losses, thereby suffering damage.

10. Other class members who purchased Facebook shares suffered declines in value of those shares as the proximate result of NASDAQ's negligence. For example, the NASDAQ reported bid price for Facebook became stuck at a price of $42.99 within 30 seconds of the opening and remained stuck until 1:50 pm – a period of two and one-half hours. The NASDAQ stuck bid price prevented shares from trading to higher prices during the trading hours which occurred after the delayed opening and caused many market participants to place sell orders, which drove the price lower.

11. As another example, UBS reportedly wanted to acquire one million shares of Facebook stock and placed a purchase order for that amount. When the first UBS order was not confirmed as having been executed, UBS placed a second order for the one

million shares, which order was also not confirmed. This process reportedly was repeated several more times. UBS finally received delayed confirmations that all of its orders had executed, resulting in the purchase of several times the amount of shares UBS had wanted to purchase. UBS then began selling the unwanted shares back into the market, further driving Facebook's share price downward.

12. Yet another example involves NASDAQ's notice to brokers to submit claims for Facebook losses by noon on Monday, May 21. Reportedly, this notice prompted many brokers to sell shares to fix their losses in what was described as "massive selling," leading to still further declines in the market price of Facebook shares.

13. All the problems encountered by Plaintiffs and class members—and all the damages they incurred—were the direct, proximate and easily foreseeable result of Defendants' negligence.

14. In the days leading up to the Facebook IPO, NASDAQ had prior knowledge that it was having software problems. Exhaustive reporting by multiple media outlets has indicated that NASDAQ encountered major problems with the IPO software that it could not resolve satisfactorily. Despite these problems, NASDAQ chose not to correct the software systems before opening the stock for trading, depriving investors of a fair and transparent market on which to trade Facebook shares.

15. On May 18, 2012, NASDAQ experienced immediate problems in establishing an opening price with its IPO Cross system, preventing it from opening trading in Facebook stock on time. Traders experienced problems entering or changing quotations in the hours before the market even opened. NASDAQ delayed the opening several times before opening Facebook for trading. NASDAQ finally switched to a back-

up IPO Cross system in order to open trading, but failed to take reasonable steps to assure that the back-up system would allow the market to function properly.

16. On June 6, 2012, in a live television interview with CNBC reporter Maria Bartiromo, (the "*Bartiromo Interview*"), the Chief Executive Officer of the Nasdaq OMX Group, Inc., Robert Greifeld ("CEO Greifeld"), admitted it was an "additional capability in our IPO cross" which was the cause of the problem with the opening cross, and that NASDAQ had to "revert back to a simpler code base." He failed to explain the cause of NASDAQ's other significant and serious problems that day, or even acknowledge that there were other problems.

17. In a June 11, 2012 *Wall Street Journal* article, CEO Greifeld described the problem with the IPO opening cross as "a design flaw in the systems used successfully in over 400 IPOs" which "doomed the <u>routine</u> but essential chore of lining up trades to set the opening price for Facebook shares." (emphasis added) He further stated that "we over-engineered it." After Facebook shares finally began to trade, NASDAQ's negligence resulted in continued substantial problems and disruptions in the markets and trading of Facebook's stock. According to Nanex, LLC, a provider of a real-time streaming data feed for all quotes and trades transmitted by the exchanges:

- NASDAQ went silent for 17 seconds (an enormity in market time, which is measured in milliseconds) immediately before Facebook trading commenced, from 11:29:52 AM until 11:30:09 AM—possibly due to NASDAQ's rebooting or "reversion back to the simpler code base" as CEO Greifeld described in the *Bartiromo Interview*;

- After switching to the “back-up system” and failing to take reasonable steps to test its functionality, NASDAQ allowed trading to commence and to continue even though it did not have a National Best Bid/Offer (“NBBO”) quote on Facebook stock for two hours and twenty minutes, from 11:30:34 AM to 1:50:01 PM, a period during which approximately 272 million Facebook shares traded;
- During the same two hour and twenty minute period, NASDAQ’s Facebook Bid was stuck at $42.99 and failed to update;
- During the same two hour and twenty minute period, NASDAQ’s Facebook Ask became non-firm (ineligible to set an NBBO), was stuck at $38.01 and failed to update from 11:54:57 AM to 1:50 PM; and
- On or about 1:50 PM, NASDAQ finally reported all transactions executed in the opening cross and earlier in the day, which “blasted” the tape at once.

18. Traders have questioned whether NASDAQ’s software and systems problems handling the opening IPO Cross resulted in an inaccurate and inflated opening price of $42 per share, as reported in articles published by the *Wall Street Journal* and *Seeking Alpha*. The article in *Seeking Alpha* has suggested that retail customers may be owed $340 million from NASDAQ’s negligence in handling the opening cross which filled their orders at an opening price inflated by as much as $4 per share.

19. After trading began, NASDAQ’s continued negligence manifested itself in quotation problems and reporting problems, which had a proximate adverse impact on the price of Facebook stock. NASDAQ’s locked Bid at $42.99 had a dampening effect on

the price of Facebook, which prevented the price from rising as high as anticipated or as could be expected. The failure of the price to rise above $42.99 for an extended time in turn caused many market participants to initiate sell orders, leading to a depression of the market price. NASDAQ's "blast" trade reporting at 1:50 PM also had an adverse impact on the market price as it indicated large, concentrated selling activity which, in turn, precipitated further selling. Additionally, NASDAQ's negligence in and of itself resulted in a loss of confidence by investors in the IPO process and integrity of the market, and increased sell orders for Facebook stock.

20. NASDAQ's negligent failure to deliver trade confirmations in a prompt and accurate manner, in turn, caused investors such as UBS, who suddenly saw belated confirmations for shares that they did not want, or saw confirmations for purchases at prices higher than the current market price, to sell their Facebook shares, again causing a sell-off and further depression of the market price.

21. These problems experienced by NASDAQ during the Facebook IPO were foreseeable. In the preceding months, NASDAQ experienced various problems with its trading software and systems involving its order entry systems and cancellation systems – the same systems that failed to function properly during the Facebook IPO. Weeks earlier, similar transaction problems had plagued the IPO of BATs Global Trading, resulting in the IPO being withdrawn.

22. NASDAQ's negligence in handling the Facebook IPO and subsequent market trading in Facebook stock violated ordinary standards of care and the reasonable expectations of investors who traded or attempted to trade in Facebook stock. Investors relied upon NASDAQ as the stock market on which their Facebook orders would be

promptly and accurately executed, and even though they placed trade orders through their brokers, they were ultimately damaged by NASDAQ's negligence.

23. Through fees charged for access to its markets, NASDAQ earned revenues of $411 million in the first quarter of 2012 alone, and even reportedly earned $10.7 million from trading in Facebook shares during its IPO. Plainly, Defendants have sufficient resources to prevent and eliminate the types of market failures that accompanied the Facebook IPO and to compensate all class members damaged thereby.

24. By this action, Plaintiffs seek recovery for themselves and for class members for damages suffered because of NASDAQ's negligence and res ipsa loquitur negligence.

PARTIES

25. Plaintiff Philip Goldberg ("Goldberg") is a citizen of the state of Maryland. On May 18, 2012, Goldberg placed purchase and cancellation orders for Facebook's stock that were not promptly and accurately executed and confirmed. Goldberg suffered losses thereby.

26. Plaintiff David Kenton ("Kenton") is a citizen of the state of Utah. On May 18, 2012, Kenton placed purchase and cancellation orders for Facebook stock that were not promptly and accurately executed and confirmed. Kenton suffered losses thereby.

27. Plaintiffs Randy and Teresa Mielke (the "Mielkes") are citizens of the state of Montana. On May 18, 2012, the Mielkes placed orders to purchase Facebook stock that were not promptly and accurately executed and confirmed. The Mielkes suffered losses thereby.

28. Plaintiff Nukhet Kayahan ("Kayahan") is a citizen of the state of New York. On May 18, 2012, Kayahan placed an order to purchase Facebook stock that was not promptly and accurately executed and confirmed. Kayahan suffered losses thereby.

29. Plaintiff George Michalitsianos ("Michalitsianos") is a citizen of the state of New Jersey. On May 18, 2012, Michalitsianos placed purchase and cancellation orders for Facebook stock that were not promptly and accurately executed and confirmed. Michalitsianos suffered losses thereby.

30. Plaintiff Crystal McMahon ("McMahon") is a citizen of the state of California. On May 18, 2012, McMahon placed an order to purchase Facebook stock that was not promptly executed and confirmed. McMahon suffered losses thereby.

31. Plaintiff Benjamin Levi (Levi") is a citizen of the state of California. On May 18, 2012, Levi placed purchase and cancellation orders for Facebook stock that were not promptly and accurately executed and confirmed. Levi suffered losses thereby.

32. Plaintiff Steve Jarvis ("Jarvis") is a citizen of the state of New Jersey. On May 18, 2012, Jarvis placed purchase and cancellation orders for Facebook stock that were not promptly and accurately executed and confirmed. Jarvis suffered losses thereby.

33. Plaintiff Atish Gandhi ("Gandhi") is a citizen of the state of Texas. On May 18, 2012, Gandhi placed purchase and cancellation orders for Facebook stock that were not promptly and accurately executed and confirmed. Gandhi suffered losses thereby.

34. Plaintiff Dmitri Bougakov ("Bougakov") is a citizen of the state of New York. On May 18, 2012, Bougakov placed purchase and cancellation orders for

Facebook stock that were not promptly and accurately executed and confirmed. Bougakov suffered losses thereby.

35. Plaintiff Eric Hamrick ("Hamrick") is a citizen of the state of Florida. On May 18, 2012, Hamrick placed purchase and cancellation orders for Facebook stock that were not promptly and accurately executed and confirmed. Hamrick suffered losses thereby.

36. Plaintiff Colin Suzman ("Suzman") is a citizen of the state of California. On May 18, 2012, Suzman placed purchase and cancellation orders for Facebook stock that were not promptly and accurately executed and confirmed. Suzman suffered losses thereby.

37. Plaintiff Katherine Loiacono ("Loiacono") is a citizen of the state of Maryland. On May 18, 2012, Loiacono placed a purchase order for Facebook stock that was not promptly and accurately executed and confirmed. Loiacono suffered losses thereby.

38. Plaintiff Meredith Bailey ("Bailey") is a citizen of the District of Columbia. On May 18, 2012, Bailey placed purchase and cancellation orders for Facebook stock that were not promptly and accurately executed and confirmed. Bailey suffered losses thereby.

39. Plaintiff Faisal Sami ("Sami") is citizen of the state of Illinois. On May 18, 2012, Sami placed a purchase order for Facebook stock that was not promptly and accurately executed and confirmed. Sami suffered losses thereby.

40. Plaintiff Ryan Cefalu ("Cefalu") is a citizen of the state of Louisiana. On May 18, 2012, Cefalu placed purchase and cancellation orders for Facebook stock that

were not promptly and accurately executed and confirmed. Cefalu suffered losses thereby.

41. Plaintiff Sanjeev Sharma ("Sharma") is a citizen of the state of New Jersey. On May 18, 2012, Sharma placed purchase and sell orders for Facebook stock that were not promptly and accurately executed and confirmed. Sharma suffered losses thereby.

42. Plaintiff Dennis Kuhn ("Kuhn") is a resident of the state of Arizona. On May 18, 2012, Kuhn placed purchase and sell orders for Facebook stock that were not promptly and accurately executed and confirmed. Kuhn suffered losses thereby.

43. Plaintiff Lorrain Chin ("Chin") is a citizen of the state of New York. On May 18, 2012, Chin placed purchase and sell orders for Facebook stock that were not promptly and accurately executed and confirmed. Chin suffered losses thereby.

44. Plaintiff Jacinto Rivera ("Rivera") is a citizen of the state of New York. On May 18, 2012, Rivera placed purchase, sell and cancellation orders for Facebook stock that were not promptly and accurately executed and confirmed. Rivera suffered losses thereby.

45. Plaintiff Joe Johnson ("Johnson") is a citizen of the state of Minnesota. On May 18, 2012, Johnson placed purchase, sell and cancellation orders for Facebook stock that were not promptly and accurately executed and confirmed. Johnson suffered losses thereby.

46. All of these named plaintiffs shall be referred to collectively as "Plaintiffs."

47. Defendant The Nasdaq Stock Market LLC ("NASDAQ LLC") is a Delaware limited liability company with its principal place of business at One Liberty Plaza, New York, New York 10006. NASDAQ LLC, together with NASDAQ OMX, operates what is known as the "NASDAQ" stock market. The NASDAQ is a national electronic securities exchange available to the public for trading securities. By 1999, it had become the biggest stock market in the world by dollar volume.

48. Defendant The Nasdaq OMX Group, Inc. ("NASDAQ OMX") is a Delaware corporation with its principal place of business at One Liberty Plaza, New York, New York 10006. NASDAQ OMX, together with Nasdaq LLC, operates the NASDAQ.

JURISDICTION AND VENUE

49. This Court has jurisdiction over the subject matter presented by this class action complaint because it is a class action arising under the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original jurisdiction of the Federal Courts over any class action in which any member of the plaintiff class is a citizen of a state different from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of $5,000,000.00, exclusive of interest and costs. Plaintiff alleges that the total claims of the individual members of the Class in this action are in excess of $5,000,000.00 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5).

50. Plaintiffs allege that diversity of citizenship exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A) as members of the proposed Class in the aggregate are citizens of a state other than New York where this action is originally being

filed, and that the total number of members of the proposed Class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B).

51. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Defendants' principal place of business was located in this district at all times relevant to this action, and many of the acts charged herein occurred in this district.

SUBSTANTIVE ALLEGATIONS

Background: Facebook's IPO Is The Largest Ever

52. Facebook's IPO was the subject of intense speculation regarding its timing and size for months, and even years before it occurred.

53. The initial plan called for the IPO to include 337.4 million shares.

54. On May 14, 2012, the company revised that number upward, announcing that the offering would now include 421.2 million shares.

55. This increase was reportedly the result of two factors: extreme market demand and the desire of many major shareholders to sell their shares in the IPO.

56. Also on May 14, 2012, Facebook filed an S-1 amendment raising the per-share price range to $34 to $38 per share.

57. This share price worked out to a valuation of $104 billion, believed to be the largest ever valuation for a newly public company, and the largest valuation of any technology company.

58. All told, 421.2 million Facebook shares were to be offered in its IPO, and 25% of those shares were allocated to retail investors, an unusually high proportion.

NASDAQ's Multiple Acts of Negligence and Their Impact on Trading

59. On May 18, 2012, Facebook began public trading on the NASDAQ. The IPO offering price was $38 a share.

60. Public trading in Facebook shares was scheduled to begin at 11:00 AM on May 18, but that opening was repeatedly delayed by software failures at NASDAQ.

61. As reported by the *Wall Street Journal*, hours before shares were set to begin trading, investors began experiencing worrisome problems. Specifically, "queue problems left traders unable to change or cancel premarket orders placed as early as 7:30 a.m." As it turned out, those premarket failures were a harbinger of worse software problems to come.

62. First, NASDAQ announced that it had postponed the opening of trading to 11:05 AM. Next came another postponement, this time until 11:10 AM. Finally, NASDAQ postponed the opening a third time until 11:30 AM.

63. NASDAQ's delays and postponements were apparently the result of malfunctions in the design of its software programs for processing order cancellations, which NASDAQ has negligently failed to correct before letting the Facebook IPO go forward. In the *Bartiromo Interview*, NASDAQ OMX CEO Greifeld acknowledged that the problem occurred in an "additional capacity in our IPO cross." According to a *Wall Street Journal* article, CEO Greifeld described the problem with the IPO opening cross as "a design flaw in the systems" that "doomed" the "routine but essential chore of lining up trades."

64. These multiple delays occurred without any meaningful communication to investors and other market participants, whom NASDAQ left in the dark concerning the

cause or likely duration of the delays. NASDAQ's failure to communicate forthrightly with investors during the day, added to the confusion and apprehension in the markets after Facebook opened.

65. The *New York Times*, in a May 30, 2012 article titled "Technical Trading Issues to Blame for Facebook's Fall," reported that highly reputed tech analyst Mary Meeker, assessing why Facebook's stock price did not appreciate substantially after it began trading, told listeners that the "early technical issues broke the market's confidence and spooked skittish investors."

66. *Forbes*, in a May 30, 2012 article, quoted lead underwriter Morgan Stanley's CEO James Gorman regarding NASDAQ's failures, saying they had caused "unprecedented confusion and disarray."

67. The *Huffington Post*, in a May 31, 2012 article titled "Top 10 Reasons Why Facebook's IPO Went Badly," concluded that the number-one reason for the botched IPO was "NASDAQ's unforgivable incompetence in not stress-testing in advance its confirmation delivery systems in the face of projected demand, and then going forward with trading when they knew the system wasn't working well at all."

68. *Reuters*, in a May 26, 2012 article titled, "Minute by Minute, Nasdaq Chaos Engulfed Facebook IPO," described the situation during the 30-minute delay and its impact:

> Dead silence.
>
> For nearly 20 minutes on the morning of Facebook Inc.'s trading debut last Friday, the line Nasdaq had opened up to keep traders informed about the social media company's $16 billion IPO had been mute. Well after the stock was supposed to have opened at 11 a.m. New York time, no one from Nasdaq was talking—and there was still no sign of trading.

> Finally, at 11:28 a.m., an unidentified person announced that the shares would open in about 2 minutes. Nasdaq also said orders and cancellations were still being processed, according to several sources listening to the call.
>
> Those crucial 20 minutes created confusion that turned into chaos over the next few hours as market makers—the brokers who quote bid and offer prices—struggled to figure out what was happening. They were rebuffed in their attempts to get Nasdaq to halt trading and sort out a growing number of problems.
>
> A lack of communication and, some say, misinformation from Nasdaq may have been central to the failed debut of Facebook's shares. Market makers—crucial to the smooth operation of stock trading—were unsure about their exposure for hours. Investors were in the dark as to whether their trades had gone through, in some cases for days afterwards.

69. Toward the end of the 30-minute initial postponement, in the moments just before trading began, NASDAQ went totally "silent." According to Nanex, which has prepared and published reports on the Facebook IPO, there were no quotes, reports or other signals from NASDAQ for <u>any stocks at all</u> trading on the NASDAQ market for over 17 seconds from 11:29:52 until 11:30:09.

70. These 17 seconds of silence were an eternity in the trading world, where investors count on orders being routed and executed in milliseconds. This delay—again unexplained—compounded the unease and concern among investors trading Facebook shares after it opened for trading.

71. In the *Bartiromo Interview* on CNBC, Nasdaq OMX Group CEO Greifeld stated that after it had experienced problems with the opening cross, NASDAQ had to "revert back to simpler code base." The 17-second delay may have been the result of NASDAQ rebooting its systems or otherwise switching it systems back to this "simpler code."

72. NASDAQ has not disclosed whether orders, cancellations or quotes were lost during this 17 seconds of silence, and its effect is accordingly unknown.

73. At 11:30:10 AM, trades finally began to appear for Facebook. However, according to Nanex, almost instantly (at 11:30:34) and for the next two hours and 20 minutes (until 1:50 PM), NASDAQ failed to have an eligible National Best Bid/Offer ("NBBO") quote published for Facebook stock.

74. The NBBO represents the best price available on any market at the time that an order is placed, and customers expect to receive the NBBO when they place a buy or sell order in a security. NASDAQ represents to investors that they will receive the NBBO on their orders, and that will it route orders to other exchanges if necessary for investors to receive NBBO. This is a purported advantage of NASDAQ's electronic market system when it is properly functioning. NASDAQ's negligent failure to publish an NBBO disrupted order routing across all exchanges, and as a direct result investors did not receive accurate information about the market for Facebook shares.

75. During this time when NASDAQ had no published NBBO quotation, 272 million shares of Facebook traded, according to Nanex. Because of this failure to maintain an eligible NBBO, there was no way to ensure that investors trading in Facebook shares during this time received a fair and equitable price for their trades.

76. During that same period from 11:30:34 AM through 1:50 PM, Nanex reported that NASDAQ's Bid was stuck at $42.99. NASDAQ's Bid failed to update, even though quotes from other exchanges moved higher.

77. Nanex also reported that, in addition, from 11:30:34 through 11:54:20, NASDAQ's Ask was non-firm, so it was not eligible to qualify as an NBBO.

78. At 11:50:06, according to Nanex, NASDAQ's Ask got stuck briefly at $38.01 and did not update, even though quotes from other exchanges moved higher. From 11:54:17 through 1:50, NASDAQ's Ask remained stuck at $38.01 and did not update.

79. NASDAQ reported to the Securities Information Processor (known as "SIP") a higher Bid (at $42.99) and a lower Ask (at $38.01), from approximately 11:30 AM until 1:50 PM. An order book with buy orders higher than sell orders is known as a crossed book. It is a market trading anomaly that should not have been allowed to exist at the opening of trading in the first instance and never should have been allowed to persist, as it did, for hours.

80. According to a June 8, 2012 article from *Seeking Alpha*, as a result of NASDAQ's negligence in matching pre-market orders to determine the price at the opening of trading, shares opened for trading at an incorrect price of $42 when more than enough shares were available at the $38 IPO price to satisfy the demand. It is estimated that more than 80 million shares were traded in the first 30 seconds of trading at the higher, incorrect price of $42 per share. NASDAQ breached its duty of care to fill opening orders at an accurate and fair price for investors, who should have purchased their shares at the IPO price of $38 per share, instead of the price of $42 per share which they received. This act of negligence alone may have resulted in an aggregate overpayment for the stock by customers of $4 per share, or more than $320 million.

81. On June 11, 2012, the *Wall Street Journal* reported that some long-time traders to whom it spoke were "skeptical" about the accuracy of the $42 per share opening price for Facebook. "'Mathematically, it's impossible,' Jose Marques, who

oversees electronic stock trading at Deutsche Bank AG told colleagues," according to this article.

82. During the subsequent hours of trading after the opening, NASDAQ's Bid/Ask failures denied investors a fair and transparent market in Facebook stock that was influenced by the disruption caused by NASDAQ's failures. Investors were also denied accurate and transparent information about the market for Facebook stock, as well as their own transactions, on which they could make informed decisions.

83. To date, NASDAQ has failed to explain the two hour and twenty minute absence of an NBBO and the concurrent existence of a crossed, and stuck, SIP reported Bid/Ask price. In the *Bartiromo Interview*, CEO Greifeld obfuscated matters referring to the fact that a "continuous market" existed, but never addressed NASDAQ's quotation failures.

84. Because of NASDAQ's negligence, Plaintiffs and class members received no confirmations on their attempted purchase and cancellation orders until at least 1:50 PM, and in some cases much—even days—later.

85. A May 21, 2012 *TechSpot* article titled "Facebook IPO Affected by Nasdaq Technical Issues" reported that "As a result of [the failures], the IPO was delayed for around 30 minutes, but more crucially, many traders were left absolutely clueless as to whether their orders had been processed."

86. As described in a May 18, 2012 *CNET News* article, "[f]or traders, the implications of a delay in confirmations are major. Without knowing if a sale went through, there's no telling if the transaction was locked in at the desired price."

87. The *Wall Street Journal*, in a May 18, 2012 article titled "Facebook IPO Sputters," reported that "[t]he glitches that beset Nasdaq on Friday helped contribute to the lackluster price for Facebook shares, according to people familiar with the snafus. One of the biggest problems, these people said, was that buyers and sellers of Facebook shares weren't provided confirmation of their trades until 2 p.m. That's akin to people not knowing how much money is in their bank account, and therefore not knowing whether to go out and spend more money or save." As one market-maker phrased it in the May 26, 2012 *Reuters* report, investors were "flying blind until 2 o'clock."

88. UBS's experience illustrates one foreseeable consequence of the negligence-induced delays in confirming Facebook transactions. As reported by CNBC and *Forbes* on Friday, June 8, 2012, UBS may have lost as much as $350 million and is considering whether to file a lawsuit against NASDAQ. According to the reports, when UBS did not receive confirms of a buy order, as happened with many investors, UBS repeated its order multiple times. Subsequently, it received confirms that all of the multiple orders had executed, leading to enormous losses. Then, the reports indicate, UBS began to sell the unwanted shares back into the market, further depressing the market price and causing market value losses to those investors who still owned their shares.

89. At 1:50 PM, the NASDAQ quote finally returned and trade reporting restarted, through the SIP feed. When the SIP feed returned at 1:50:01 PM, during the three seconds until 1:50:03 PM, approximately 37,000 quotes and 22,000 trades were reported, which overloaded the NASDAQ trading networks and caused several full-second outages, according to Nanex.

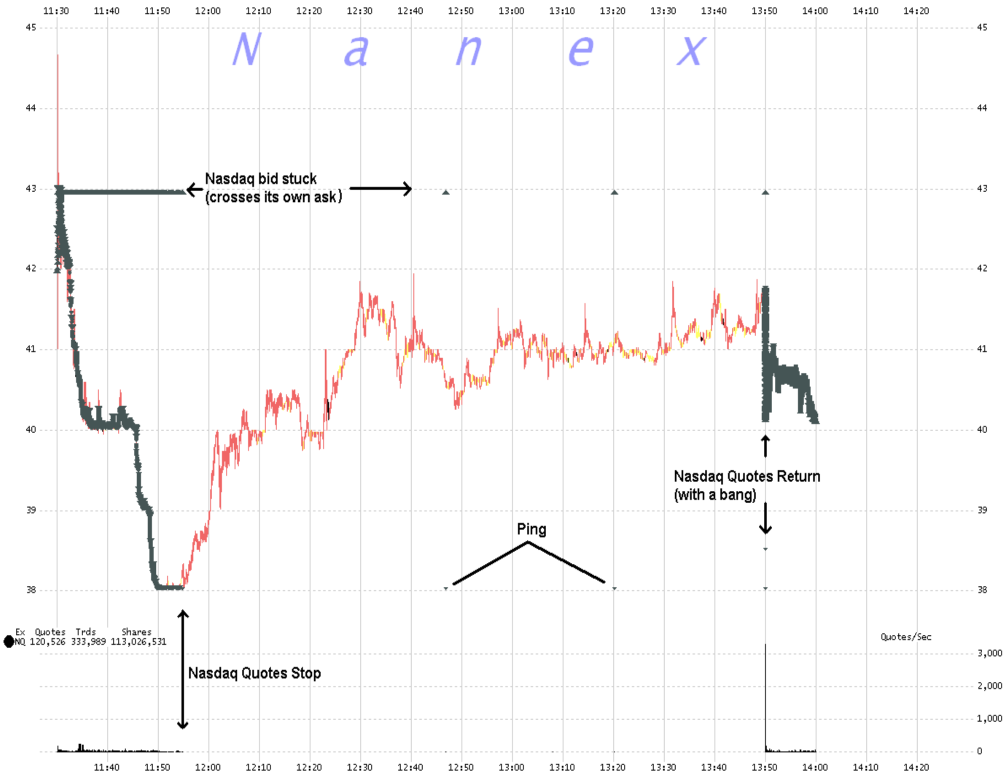
90. The belated, sudden reporting of trades at 1:50 PM apparently included trades at the opening cross, and trades which occurred for the last two hours and twenty minutes when NASDAQ had no NBBO quotation. NASDAQ's delay in matching orders from the opening and in not reporting the trades until 1:50 PM is totally unprecedented and unjustified when this is routinely done in minutes, and even seconds.

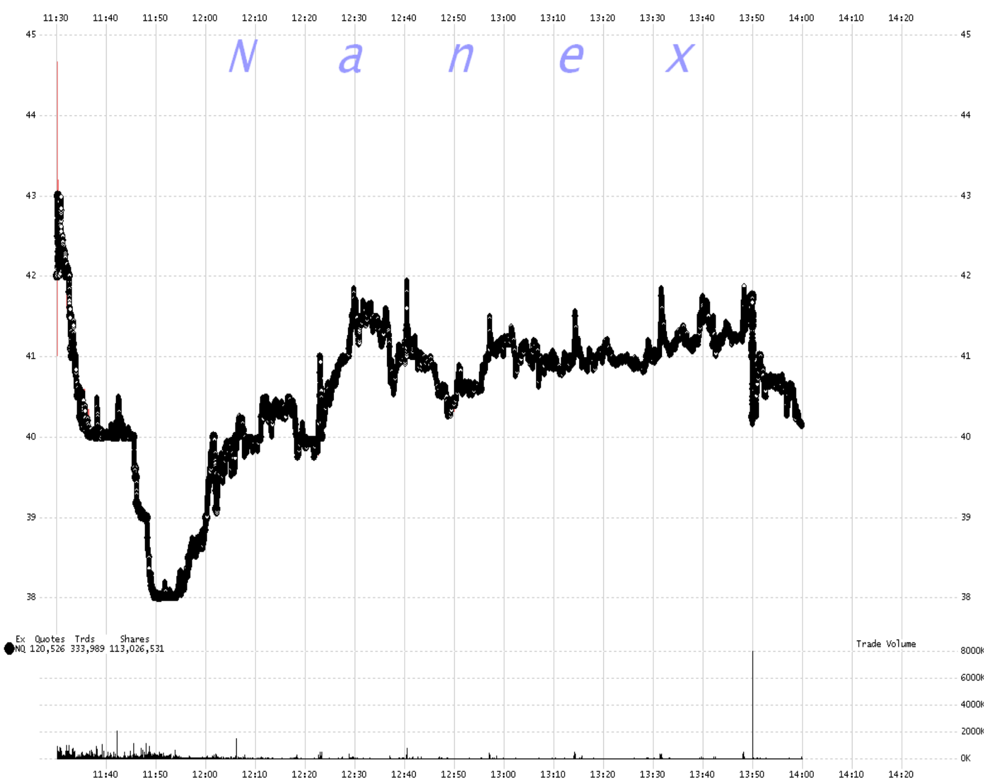
91. To date, NASDAQ has failed to explain sufficiently how it matched trades, how it reconciled the opening cross, the prices it used for trades executed after the opening in view of the lack of an NBBO, and whether the system outages including the 17 seconds of "silence" resulted in lost trades or cancellations.

92. Even worse, because NASDAQ had no NBBO quote on SIP for two hours and twenty minutes, there is likely no order audit trail ("OAT") for the 272 million in trades executed during this time period. The lack of an OAT for these Facebook trades denies these investors the ability to verify that they received an accurate and fair price in the market place.

<u>Charts Depicting May 18 Events And NASDAQ's Facebook Problems</u>

93. The charts below, prepared by Nanex, show NASDAQ's Facebook quotes and trades on the first day of trading:


Nanex
Nasdaq bid stuck
(crosses its own ask)
Nasdaq Quotes Return
(with a bang)
Ping
Nasdaq Quotes Stop
Ex Quotes Trds Shares
NQ 120,526 333,989 113,026,531
Quotes/Sec


Nanex
Ex Quotes Trds Shares
NQ 120,526 333,989 113,026,531
Trade Volume

94. During the NASDAQ quote-outage period, the following table prepared by Nanex shows the number of quotes and trades reported:

No Nasdaq quotes 11:54 - 13:50

Exch	Quotes	Trades	Shares	Qt/Td	Sh/Td
Totl	2,840,797	631,656	152,176,186	5	241
NQEX	5	165,335	44,924,062	1	272
CBOE	36,338	487	219,722	75	451
PACF	329,605	106,942	26,802,921	4	251
CINC	178,671	2,327	800,233	77	344
PHIL	330,601	20,699	4,413,794	16	214
BOST	633,735	95,438	16,541,884	7	174
CHIC	15,737	17	13,785	875	766
NQNX	0	84,259	20,883,565	0	248
NTRF	0	2,312	867,358	0	375
BATS	356,688	65,655	13,762,576	6	210
BATY	375,216	28,982	5,665,507	13	196
EDGE	387,344	24,736	5,909,359	16	239
EDGX	196,857	34,467	11,371,420	6	330

Nasdaq non-firm 11:31 - 13:50

Exch	Quotes	Trades	Shares	Qt/Td	Sh/Td
Totl	3,361,854	988,944	272,176,429	4	276
NQEX	62,080	303,534	100,752,809	1	332
CBOE	39,452	1,304	1,059,816	31	813
PACF	364,295	132,312	38,348,900	3	290
CINC	191,420	3,228	1,153,488	60	358
PHIL	374,893	30,242	7,610,605	13	252
BOST	784,419	135,368	25,129,814	6	186
CHIC	16,046	162	197,838	99	1214
NQNX	0	143,230	35,859,565	0	251
NTRF	0	4,554	1,323,131	0	291
BATS	417,712	101,191	24,394,528	5	242
BATY	442,735	48,817	10,530,738	10	216
EDGE	434,645	32,005	8,023,535	14	251
EDGX	234,157	52,997	17,791,662	5	336

95. When the NASDAQ quote returned, at 1:50:01 to 1:50:03, during these three seconds, approximately 37,000 quotes and 22,000 trades were reported, which overloaded networks and caused several full-second outages, according to Nanex.

96. A timeline prepared by Nanex showing NASDAQ's problems is set forth here:

Start Time	End Time	Elapsed Time	Event
11:00:00	11:05	5 minutes	Trading to begin (postponed to 11:05)
11:05:00	11:10	5 minutes	Trading to begin—2nd attempt (postponed to 11:10)
11:10:00	11:30	20 minutes	Trading to begin—3rd attempt (postponed to 11:30)
11:10	11:45	35 minutes	Erratic prices appear in Apple, Netflix and at least 24 other stocks over next 45 minutes.
11:29:52	11:30:09	17 seconds	Nasdaq goes radio silent for all stocks for 17 seconds for all stocks for 17 seconds
11:30:09			Trades from BATS and NQ-Bost appear
11:30:10			Trades from Nasdaq appear
11:30:34 -	13:50	3 hours, 20	Nasdaq Bid gets stuck at 42.99. SIP users no longer see NBBO eligible Nq Quote until

		mins	13:50
11:30:34	11:54:20	~ 20 minutes	Nasdaq Ask is non-firm (not eligible to set NBBO)
11:50:06			Nasdaq Ask gets stuck at 38.01—stops updating when other exchange quotes move higher
11:54:17	13:50	~ 2 hours	Nasdaq Ask remains stuck at 38.01, and stops updating until 13:50 (Other exchange quote prices moved higher)
13:50:01	13:50:03	3 seconds	Approx 37,000 quotes and 22,000 trades are blasted over 3 seconds from all reporting exchanges, causing several full-second outages.

97. The messages sent by NASDAQ that day were as follows:

NASDAQ Market System Status

System Status Messages

Time	Market	Status
13:05:30 ET	NASDAQ	NASDAQ is working to deliver pending trade execution status messages from the Facebook, Inc. (FB) IPO Cross. NASDAQ anticipates providing a manual report to participants containing this information shortly. To be later followed with the electronic message summary. NASDAQ will provide additional information when available.
11:59:39 ET	NASDAQ	NASDAQ is investigating an issue in delivering trade execution messages from the IPO Cross in symbol FB. NASDAQ is working to deliver these executions back to customers as soon as possible. NASDAQ will advise.
11:28:50 ET	NASDAQ	The first print in Facebook Inc. (FB) will open at approximately 11:30 ET. Trading will commence at that time.
11:13:50 ET	NASDAQ	NASDAQ is experiencing a delay in delivering the opening print in Facebook, Inc. (FB). NASDAQ will advise.

98. According to the Nanex analysis, NASDAQ's problems also impacted trading in other stocks beyond the 17 seconds of silence was experienced by all stocks. During the opening hours while NASDAQ lacked an NBBO for Facebook, other stocks trading on the CBOE and AMEX experienced erratic price changes including APPL, INTU, NFLX, PDCO, QCOM, QLD, UST and ZNGA. The price aberrations in these

stocks led to executions outside the NBBO. This was likely due to errors in NASDAQ's routing software.

99. NASDAQ's failures in handling the Facebook IPO were, at least in part, the apparent result of its inability to handle, and inexplicable failure to plan for, a high volume of quote cancellations. A May 21, 2012 *Reuters* article reported that "Nasdaq Chief Executive Robert Greifeld said in a conference call with reporters…that there had been a malfunction in the trading system's design for processing order cancellations." Greifeld acknowledged that the system took five milliseconds to calculate the opening price, or two milliseconds longer than it received the cancellations, which occurred more rapidly than the system could handle.

100. The failures, according to Nanex, were also the result of NASDAQ's decision to allow continuous order placement during the IPO.

101. From the detailed analysis and reporting that has taken place in the days since the botched Facebook IPO, not only the nature of NASDAQ's failures (outlined above), but also NASDAQ's negligence, has become increasingly clear.

102. A May 20, 2012 article in the *Wall Street Journal* quoted CEO Greifeld as saying he was "humbly embarrassed" by NASDAQ's failures, and that the Facebook IPO was not the exchange's "finest hour." A May 21, 2012 *TechSpot* article reports that CEO Greifeld acknowledged that he was "not happy with our performance."

103. It is well established that the Facebook IPO was easily the most talked-about IPO in years, and that there was a level of interest by both professional traders and retail investors that was both highly unusual and well known in advance, and yet NASDAQ was woefully unprepared.

104. A May 31, 2012 *Market Day* article noted that "[a]ccording to CNBC, as much as 25 percent of Facebook shares were allocated for the retail market, an abnormally high figure."

105. It is inconceivable that NASDAQ could not have understood that it needed to be prepared for potentially unprecedented trading volume on Facebook's opening day.

106. However, while the prior interest and expectations were that volume would be high on May 18, the actual volume experienced even in the pre-opening market should have been within reasonable and normal parameters. NASDAQ's systems ordinarily are designed to handle much larger volumes of quotes and trades. In the *Bartiromo Interview*, CEO Greifeld admitted that NASDAQ's problems lay in new software programs and code. The NASDAQ problems occurring on May 18 were not the result of volume that could not be handled under usual circumstances, but rather negligence.

107. Several media outlets have reported that NASDAQ had knowledge of potentially significant problems with its IPO software in the days leading up to the Facebook IPO, but chose instead to move ahead with the Facebook IPO before these problems were thoroughly investigated and competently resolved.

108. For example, the *New York Post*, in an article titled "Nasdaq Bugged FB IPO," reported that "Nasdaq Chief Executive Bob Greifeld pressed ahead with Facebook's initial public offering despite signs that the new software [NASDAQ] was using to launch the much-hyped stock sale still had bugs, market veterans said." The article also reported that "Wall Street insiders said it appears Nasdaq used untested

software to launch the botched IPO" and that "there may have been signs that the system wasn't glitch-free even at the 11th hour and that Nasdaq opted to roll the dice."

109. Comments by Eric Noll, NASDAQ's head of transaction services, indicate the exchange's regret over its decision to push forward with the IPO despite massive problems. According to a May 21, 2012 *CNET News* report, Noll stated "[i]n retrospect, it was incorrect" of what *CNET* called "the decision to proceed with the blockbuster offering after a 30-minute delay in the IPO's opening contributed to confusion among traders."

110. But even after the initial set of problems plagued the opening minutes of trading, NASDAQ still had a choice before it that could have prevented—or at least mitigated—much of the damage to come. It could have elected to fully test and fix the system problems before the stock opened for trading.

111. NASDAQ negligently failed to realize that it lacked an NBBO or that its SIP feed was down and not reporting transactions for over two hours and twenty minutes. NASDAQ also negligently failed to realize that it was not reporting trades for a two and one-half hour period from the opening at 11:30 AM until 1:50 PM.

Plaintiffs' and Class Members' Common Damages Caused by Defendants' Negligence: Four Principal Problem Areas

112. As noted above, on May 18, 2012, when Facebook opened for trading, investors experienced delays and difficulties trying to trade the stock. NASDAQ's problems caused investors who placed buy orders to wait hours before they knew whether their trades had been executed. Investors who placed buy orders which, after receiving no reports, they tried to cancel, had to wait hours and even days, before

knowing whether their cancellations were executed. Normally, trades placed by retail investors through brokerage services are executed within seconds, as are cancellations.

113. However, the execution failures and delays caused uncertainty and chaos among investors. Investors who placed orders to purchase Facebook shares had no idea if their trades had executed and if they owned Facebook shares. As a result of NASDAQ's negligence, investors lacked the ability to make any informed decisions for hours, and even days in some cases direct.

114. Public reports confirmed that these problems were the fault of NASDAQ, and not the investors' brokerage firms, and that these problems were widespread. For example, a May 21, 2012 *Reuters* article stated:

> The Nasdaq Stock Market, where Facebook is listed, had problems sending electronic messages back to the brokerages that handle orders from individual, or "retail," investors, according to people with direct knowledge of the situation.
>
> Because the electronic acknowledgements didn't come back from the exchange, the brokers were unable to tell their clients that trades had been executed. Such acknowledgements usually occur almost instantaneously. The delay meant that, in one of the most anticipated stock offerings ever, frustrated brokers and investors didn't know if orders had actually gone through.

115. In general, Class members who traded or attempted to trade Facebook stock on May 18 experienced four types of common problems:

- **<u>Execution Delays And Confirmation Failures</u>**—Many investors placed orders to purchase Facebook stock that were unreasonably delayed by hours and/or days in the execution and/or delayed by hours and/or days in the confirmation that the orders had been executed. Investors did not know if they owned Facebook stock or not, or how much they owned and at what price. As a result, investors were injured because they refrained selling Facebook shares as the market continued to fall because they relied on the delayed cancellations, while other investors purchased additional Facebook shares that they had not intended on purchasing because they had not received timely confirmations that their earlier buy orders had been executed.

- **Bad Execution**—Many investors placed market and limit orders to purchase Facebook shares which, after the ensuing delays of hours and/or days, were not executed at prices that were fair and consistent with the contemporaneous published market quotations existing at the times the orders had been placed. NASDAQ's problems with the opening IPO Cross also raise questions whether the opening price of $42 per share was fair and correct, or should have been $38 per share.. As a result, investors received shares at price levels that were higher than they reasonably expected or at which they knowingly consented to purchase their shares. As a result, investors were injured from the higher prices they received and/or from purchases that they otherwise would not have made.

- **Delayed Cancellations**—After trades to purchase Facebook were delayed in the execution and/or were not confirmed, many investors attempted to cancel their purchases. NASDAQ delayed in executing and confirming these trade cancellations to investors who did not know if they had been filled on their purchase orders, how many shares they had purchased or at what price. As a result, investors were injured because they did not have the opportunity to sell their Facebook shares while the market for Facebook shares continued to decline because they did not know the status of their cancellation orders.

- **Failed Cancellations**—After trades to purchase Facebook were delayed in the execution and/or were not confirmed, many investors attempted to cancel their purchase orders. NASDAQ delayed in executing and confirming these trade cancellations to investors who did not know if they owned Facebook stock, how much they owned or at what price. For many investors, NASDAQ never executed their trade cancellations, and the investors were notified hours and/or days later that their purchases were executed. As a result, investors were injured because they received stock that they thought they had canceled, and they failed to sell stock in reliance upon the cancellation orders being properly executed in a timely manner.

116. These four problems were just some of the common experiences suffered by the Class Members during their trading on May 18. Class Members experienced one or more of these four problems whether they traded through Scottrade, Fidelity Investments, Charles Schwab, Merrill Lynch or other brokerage firms. One or more of these four common problems resulted in injury to each of the Class Members.

117. A May 18, 2012 *Wall Street Journal* article described a typical experience:

> Eric Hamrick was eager to get his hands on newly minted Facebook Inc. stock, placing an order for 500 shares at 6 a.m. Friday before the company's debut on the Nasdaq Stock Market.
>
> The order to buy shares for as much as $49 apiece never made it through. By 11:30 a.m., after the opening of the stock was delayed by a half hour, Mr. Hamrick got nervous and tried to cancel his order. But his online brokerage, Scottrade, displayed the cancellation as "pending," leaving him wondering whether he had bought shares or had stayed out of trading.
>
> ****
>
> At 4 p.m., his Scottrade account showed the order expired.

118. Another example recounted in a May 21, 2012 article in *The Wall Street Journal* was:

> George Brady, a 66-year-old recruiter in North Carolina, bought 1,000 shares of Facebook a few minutes after it opened for trading Friday. He said by Monday morning, he sold his holding, taking a $2,770 loss.
>
> Mr. Brady said he tried not to purchase the shares in the first place, but was unable to withdraw his order on his Charles Schwab account, calling the situation "ridiculous." Technical problems on the Nasdaq Stock Market prevented some investors from confirming their trades or trade cancellations.

<u>Plaintiffs' Experiences</u>

119. Plaintiffs' experiences were similar to those of the investors described above. Their common experiences with problems occurred despite the fact that each traded through a completely separate and independent brokerage firm.

120. The following chart sets forth Plaintiffs, their brokerage firm and a description of their experiences:

Philip Goldberg	Charles Schwab	Delayed Execution Delayed Cancellation Bad Execution Failed Cancellation
David Kenton	Fidelity Investments	Delayed Execution Delayed Cancellation

		Bad Execution Failed Cancellation
Randy and Teresa Mielke	Edward Jones	Delayed Execution Bad Execution
Nukhet Kayahan	Fidelity Investments	Delayed Execution Bad Execution Delayed Cancellation
George Michalitsianos	www.optionshouse.com	Delayed Execution Bad Execution Delayed Cancellation Failed Cancellation
Crystal McMahon	Options Express	Delayed Execution Bad Execution
Benjamin Levi	Charles Schwab	Delayed Execution Bad Execution Delayed Cancellation Failed Cancellation
Steve Jarvis	Scottrade	Delayed Execution Bad Execution Delayed Cancellation Failed Cancellation
Dmitri Bougakov	Charles Schwab	Delayed Execution Bad Execution Delayed Cancellation Failed Cancellation
Eric Hamrick	Scottrade	Delayed Execution Bad Execution Delayed Cancellation Failed Cancellation
Colin Suzman	Charles Schwab	Delayed Execution Bad Execution Delayed Cancellation Failed Cancellation
Katherine Loiacono	Scottrade	Delayed Execution Bad Execution
Meredith Bailey	Charles Schwab	Delayed Execution Bad Execution

		Delayed Cancellation Failed Cancellation
Faisal Sami	Scottrade	Delayed Execution Bad Execution
Ryan Cefalu	ING Direct Investing Inc.	Delayed Execution Bad Execution Delayed Execution Failed Cancellation
Sanjeev Sharma	Options House LLC	Delayed Execution Bad Execution
Dennis Kuhn	Merrill Edge	Delayed Execution Bad Execution
Lorrain Chin	Charles Schwab	Delayed Execution Bad Execution
Jacinto Rivera	Fidelity Investments	Delayed Execution Bad Execution Delayed Confirmation Failed Confirmation
Joe Johnson	Charles Schwab	Delayed Execution Bad Execution Delayed Confirmation Failed Confirmation

121. Plaintiffs and Class Members experiencing each of these four common experiences with trading Facebook stock were injured and harmed in the same or substantially similar way.

Proximate Cause

122. NASDAQ's negligence proximately caused the losses suffered by the Class Members. Plaintiffs were damaged by failed and/or bad executions of their orders and transactions. Plaintiffs were also damaged by the failure to honor timely orders for trade cancellation, resulting in executions and confirmations occurring at a time when the market price had already fallen well below the confirmed price. Plaintiffs also were damaged by transactions placed or executed without an NBBO, and by the lack of OAT audit trail. Plaintiffs also suffered resulting injury and harm due to the delays in

confirming how many shares of Facebook they had purchased and at what price, and thus had insufficient information to place sell orders or take other measures to avoid or mitigate losses.

123. Class Members also suffered losses as a result of the declines in the market value of Facebook's stock that were the proximate result of NASDAQ's negligence, including capping the market price for an extended period at $42.99, blasting a large number of trades to the tape at 1:50 PM, causing investors, like UBS, to sell substantial amounts of unwanted shares back into the market, and notifying brokers to claim losses by noon on the Monday following the Friday opening,

124. NASDAQ's locked Bid at $42.99 per share for two hours and twenty minutes prevented the normal supply/demand mechanisms from proper operation and effectively capped any appreciation in Facebook's share price. All other quotes and transactions were influenced and circumscribed by NASDAQ's stuck, crossed and non-NBBO price quote transmitted to the SIP.

125. NASDAQ's "blast" reporting of trades at 1:50 PM on SIPS also adversely affected the stock price. The sudden reporting of concentrated orders caused the market price immediately to drop from $41.60 per share to $40.25 and to continue to fall thereafter.

126. On May 21, 2012, Monday morning, according to CNBC, NASDAQ sent out an alert to its brokers informing them that the deadline to submit any compensation claims for Facebook losses was noon (12:00 PM) that day. According to *MailOnline*, this caused a "massive sell-off" that day. In "*How Facebook's Stock Selloff Nearly Turned Into a Run*", CNBC reported that this notice prompted many brokers to sell shares to

realize their losses so that a complaint could be submitted. This CNBC article further reported "[w]ho knows how much selling pressure was added to the stock on Monday by people in my same situation?" said the hedge-fund manager, who wished to remain anonymous because his claim is still outstanding. "My broker told me, 'You're absolutely not alone. We're doing a ton of this.'" Facebook's stock price closed down 11 percent that day.

127. NASDAQ's negligence also adversely impacted investors' overall demand for the stock, including the interest of potential large investors who are particularly alert to small differences in execution prices and signs of share price weakness in the IPO immediate aftermarket.

NASDAQ's Public Representations Establish Standards Owed To Investors

128. NASDAQ OMX and NASDAQ LLC operate NASDAQ. NASDAQ OMX's website states it has "unparalleled" processes. The website goes on to state that NASDAQ OMX's trading model is the "standard for markets worldwide." It additionally asserts that it is "the power behind 1 in 10 of the world's securities transactions" and that "[s]eventy exchanges in 50 countries trust our trading technology to power their markets." The website also asserts that the NASDAQ stock market is "the fastest trading platform in the world." Finally, it asserts that "[o]ur commitment to excellence goes beyond our 99.999% uptime record for mission critical operations. It includes our passion for flawless execution and our relentless pursuit to anticipate customer requirements."

129. In the Nasdaq OMX Group Form 10-K for 2011, Nasdaq OMX Group held itself out as possessing the following capabilities:

> ***Leader in global exchange technology.*** We believe we are the leader in global exchange technology. As the world's first electronic stock market, we pioneered electronic trading and have continued to innovate over the last 40 years. Our INET platform processes trades at sub-millisecond transaction speeds with close to 100% system reliability. In addition, our platforms are highly scalable with current capacity at ten times the average daily volume allowing significantly higher transaction volume to be handled at low incremental cost. (Form 10-K page 3)

130. In the Nasdaq OMX Group Form 10-K for 2011, in the section entitled "2012 Outlook," management stated as follows:

> For the fourth year in a row, more share value traded on The NASDAQ Stock Market than on any other single cash equities exchange in the world. Our platform continues to stand out as a reliable, flexible, and high capacity system delivering high levels of execution quality and speed under even extremely demanding market conditions. (Form 10-K page 48)

131. As recently as April 25, 2012, NASDAQ additionally stressed its ability to process transactions, its speed at processing and its "transformative" technologies in this statement attached to press releases issued that day:

> **About NASDAQ OMX Group**
>
> The inventor of the electronic exchange, The NASDAQ OMX Group, Inc., fuels economies and provides transformative technologies for the entire lifecycle of a trade—from risk management to trade to surveillance to clearing. In the US and Europe, we own and operate 24 markets, 3 clearinghouses and 5 central securities depositories supporting equities, options, fixed income, derivatives, commodities, futures and structured products. Able to process more than 1 million messages per second at sub-40 microsecond speeds with 99.999% uptime, our technology drives more than 70 marketplaces in 50 developed and emerging countries into the future, powering 1 in 10 of the world's securities transactions. Our award-winning data products and worldwide indexes are the benchmarks in the financial industry. Home to approximately 3,400 listed companies worth $5.1 trillion in market cap whose innovations shape our world, we give the ideas of

> tomorrow access to capital today. Welcome to where the world takes a big leap forward, daily. Welcome to the NASDAQ OMX Century.

132. In its 2011 Annual Report, Nasdaq OMX CEO Greifeld sent a letter to NASDAQ's own shareholders which stated in part:

> Technology is still at the heart of everything we do. We set the bar in 1971 and continue to raise it today, relentlessly redefining the role of the exchange in the global economy. That's why more than 70 marketplaces in 50 countries rely on us to power their markets - from centuries-old bellwethers to newly formed emerging markets.

133. The 2011 Annual Report also contains a "CEO Interview" with CEO Greifeld in which he stated:

> **John [Sweeney, Nasdaq OMX IRO]**: What are your thoughts on high frequency trading?
>
> **Bob [Greifeld, Nasdaq OMX CEO]**: First, I want to speak about what an exchange uniquely does. An exchange is where price discovery happens. When you look at the price of Apple, we discover that price in the exchange through a fair access standard, inviting all investors with divergent viewpoints into our market to discover what the true price should be. We have investors who will think about it in the nanosecond, which is considered high frequency trading. We have small investors - retail investors – and very large institutional investors coming into the marketplace. We have those who think in a five- or 10-year time frame. They all come together and interact with each other through their orders to discover price. We think it's a fundamental mistake to preclude any investor, regardless of size or priority, from equal and fair access to the marketplace.

134. NASDAQ's representations on its website, press releases, annual reports and other filings with the SEC establish and augment the reasonable expectations of investors that they would be transacting in an orderly and transparent market if they transacted on NASDAQ. These expectations include, but are not limited to, the expectation that buy and sell orders and cancellations will be promptly, efficiently and accurately executed; the expectation that investors will receive timely, accurate and up-

to-date market and quote information; the expectation that NASDAQ will maintain an eligible and accurate NBBO and that orders will receive fair and accurate pricing; and the expectation that users and investors will have access to an OAT for their orders.

135. NASDAQ's negligent handling of the Facebook IPO violated commercially reasonable investor expectations set forth above. On May 18 and thereafter, the proximate results of NASDAQ's acts of negligence included, *inter alia*, that investors did not receive efficient executions of their transactions, that they and their brokers lacked accurate and up-to-date quotations, trade confirmations and other information, that investors did not receive proper execution of their orders or fair and accurate pricing, and that they did not trade stock in a market free from any influence or distorted effect caused by NASDAQ's negligence.

NASDAQ's Prior Technical Problems

136. The Facebook problems at NASDAQ were not the first time that these and similar types of problems have occurred. In the last few years, NASDAQ has been plagued with a serious of problems with its trading systems. NADSAQ has been on notice for quite some time that a large problem was imminent.

137. On December 27, 2011, NASDAQ experienced an issue with some order entry ports using the Financial Information Exchange ("FIX") protocol. The issue, which was caused by a software release that had an unintended effect on FIX order entry ports, resulted in numerous "cancel reject" messages being sent to market participants that sent cancel requests to NASDAQ. Upon discovery of the issue, the FIX ports of approximately fifty members were disconnected for approximately ninety minutes to allow the software release to be removed and the prior version to be made operational.

138. In response to this incident, NASDAQ filed a rule change request to relieve members who were potentially damaged by the order entry failure. In NASDAQ Rule 7018, there is a fee and rebate schedule providing that members may achieve better pricing if they achieve certain specified volumes of activity during a given month. The FIX port issue may have impacted the ability of affected members to reach the required volumes, and NASDAQ sought a rule change to relieve its affected members.

139. This FIX port issue appears to involve a highly similar problem with respect to NASDAQ's handling of cancellation requests. NASDAQ's inability to handle Facebook's trade cancellations was one of the primary reported causes for the May 18 problems harming investors.

140. On April 25, 2011, NASDAQ also had a problem with its automated quotation refresh system (AQR). Contemporaneously, NASDAQ sought a rule change to NASDAQ Rule 4626 which limits its liability to Member firms for losses suffered exclusively from its unresolved technical problems.

141. This AQR problem, just weeks before the Facebook IPO, appears highly similar to the two hours or more of NBBO failure and locked Bid/Ask on May 18, which was a cause of the bad executions experienced by investors.

142. On December 5, 2012, at 3:50:00 PM, NASDAQ experienced excessive quote traffic flooding the UQDF, or the Securities Information Processor feed for Nasdaq-listed stocks. UQDF is an acronym for UTP Quote Data Feed and this feed transmits quotes for NASDAQ listed stocks. When UQDF is overloaded, it appears to enter an "emergency mode" where each multicast line consistently bursts a small number of quotes for 5 milliseconds, followed by complete silence for about 95 milliseconds. The

bursts are consistent and very close to 100 milliseconds apart. The final burst contains significantly more quotes, and will often set the peak quote message rate for UQDF for the entire trading day.

143. This prior occurrence represented on a much smaller scale what happened on May 18, when NASDAQ was flooded with Facebook quotes. NASDAQ has experienced these same problems intermittently on a smaller scale for months leading up to the Facebook IPO. In addition, similar quote flooding has occurred at times (for example, on November 29, 2011 at 10:00:00 when Consumer Confidence numbers were released) with the CQS or Consolidated Quote System, which transmits quotes for NYSE-, NYSE-AMEX-, and NYSE-ARCA-listed stocks.

144. NASDAQ knew that the immediate aftermarket for the Facebook IPO would experience extraordinary trade volume. Indeed, Defendants participated in the buildup to the Facebook IPO that was deliberately and heavily hyped in the media as the largest IPO ever. NASDAQ knew that it would need to plan for the expected heavy volume to avoid these types of problems.

145. As recently as March 26, 2012, BATS Global Markets Inc. ("BATS"), which is the third largest stock exchange and handles approximately 11% of equities trading, attempted its own IPO. BATS withdrew its IPO after a computer malfunction kept its stock from trading on its own platform and forced a halt in Apple Inc. Subsequently, transactions in Apple and trades for more than 1 million shares of BATS were later voided.

146. These prior incidents, and others, demonstrate that NASDAQ had prior clear notice of the extent and severity of problems that could occur during the Facebook

IPO, and the ensuing damage that could result to investors. NASDAQ negligently failed to plan in a responsible manner for the Facebook IPO, and to upgrade and if necessary replace, programs and systems that would handle the certain heavy transaction volume that would accompany the Facebook IPO, and to do so without interrupting its quote and reporting systems.

NASDAQ's Revenues From Trading, Trading Profits In Facebook And Plan To "Compensate" Brokerage Firms, Not Investors

147. NASDAQ's negligence in designing and testing its systems and software to handle the Facebook IPO on May 18 is totally unjustified in view of the substantial resources and revenues at its disposal. In the first quarter of 2012, NASDAQ reported that it earned $411 million in revenues and $53 million from stock transactions. This revenue is the direct result of the volume of transactions, which NASDAQ handles from its Member brokerage firms and retail investors.

148. With this substantial revenue it derives from stock trading, NASDAQ should be held accountable for the harm and damage suffered by investors from its failures. NASDAQ holds its Member firms responsible for ensuring that they have adequate staffing and resources to handle order executions. The stock market itself should be held to no less of a standard than its Members.

149. NASDAQ also reportedly directly profited from trading in Facebook shares during the IPO. According to a June 5, 2012, *New York Post* article, NASDAQ purchased so-called "orphan" shares during early trading on May 18, possibly ahead of market participants and investors, and profited by $10.7 million. The "orphan" shares

resulted from unmatched orders that NASDAQ could not cross in the Facebook opening. Member firms are prohibited under FINRA Rules from trading ahead of customers.

150. On June 5, 2012, NASDAQ announced a plan to reimburse its member firms for some part of their losses. This plan has been widely criticized both by the member firms themselves and by other stock exchanges. Whatever the merits or outcome of the NASDAQ plan with respect to its members, it is important to note that the plan does not contain any proposal that would in any way compensate the retail investors/purchasers who suffered damages from their purchases of Facebook shares.

151. In connection with this announcement, NASDAQ OMX CEO Greifeld gave the *Bartiromo Interview* to discuss the reimbursement. Greifeld acknowledged that the reimbursement is only for its Member brokerage firms with which it has a direct contractual relationship, and not for retail investors who were injured. Greifeld also stated that compensation was limited only to orders it had received, and for differences in execution prices, which apply to only a small percentage of harmed investors. In short, NASDAQ has offered no compensation to the retail customers and other traders who were directly and proximately injured by NASDAQ's negligent handling of the May 18 Facebook IPO and its aftermath. Retail customers and other investors who placed their orders through brokerage firms depended upon the proper, non-negligent functioning of the NASDAQ stock market in the accurate execution and timely processing of their orders. NASDAQ thus owes compensation to those retail investors for the damages proximately caused by its negligence in handling the Facebook IPO.

152. NASDAQ's flawed plan to compensate its own, industry-insider Members should be viewed for what it is – an admission of fault that it was forced to make and, at

the same time, a transparent attempt to evade liability for the full consequences of the harm that its negligence caused.

153. Public interest demands market integrity, and a level and fair playing field for all investors. If retail investors are not compensated for damages proximately caused by the negligent operation of a national stock market, then confidence in our nation's financial institutions will continue to erode.

CLASS ACTION ALLEGATIONS

154. Plaintiffs bring this class action under rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of the following class:

> All individuals or entities who made retail purchases of Facebook stock on May 18 and May 21, 2012, whose retail orders to buy, sell or cancel were not promptly, timely, correctly and efficiently processed; who did not receive execution at accurate and fair prices; whose trades and cancellations were not promptly and accurately confirmed; or who otherwise suffered losses on their purchases of Facebook shares as a proximate result of the events described herein.

155. The class is so numerous that joinder of all class members is impracticable. Reports indicate that many millions of Facebook shares were affected by NASDAQ's negligence, and, upon information and belief, there are thousands of class members.

156. There are questions of law and fact common to members of the class that predominate over any questions affecting individual members, which include:

a. Whether the problems publicly reported in the days following the Facebook IPO on the NASDAQ adversely affected and damaged the Plaintiffs and the members of the Class;

b. Whether Defendants owed duties to Plaintiffs and the Class to exercise reasonable care in the handling of the Facebook IPO and the trading in Facebook shares;

c. Whether Defendants were negligent in failing to fulfill their duties to the Plaintiffs and the Class; and

d. Whether, as a proximate result of Defendants' negligence, Plaintiffs and the Class were damaged and are entitled to relief, and the amount and nature of such relief.

157. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs have no interests antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiffs.

158. Plaintiffs will fairly and adequately assert and protect the interests of the Class, and have retained attorneys experienced in class and complex litigation.

159. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for the following reasons:

a. The class is readily definable;

b. It is economically impracticable for members of the class to prosecute individual actions, because the amount which may be recovered by each individual class member would be insufficient to support separate actions;

c. The aggregate amount which may be recovered by individual class members will be large enough in relation to the expense and effort in administering the action to justify a class action;

d. Plaintiffs are seeking relief with respect to the class as a whole; and

e. Prosecution as a class action will eliminate the possibility of repetitious and possibly contradictory litigation.

160. This class action presents no difficulties in management that would preclude maintenance as a class action. The Class is readily definable and is one for which records of the names and addresses of the members of the class exist in the files of Defendants or third parties.

COUNT I

(Ordinary Negligence)

161. Plaintiffs hereby incorporate each of the preceding and subsequent paragraphs as if fully set forth herein.

162. Defendants owed Plaintiffs and the Class the duty of reasonable care, which they breached. By operating a stock exchange, Defendants NASDAQ LLC and defendant NASDAQ OMX have a duty of reasonable care that includes the duty to exercise reasonable care to execute trade orders and trade cancellations promptly, accurately and efficiently, to provide accurate and up-to-date market and price information, and to keep market participants informed of any material developments that might impact the integrity of the marketplace during the trading day.

163. Defendants were negligent in performing these duties, rendering them liable and/or strictly liable.

164. There is a strong public interest in Defendants' proper and non-negligent performance of their duties.

165. As a result of Defendants' breach of its legal duties, Plaintiffs and the Class suffered damages as described herein.

166. The damages suffered by Plaintiffs and the Class were all general and special damages arising from the natural and foreseeable consequences of Defendants' conduct.

COUNT II
(Negligence: Res Ipsa Loquitur)

167. Plaintiffs hereby incorporate each of the preceding and subsequent paragraphs as if fully set forth herein.

168. Defendants owed Plaintiffs and the Class the duty of reasonable care to execute trade orders and trade cancellations promptly, accurately and efficiently, to provide accurate and up-to-date market and price information, and to keep market participants informed of any material developments that might impact the integrity of the marketplace during the trading day.

169. Defendants breached these duties in the handling of the Facebook IPO and trading.

170. The breaches of duty that damaged Plaintiffs and the Class would not have occurred but for Defendants' negligence.

171. The trading systems that caused these events were within Defendants' exclusive custody and control.

172. Plaintiffs did not voluntarily contribute to these events.

173. As a result of Defendants' breach of its duties, Plaintiffs and the Class suffered damages as described herein.

174. The damages suffered by Plaintiffs and the Class were all general and special damages arising from the natural and foreseeable consequences of Defendants' conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all other individuals similarly situated, pray for judgment as requested above against Defendants and further prays for:

A. An order certifying this case as a class action and appointing Plaintiffs as representatives and their counsel as class counsel pursuant to Fed. R. Civ. P. 23(g);

B. A determination as to Defendants' liability for damages;

C. A determination as to declaratory and injunctive relief;

D. An award of restitution, rescission, and damages;

E. An award of pre-judgment and post-judgment interest on all damages as allowed by law;

F. An award from a common fund created, attorneys' fees and the costs of filing and litigating this suit; and

G. An award of such other relief as this Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiffs demand a jury trial on all issues so triable.

Dated: June 12, 2012

Respectfully submitted,

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