

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60514; File No. SR-NASDAQ-2009-075)

August 17, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing Standards 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 August 6, 2009, The NASDAQ Stock Market LLC (“Nasdaq” or the “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 Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

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

Nasdaq is proposing to amend Nasdaq Rule 5715, the Exchange’s listing standards for selected equity-linked debt securities (“SEEDS”). The text of the proposed rule change is available from Nasdaq’s Web site at <http://nasdaq.cchwallstreet.com>, at Nasdaq’s principal office, 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, Nasdaq 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 III below, and is set forth in Sections A, B, and C below.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

The Exchange is proposing to amend Nasdaq Rule 5715, the Exchange's listing standards for SEEDS, to provide for greater flexibility in the listing criteria for such securities, as set forth below. The proposed substantive rule changes herein are based upon the rules of NYSE Arca, Inc. ("NYSEArca")³ and the American Stock Exchange LLC ("Amex").⁴ Similar proposed rule changes by other national securities exchanges have been approved recently by the Commission.⁵

Nasdaq Rule 5715 currently provides that an issue of SEEDS must have a minimum public distribution of 1,000,000 notes with a minimum of 400 public note-holders, except, if traded in thousand dollar denominations, then no minimum number of holders. The Exchange proposes to expand the exception to provide that, if the notes are traded in thousand dollar denominations, then there is also no minimum public distribution requirement.⁶ The Exchange notes that, without the exception to the 1,000,000 publicly distributed notes requirement, the

³ See Securities Exchange Act Release No. 57219 (Jan. 29, 2008), 73 FR 6542 (Feb. 4, 2008) (SR-NYSEArca-2008-13).

⁴ See Securities Exchange Act Release No. 55733 (May 10, 2007), 72 FR 27602 (May 16, 2007) (SR-Amex-2007-34) (the "May 2007 Amex Order") and Securities Exchange Act Release No. 56629 (October 9, 2007), 72 FR 58689 (October 16, 2007) (SR-Amex-2007-87) (the "October 2007 Amex Order"). These two orders approved changes to Section 107A of the Amex Company Guide.

⁵ See Securities Exchange Act Release No. 56924 (December 7, 2007), 72 FR 70918 (December 13, 2007) (SR-NYSEArca-2007-98) (amending Rule 5.2(j)(2) ("Equity-Linked Notes")); Securities Exchange Act Release No. 56906 (December 5, 2007), 72 FR 70636 (December 12, 2007) (SR-NYSEArca-2007-103) (amending Rule 5.2(j)(1) ("Other Securities")); and Securities Exchange Act Release No. 56593 (October 1, 2007), 72 FR 57362 (October 9, 2007) (SR-NYSEArca-2007-96) (amending Rule 5.2(j)(6) ("Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities")).

⁶ See the May 2007 Amex Order, Note 4, supra.

Exchange would be unable to list issues in thousand dollar denominations having a market value of less than \$1 billion. The Exchange believes that the proposed exception is a reasonable accommodation for those issuances in \$1,000 denominations.

The Exchange proposes to further amend Nasdaq Rule 5715 to provide that there are no minimum public distribution and holders requirements if the notes are redeemable at the option of the holders thereof on at least a weekly basis (regardless of whether the notes are traded in thousand dollar denominations).⁷ The Exchange believes that a weekly redemption right will ensure a strong correlation between the market price of the notes and the performance of the underlying index, as holders will be unlikely to sell their notes for less than their redemption value if they have a weekly right to redeem such notes for their full value. In addition, in the case of certain notes with a weekly redemption feature the issuer may have the ability to issue new notes from time to time at market prices prevailing at the time of sale, at prices related to market prices, or at negotiated prices. This provides a ready supply of new notes, thereby lessening the possibility that the market price of such notes will be affected by a scarcity of available notes for sale. The Exchange believes that the weekly redemption right also assists in maintaining a strong correlation between the market price and the indicative value of the notes, as investors will be unlikely to pay more than the indicative value in the open market if they can acquire notes from the issuer at that price.

The Exchange believes that the ability to list SEEDS with these characteristics without any minimum public distribution or holders requirements is important to the successful listing of such notes. Issuers issuing these types of notes generally do not intend to do so by way of an

⁷ See the May 2007 Amex Order (approving no minimum holders requirement if there is a weekly redemption right) and the October 2007 Amex Order (approving no minimum public distribution requirement if there is a weekly redemption right), Note 4, supra.

underwritten offering. Rather, the distribution arrangement is analogous to that of an exchange traded fund issuance, in that the issue is launched without any significant distribution event and the float increases over time as investors purchase additional securities from the issuer at the then indicative value. Investors will generally seek to purchase the notes at a point when the underlying index is at a level that they perceive as providing an attractive growth opportunity. In the context of such a distribution arrangement, it is difficult for an issuer to guarantee its ability to sell a specific number of units on the listing date. However, the Exchange believes that this difficulty in ensuring the sale of 1,000,000 notes and 400 public holders on the listing date is not indicative of a likely long-term lack of liquidity in the notes or, for the reasons set forth in the prior paragraph, of a difficulty in establishing a pricing equilibrium in the notes or a successful two-sided market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ 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. The proposed rule change is consistent with that requirement in that conforming the listing standard for SEEDS enables continued multiple listing and trading of SEEDS across multiple venues within the national market system.

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.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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. 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-2009-075 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2009-075. 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, 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2009-075 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.¹⁰ The Commission believes that the proposal is consistent with Section 6(b)(5)¹¹ 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. The Commission believes that the proposed rule change should enhance competition among issuers, to the benefit of the market, by expanding the listing and trading of SEEDS.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹² for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the Federal Register. The proposal seeks to conform the Exchange's rules for SEEDS to the rules of other exchanges that have previously been approved by the

¹⁰ 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).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(2).

Commission.¹³ Therefore, the Commission does not believe that the Exchange's proposal raises any novel regulatory issues. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for these products.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-NASDAQ-2009-075) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹³ See Securities Exchange Act Release No. 55733 (May 10, 2007), 72 FR 27602 (May 16, 2007) (SR-Amex-2007-34); Securities Exchange Act Release No. 56629 (October 9, 2007), 72 FR 58689 (October 16, 2007) (SR-Amex-2007-87); and Securities Exchange Act Release No. 56924 (December 7, 2007), 72 FR 70918 (December 13, 2007) (SR-NYSEArca-2007-98) (amending Rule 5.2(j)(2) (“Equity-Linked Notes”)).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).