

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49667; File No. SR-NASD-2004-073)

May 7, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. to Change the Minimum Term for Selected Equity-linked Debt Securities

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 April 27, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a "non-controversial" rule change under subparagraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ As required by 17 CFR 240.19b-4(f)(6), Nasdaq has represented that the proposed rule change will not significantly affect the protection of investors or the public interest, nor will it impose any significant burden on competition. Nasdaq also fulfilled its obligation to provide at least five business days notice to the Commission of its intent to file this proposed rule change by notice on April 16, 2004. The NASD's proposed rule change is similar to the rules regarding the minimum term of equity-linked debt securities for the American Stock Exchange LLC ("Amex"), the Chicago Stock Exchange, Inc. ("CHX"), and the New York Stock Exchange, Inc. ("NYSE").

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

Nasdaq proposes to modify NASD Rule 4420(g) to reduce the minimum term of Selected Equity-linked Debt Securities (“SEEDS”) from two years to one year.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in [brackets].⁵

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4420. Quantitative Designation Criteria

(a) through (f) No change

(g) Nasdaq will consider designating as Nasdaq National Market securities Selected Equity-linked Debt Securities (SEEDS) that generally meet the criteria of this paragraph (g). SEEDS are limited-term, non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of another issuer’s common stock or non-convertible preferred stock (or sponsored American Depositary Receipts (ADRs) underlying such equity securities).

(1) No change

(2) Equity-Linked Debt Security Listing Standards

The issue must have:

(A) through (C) No change

(D) a term of one [two] to seven years; provided that if the issuer of the underlying security is a non-U.S. company, or if the underlying security is a sponsored ADR, the issue may not have a term of more than three years.

(3) through (5) No change

⁵ The proposed rule change is marked to show changes to NASD Rule 4420(g) as currently reflected in the NASD Manual available at www.nasd.com. No other pending or approved rule filings would affect the text of Rule 4420(g).

(h) through (l) No change

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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 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. 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

The proposed rule change reduces from two years to one the minimum term of SEEDS that may qualify for Nasdaq National Market designation under NASD Rule 4420(g). Nasdaq represents that several other self-regulatory organizations that maintain specific listing criteria for equity-linked debt securities similar to the criteria in NASD Rule 4420(g) have in recent years reduced the minimum term requirement with respect to such securities from two years to one.⁶ In order to provide issuers of equity-linked debt securities that have a term shorter than two years with a greater choice of listing venues, Nasdaq is now seeking to make the same

⁶ See Securities Exchange Act Release No. 42313 (Jan. 4, 2000), 65 FR 2205 (Jan. 13, 2000) (CHX rule change reducing the minimum term of eligible equity-linked debt securities from two years to one and eliminating the maximum term requirement); Securities Exchange Act Release No. 42110 (Nov. 5, 1999), 64 FR 61677 (Nov. 12, 1999) (Amex rule change reducing the minimum term of eligible equity-linked debt securities from two years to one and eliminating the maximum term requirement); Securities Exchange Act Release No. 41992 (Oct. 7, 1999), 64 FR 56007 (Oct. 15, 1999) (NYSE rule change reducing the minimum term of eligible equity-linked debt securities from two years to one and eliminating the maximum term requirement).

change. Nasdaq represents that comprehensive surveillance procedures, which are designed to identify and deter manipulative trading activity, are in place with respect to the SEEDS.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁷ in general and furthers the objectives of Section 15A(b)(6) of the Act,⁸ in particular, in that, by reducing the minimum term of SEEDS, impediments to a free and open market and a national market system will be removed, and investors and the public interest will be protected.

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

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

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

This proposed rule filing has been filed by Nasdaq as a “non- controversial” rule change pursuant to Section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰ Nasdaq states that the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, nor does it impose any significant burden on competition.

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR. 240.19b-(f)(6).

Nasdaq also provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, as statutorily required.

Pursuant to subparagraph (f)(6) of Rule 19b-4,¹¹ the Commission has the authority to shorten the time period for the effectiveness of a rule “if consistent with the protection of investors and the public interest.” In this case, shortening the time period for effectiveness from 30 days after the date of filing¹² to immediate effectiveness is consistent with the protection of investors and the public interest because approval of this proposed rule conforms the listing criteria for equity-linked debt instruments to those of the Amex, the CHX, and the NYSE.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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

¹¹ Id.

¹² Id.

¹³ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

- Send E-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2004-073 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-073. 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 (<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 inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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-NASD-2004-073 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).