

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57873; File No. SR-NASDAQ-2008-044)

May 27, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Amend Nasdaq Rule 4420(g)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 13, 2008, 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 substantially by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is granting accelerated approval to the proposed rule change.

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

Nasdaq proposes to amend Nasdaq Rule 4420(g) for the purpose of adding new text clarifying that securities listed under the rule are done so pursuant to Rule 19b-4(e) of the Act.³ Nasdaq also proposes to remove the maximum term limitation set forth in the rule and to allow securities listed under the rule to be based on multiple underlying securities. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nasdaq.com.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(e).

and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq 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

Nasdaq proposes an amendment to Nasdaq Rule 4420(g) to clarify that Selected Equity-linked Debt Securities (“SEEDS”) listed on the Nasdaq Global Market are listed pursuant to Rule 19b-4(e) of the Act.⁴ Rule 19b-4(e) allows self-regulatory organizations (“SROs”) to, among other things, list and trade new derivative securities products without going through the rule change process under Section 19(b) of the Act.⁵ Specifically, Rule 19b-4(e) provides that the listing and trading of derivatives securities products is not deemed a proposed rule change under Rule 19b-4(c)(1). To qualify for this exemption from Rule 19b-4(c)(1), an SRO must have existing, Commission-approved trading rules, procedures, and listing standards for the product class that would include the new derivative securities product. In addition, the SRO must have a surveillance program for the product class.

Nasdaq adopted its listing rules for SEEDS in 1994,⁶ prior to the Commission’s amendment to Rule 19b-4 of the Act, which added paragraph (e) and its exemption from the Section 19(b) rule change filing requirement. Subsequent to the Commission’s amendment of

⁴ Id.

⁵ 15 U.S.C. 78s(b)(1).

⁶ Securities Exchange Act Release No. 34758 (September 30, 1994), 59 FR 50943 (October 6, 1994) (SR-NASD-94-49).

Rule 19b-4 in 1998,⁷ Nasdaq did not amend its rule relating to the listing of SEEDS to clarify that such securities are considered derivative securities products and, as such, may be listed and traded without submitting a proposed rule change under Section 19(b). Nasdaq has adopted listing rules for derivative securities products subsequent to the Commission's adoption of the 1998 amendment to Rule 19b-4(e) that specifically note that such listing is pursuant to Rule 19b-4(e).⁸ Accordingly, Nasdaq is filing this rule change proposal to make clear in its rules that SEEDS listed under Rule 4420(g) are done so pursuant to Rule 19b-4(e) of the Act.

Nasdaq is also proposing to amend 4420(g) to conform the rule to the analogous rule of the American Stock Exchange LLC ("Amex").⁹ Nasdaq notes that Amex requires its Equity Linked Term Notes to have only a minimum term of one year, with no maximum term limit;¹⁰ however, Nasdaq limits SEEDS based on a domestic security to a term of one to seven years, and limits SEEDS based on a non-U.S. security or sponsored ADR to a maximum term of three years.¹¹ Amex's listing rules also allow Equity Linked Term Notes to be linked up to thirty underlying equity securities if all of the underlying equity securities individually satisfy the applicable listing standards. As such, Nasdaq is proposing to allow SEEDS to be listed on up to thirty equity securities and have only a minimum term of one year, with no maximum term.

⁷ Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7-13-98).

⁸ See e.g., Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002) (SR-NASD-2002-45).

⁹ Section 107B of the Amex Company Guide.

¹⁰ Like the Amex, The New York Stock Exchange also requires equity-linked debt securities to have only a minimum term of one year, with no maximum term. See Paragraph 703.21 NYSE Listed Company Manual.

¹¹ Rule 4420(g)(2)(D).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)¹² of the Act, in general, and furthers the objectives of Section 6(b)(5),¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that the clarification of Nasdaq Rule 4420(g) is needed to avoid further confusion surrounding the part of the Act that such securities are listed. In addition, Nasdaq believes that eliminating the maximum term of SEEDS and allowing SEEDS to be linked to multiple securities provides issuers with flexibility to create such securities and allows Nasdaq to compete effectively with the other markets, while maintaining high standards and protecting investors. Nasdaq notes that the Commission has already determined, through its approval of the Amex rules, that linking Equity Linked Term Notes to up to thirty underlying securities without a maximum term is consistent with Section 6(b)(5) of the Act.

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

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

III. 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 (www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2008-044 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NASDAQ-2008-044. 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 Internet Web site (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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit

personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2008-044 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁵ which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the Federal Register. The proposed rule change seeks to clarify that the Exchange's listing and trading of SEEDS is subject to Rule 19b-4(e) under the Act and would conform the Exchange's rules to those of other exchanges.¹⁶ In addition, the proposed changes relating to the number of securities that may underlie SEEDS and the term of a SEED seek to conform the Exchange's rules to those of other exchanges that have been

¹⁴ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See, e.g., Chicago Board Options Exchange Rule 31.5(I) and NYSE Arca Rule 5.2(j)(2).

previously approved by the Commission.¹⁷ Therefore, Commission does not believe that this proposal raises any novel regulatory issues and believes that accelerating approval of this proposal is appropriate and would ensure that the Exchange's rules clearly reflect the standards for listing and trading SEEDS and conform Nasdaq's rules to those of other exchanges without delay.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-NASDAQ-2008-044), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon
Acting Secretary

¹⁷ See supra notes 9-10 and accompanying text.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).