

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68721; File No. SR-NASDAQ-2013-008)

January 24, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 5710

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 10, 2013, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 5710 so that the Exchange may list Linked Securities³ that provide for three times accelerated payment at maturity. The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).⁴ The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at the Exchange’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ For a discussion of Linked Securities, see Rule 5710.

⁴ 17 CFR 240.19b-4(f)(6)(iii).

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set 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

The purpose of this proposed rule change is to amend Rule 5710(d) so that the Exchange may list Linked Securities that provide for three times accelerated payment at maturity.⁵ In changing one word in Rule 5710, the Exchange is conforming its rule to the established listing rules of other exchanges.

This proposed amendment to Rule 5710(d) is based, word-for-word, on NYSE Arca (“Arca”) Equities Rule 5.2(j)(6)(A)(d) and NYSE Section 703.22(B)(6) of the Listed Company Manual. NASDAQ, Arca, and NYSE all have rule provisions stating that pursuant to Rule 19b-4(e) under the Act⁶ a loss or negative payment at maturity of a Linked Security⁷ may be accelerated by a multiple of the performance of an underlying asset (known as the “acceleration provision”). However, in Rule 5710 NASDAQ sets the multiple for the acceleration provision at

⁵ The proposal is applicable only to non-option products.

⁶ 17 CFR 240.19b-4(e).

⁷ Where NASDAQ refers to “Linked Securities” in its Rule 5710, NYSE and Arca refer to these products as “Index-Linked Securities.” On all exchanges, Linked Securities are based on the performance of various Reference Assets. For a more detailed discussion of Reference Assets, see Rule 5710.

“twice”;⁸ whereas Arca and NYSE both set the acceleration provision multiple at “three times”.⁹ Other than changing one word - from “twice” to “three times” - in the Exchange’s acceleration provision in Rule 5710(d), no other change is proposed or made by this filing.¹⁰

The current requirements for listing Linked Securities, which include Multifactor Index-Linked Securities, Equity Index-Linked Securities, Commodity-Linked Securities, Fixed Income Index-Linked Securities and Futures-Linked Securities, are set forth in Rule 5710. This rule states that NASDAQ will consider Linked Securities for listing and trading pursuant to Rule 19b-4(e) under the Act, provided the following requirements are met:¹¹

(a) Both the issue and the issuer of such security meet the criteria for other securities set forth in Rule 5730(a), except that if the security is traded in \$1,000 denominations or is

⁸ See Rule 5710(d). See also Securities Exchange Act Release Nos. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009)(SR-NASDAQ-2009-018)(notice of filing and immediate effectiveness relating to revisions and restructuring of the NASDAQ listing rules, and transference of Rule 5710(d) from Rule 4420(m)); and 57269 (February 5, 2008), 73 FR 8092 (February 12, 2008)(SR-NASDAQ-2008-08)(order approving listing standards in Rule 4420(m) to allow twice (2x) the performance of the underlying index, indexes, or Reference Asset).

⁹ See Arca Equities Rule 5.2(j)(6) and NYSE Section 703.22(B)(6) of the Listed Company Manual. See also Securities Exchange Act Release Nos. 59332 (January 30, 2009), 74 FR 6338 (February 6, 2009)(SR-NYSEArca-2008-136)(order approving listing standards in NYSE Arca Equities Rule 5.2(j)(6) to allow three times (3x) the performance of the underlying Reference Asset); and 61230 (December 23, 2009), 74 FR 69163 (December 30, 2009)(SR-NYSE-2009-124)(order approving three times (3x) the performance in NYSE Section 703.22 of the Listed Company Manual, similarly to Arca Equities Rule 5.2(j)(6)).

¹⁰ In recently approving rule changes to allow listings on NASDAQ that are allowed on Arca by rule, the Commission noted that it “has previously approved substantively identical listing standards for the listing and trading of the Subject Securities on NYSE Arca.” See Securities Exchange Act Release No. 66648 (March 23, 2012), 77 FR 19428 (March 30, 2012)(SR-NASDAQ-2012-013).

¹¹ However, Rule 5710 provides that if Linked Securities do not otherwise meet the Rule 19b-4(e) standards set forth in the rule, NASDAQ may submit a rule filing pursuant to Section 19 of the Act to permit the listing and trading of Linked Securities.

redeemable at the option of holders thereof on at least a weekly basis, then no minimum number of holders and no minimum public distribution of trading units shall be required;

(b) The issue has a term of not less than one (1) year and not greater than thirty (30) years;

(c) The issue must be the non-convertible debt of the Company;

(d) The payment at maturity may or may not provide for a multiple of the direct or inverse performance of an underlying index, indexes or Reference Asset; however, in no event will a loss (negative payment) at maturity be accelerated by a multiple that exceeds twice the performance of an underlying index, indexes or Reference Asset;

(e) The Company will be expected to have a minimum tangible net worth in excess of \$250,000,000 and to exceed by at least 20% the earnings requirements set forth in Rule 5405(b)(1)(A);¹²

(f) The Company is in compliance with Rule 10A-3 under the Act;

(g) Certain Maintenance and Dissemination standards must be satisfied.¹³

¹² Subsection (e) states also, in relevant part, regarding minimum tangible net worth: “In the alternative, the Company will be expected: (i) to have a minimum tangible net worth of \$150,000,000 and to exceed by at least 20% the earnings requirement set forth in Rule 5405(b)(1)(A), and (ii) not to have issued securities where the original issue price of all the Company's other index-linked note offerings (combined with index-linked note offerings of the Company's affiliates) listed on a national securities exchange exceeds 25% of the Company's net worth. Rule 5710(e).” [sic]

¹³ Subsection (g) states, regarding Maintenance and Dissemination: “(i) If the index is maintained by a broker-dealer, the broker-dealer shall erect a “firewall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. (ii) Unless the Commission order applicable under paragraph (k) hereof provides otherwise, the current value of the index or the Reference Asset (as applicable) will be widely disseminated at least every 15 seconds during Nasdaq's regular market session, except as provided in the next clause (iii). (iii) The values of the following indexes need not be calculated and widely disseminated at least every 15 seconds if, after the close of trading, the indicative value of the Equity Index-Linked Security based on one or more of such

Of the seven specific and extensive requirements in Rule 5710 for listing Linked Securities pursuant to Rule 19b-4(e), the Exchange proposes to change only the multiple by which a Linked Security payment can be accelerated from twice to three times. Each of the other listing requirements remains unchanged.

The principal reason for the proposed amendment is demand for accelerated Linked Securities. There is continuing customer demand for having the ability to list and trade these Linked Securities products on the Exchange, particularly as the strategies and components of these products continue to evolve and offer access to a broader range of asset classes.

Prior to the commencement of trading of three times accelerated Linked Securities, NASDAQ will inform its members in an Information Circular of the special characteristics and risks associated with trading such leveraged securities. In particular, the Information Circular will discuss that leveraged Linked Securities seek returns on a periodic basis (e.g. daily or monthly), and do not seek to achieve their stated investment objective over a period of time greater than one period because compounding prevents these securities from perfectly achieving such results. Accordingly, results for leveraged Linked Securities over periods of time greater than one period (e.g. daily or monthly) typically will not reflect exactly the leveraged multiple of the period return of the applicable Reference Asset benchmark, and may differ from the

indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA Buy Write Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm). (iv) If the value of a Linked Security is based on more than one index, then the dissemination requirement of this paragraph (g) applies to the composite value of such indexes. (v) In the case of a Commodity-Linked Security that is periodically redeemable, the indicative value of the subject Commodity-Linked Security must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during Nasdaq's regular market session.”

multiple.¹⁴ NASDAQ will also inform its members of NASDAQ Rule 2310, Recommendations to Customers (Suitability), and the requirement that, if members recommend transactions in these leveraged securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such Member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the securities. In addition, FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged, and inverse leveraged securities and options on such securities, as described in FINRA Regulatory Notices 09-31 (June 2009), 09-53 (August 2009) and 09-65 (November 2009) ("FINRA Regulatory Notices"). Members that carry customer accounts will be required to follow the FINRA guidance set forth in the FINRA Regulatory Notices. The Information Circular will reference the FINRA Regulatory Notices.

The Exchange believes that its surveillance procedures are adequate to address any concerns about the trading of the securities on NASDAQ. Trading of the securities on NASDAQ will be subject to FINRA's surveillance procedures for derivative products.¹⁵ NASDAQ may

¹⁴ The Exchange notes that leveraged exchange trade products are not new to the market; these products trade on NASDAQ, NASDAQ Options Market, and various other equity, options, and futures exchanges. Moreover, as noted 3x leveraged exchange products have been trading on Arca for years. As such, while the concept of leverage is not novel to the markets, the Information Circular will be distributed to provide additional information to market participants.

¹⁵ FINRA surveils trading on NASDAQ pursuant to a regulatory services agreement. NASDAQ is responsible for FINRA's performance under this regulatory services agreement.

obtain information via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members or affiliates of the ISG.¹⁶

The Exchange believes that by conforming Rule 5710 to the rules of other exchanges (e.g. Arca and NYSE) and allowing listing opportunities on the Exchange that are already allowed by rule on other exchanges, the proposal would offer another venue for listing and trading the Linked Securities products and thereby promote competition. For the noted reasons, the Exchange proposes to change the acceleration provision in its Rule 5710 to exactly match, as described above, what is available on other exchanges.¹⁷

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁹ in particular, in that it is designed 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. For the reasons noted in the filing, the Exchange proposes to change the acceleration provision in its Rule 5710 from a two times to a three times multiple of the performance of the underlying asset. This exactly matches what is available on other exchanges. The Exchange believes that by conforming Rule 5710 to the rules of other exchanges (e.g. Arca and NYSE) and allowing listing opportunities on the Exchange that are already allowed by rule on other exchanges, the proposal would offer another venue for listing and

¹⁶ For a list of the current members and affiliate members of ISG, see www.isgportal.com.

¹⁷ No other changes are made or intended by this filing and existing listing and trading rules continue to be applicable to leveraged Linked Securities.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

trading the Linked Securities products and thereby promote broader competition among exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, where the current variance in the rules of the exchanges limits competition, the proposal will allow listing additional Linked Securities on the Exchange, thereby promoting increased competition across markets and liquidity on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)²⁰ of the Act and Rule 19b-4(f)(6)(iii) thereunder²¹ because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

The Exchange has requested the Commission to waive the 30-day operative delay period to allow the proposed rule change to become operative upon filing.²² The Commission believes

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6)(iii).

²² As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

it is consistent with the public interest to waive the 30-day operative delay. The proposed rule change is substantially similar in all material respects to Section 703.22(B)(6) of the NYSE Listed Company Manual and Arca Equities Rule 5.2(j)(6)(A)(d), and each policy issue raised by the proposed rule change (i) has been considered by the Commission in approving the other exchanges' rules and (ii) is resolved in a manner generally consistent with the approved rules. As such, the Commission believes that the proposal presents no novel regulatory issues. Waiver of the operative delay will allow the Exchange to list certain securities that can already be listed and traded on other exchanges without undue delay. Therefore, the Commission grants such waiver and designates the proposal operative upon filing.²³

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 e-mail to rule-comments@sec.gov. Please include File No. SR-NASDAQ-2013-008 on the subject line.

²³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper comments:

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

All submissions should refer to File No. SR-NASDAQ-2013-008. This file number should be included on the subject line if e-mail 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 website (<http://www.sec.gov/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 website 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 such filing also will be available for inspection and copying at the principal office of NASDAQ. 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 No. SR-NASDAQ-2013-008 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Kevin M. O'Neill
Deputy Secretary

²⁴ 17 CFR 200.30-3(a)(12).