

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69858; File No. SR-NASDAQ-2013-085)

June 25, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend Rule 4630 to Remove a Restriction on a Member Acting as a Registered Market Maker in a Commodity-Related Security

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 June 14, 2013, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the NASDAQ. 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 Substance of the Proposed Rule Change

NASDAQ proposes to amend NASDAQ Rule 4630(e), which governs the trading in Commodity-Related Securities.³ This rule change to amend NASDAQ Rule 4630(e) is consistent with a previous NYSE Arca, Inc. (“NYSE Arca”) rule change discussed herein.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term "Commodity-Related Security" means a security that is issued by a trust, partnership, commodity pool or similar entity that invests, directly or through another entity, in any combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, or the value of which is determined by the value of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives. See NASDAQ Rule 4630(c)(1).

The text of the proposed rule change is available on the Exchange's Website at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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. 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 Exchange proposes to amend NASDAQ Rule 4630(e) consistent with a rule change previously made by NYSE Arca in 2010 to its equities rules in an immediately effective rule filing (the "NYSE Arca filing").⁴ NASDAQ's proposed rule change is to remove the restriction that a member acting as a registered market maker in a Commodity-Related Security will not act or register as a market maker in any commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

The NYSE Arca filing, in part, amended Commentary .01(a) to NYSE Arca Equities Rule 5.2(j)(6) ("Commentary .01(a)"). The portion of that amendment that is the focus of this filing affected NYSE Arca's listing standards for Commodity-Linked Securities. Specifically, the deletion included removing the prohibition that a registered market maker in Commodity-

⁴ See Securities Exchange Act Release No. 62013 (April 30, 2010), 75 FR 25892 (May 10, 2010) (SR-NYSEArca-2010-35).

Linked Securities could not also act as a market maker or function in any capacity involving market-making responsibilities in the commodity reference asset or the components underlying that commodity reference asset. As amended, NASDAQ Rule 4630(e) would similarly remove this prohibition, which states that a registered market maker in a Commodity-Related Security is prohibited from acting or registering as a market maker in any commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

NASDAQ Rule 4630(e), as amended, would be similar to current Commentary .01(a) and would similarly continue to provide that a member acting as a registered market maker in a Commodity-Related Security must file with the Exchange's regulation department in a manner prescribed by such department and keep current a list identifying all accounts for trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, in which the market maker holds an interest, over which it may exercise investment discretion, or in which it shares in the profits and losses.

Additionally, the amended NASDAQ rule would remain consistent with Commentary .01(a) since it would also continue to provide that no market maker shall trade in, or exercise investment discretion with respect to, such underlying commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, in an account in which a market maker, directly or indirectly, controls trading activities, or has an interest in the profits or losses thereof, that has not been reported as required by the rule.

NASDAQ Rule 4630(e), as amended, also would remain consistent with NASDAQ Rules 4630(d) and (g) so that a member acting as a registered market maker in a Commodity-Related

Security remains obligated to establish adequate information barriers when such market maker engages in inter-departmental communications. Members should refer to NASD/NYSE Joint Memo on Chinese Wall Policies and Procedures (NASD Notice to Members 91-45) for guidance on the “‘minimum elements’ of adequate Chinese Wall policy and procedures.”⁵ For purposes of a Commodity-Related Security, “inter-departmental communications” are defined to include communications to other departments within the same firm or the firm’s affiliates that involve trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.⁶

In the context of approving a similar proposal by NYSE Arca, the Commission stated that, “while information barriers are not specifically required under the proposal, a [firm’s] business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.”

The NASDAQ rules discussed above serve to ensure that market makers in a Commodity-Related Security would continue to have in place the appropriate policies and procedures with regard to also acting as a market maker in any commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security. This amendment does not lessen the protection of members from risks associated with integrated market making and any possible misuse of non-public information.

⁵ See NASDAQ Rule 4630(d).

⁶ See Securities Exchange Act Release No. 55386 (March 2, 2007), 72 FR 10801 (March 2, 2007) (SR-NASDAQ-2007-016).

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Section 6(b)(5) of the Act,⁸ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

Specifically, NASDAQ believes that the change to remove the restriction in NASDAQ Rule 4630(e) that a member acting as a registered market maker in a Commodity-Related Security shall not act or register as a market maker in any commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security will remove impediments to and perfect the mechanism of a free and open market by providing the same flexibility to NASDAQ that is already available to NYSE Arca regarding the market maker activities for Commodity-Related Securities.

Additionally, NASDAQ Rules 4630(d) and (g), in connection with NASDAQ Rule 4630(e), as amended, would continue to serve to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest from concerns that may be associated with integrated market making and any possible misuse of non-public information.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

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. To the contrary, the Exchange believes the proposal is pro-competitive and is proposed as a competitive response to the NYSE Arca filing. The Exchange believes this proposed rule change, which governs the trading in Commodity-Related Securities is necessary to permit fair competition among the exchanges.

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

No written comments were either solicited or received.

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

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, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

At any time within 60 days of the filing of the 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. The Exchange has provided the Commission written notice of its

⁹ 15 U.S.C. 78s(b)(3)(a)(ii).

¹⁰ 17 CFR 240.19b-4(f)(6).

intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

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 Number SR-NASDAQ-2013-085 on the subject line.

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 Number SR-NASDAQ-2013-085. 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 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 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-2013-085 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.¹¹

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).