

14.11, which relates to ETPs, to those members that have actively participated in the development or funding of such product. This restriction would remain in effect for six months following the initial offering of the ETP on the Exchange after which time there would be no limitation on the members that can be assigned as CLPs for such a product.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>9</sup> In particular, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest.<sup>11</sup>

The Commission believes that the CLP Program may benefit investors because it is reasonably designed to provide greater liquidity for the securities that participate in the CLP Program. The securities eligible for the CLP Program are generally newly listed securities that could particularly benefit from potentially greater liquidity as a result of enhanced quoting obligations.

As proposed by the Exchange, each CLP must comply with a monthly quoting requirement in order to remain a CLP, and must comply with a daily quoting requirement in order to be eligible for the financial incentives of the CLP Program. With respect to the monthly quoting requirement, a CLP must be quoting at the NBB or NBO 10% of the time that the Exchange is calculating SETs. With respect to the daily quoting requirement, the CLP with the greatest aggregate size at the NBB and NBO at each SET would be considered to have the winning SET, with the CLP with the greatest number of winning SETs (and, in some instances, the CLP with second-greatest number of winning SETs) each day receiving the daily rebate. Thus, this proposal would incentivize both quoting frequency at the NBBO and quoted size at the NBBO, potentially improving the market quality of the securities that participate in the CLP Program.

The Commission also finds that this program is reasonably designed to encourage listings on the Exchange. This may promote competition among listing venues, and an issuer seeking to list its securities could benefit from the potential impact such competition has on listing fees or quoting obligations across venues.

The Commission also finds that the proposal is not unfairly discriminatory. Registration as an Exchange market maker is available to all Exchange members that satisfy the requirements of Exchange Rule 11.7, and all Exchange market makers are eligible to apply to become CLPs. The Commission finds further that the proposal to establish procedures for the registration, withdrawal, and disqualification of CLPs, and the CLP quoting requirements, are consistent with the requirements of Section 6(b)(5) of the Act. The Exchange's proposed rules provide an objective process by which a member could become a CLP and for appropriate oversight by the Exchange to monitor for continued compliance with the terms of these provisions. The Commission also notes that these provisions, including the CLP quoting requirements, are similar to those of at least one other exchange.<sup>12</sup> As a result, the Commission believes that these aspects of the proposal are consistent with the requirements of the Act.

### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-BATS-2011-051) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-2801 Filed 2-7-12; 8:45 am]

**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66308; File No. SR-NYSEAmex-2012-02]

#### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Options Rule 902NY To Create a Reserve Floor Market Maker Amex Trading Permit

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice; correction.

**SUMMARY:** The Securities and Exchange Commission published a document in the **Federal Register** on January 31, 2012 concerning a Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Options Rule 902NY To Create a Reserve Floor Market Maker Amex Trading Permit by NYSEAmex LLC. An incorrect release number was assigned to that document.

**FOR FURTHER INFORMATION CONTACT:** Office of the Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, (202) 551-5400.

#### Correction

In the **Federal Register** of January 31, 2012, in FR Doc. 2012-2036, on page 4848, in the middle column, in the 14th line, the release number is corrected to read as noted above.

Dated: February 2, 2012.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-2812 Filed 2-7-12; 8:45 am]

**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66310; File No. SR-NASDAQ-2012-015]

#### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4618

February 2, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 19, 2012, the NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> In approving the proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> See NYSE Rule 107B (governing Supplemental Liquidity Providers).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

below, which Items have been prepared primarily by NASDAQ. NASDAQ filed the proposal pursuant to Section 19(b)(3)(A) (iii) of the Act<sup>2</sup> and Rule 19b-4(f)(6)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASDAQ is filing this proposed rule change to amend Rule 4618. The text of the proposed rule change is shown below. Proposed new language is italicized, and proposed deletions are in brackets.

#### **4618. Clearance and Settlement**

(a) All transactions through the facilities of the Nasdaq Market Center shall be cleared and settled through a registered clearing agency using a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, [or] by entry into a correspondent clearing arrangement with another member that clears trades through such a[n] clearing agency[.], *or by use of the services of CDS Clearing and Depository Services, Inc. in its capacity as a member of such a clearing agency.*

(b) Notwithstanding paragraph (a), transactions may be settled "ex-clearing" provided that both parties to the transaction agree.

### **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 these statements.<sup>4</sup>

#### **(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

NASDAQ proposes to modify Rule 4618 to clarify that the use of a long-standing arrangement between National Securities Clearing Corporation ("NSCC") and CDS Clearing and Depository Services, Inc. ("CDS")<sup>5</sup> for clearing transactions in U.S. securities provides an acceptable method for clearing transactions executed on NASDAQ. Among other things, CDS operates Canada's national clearance and settlement operations for cash equities trading, performing a role analogous to NSCC in the U.S. CDS is regulated by the Ontario and Quebec securities commissions and the Bank of Canada and has working and reporting relationships with the Canadian Securities Administrators, other Canadian provincial securities commissions, and the Canadian Office of the Superintendent of Financial Institutions. CDS is also a full service member of NSCC and a participant in The Depository Trust Company ("DTC").

Currently, a Canadian broker-dealer seeking to buy or sell U.S. securities may do so through a U.S. registered broker-dealer with which it establishes a relationship for that purpose. In such a relationship, the US broker-dealer manages the clearance and settlement of the resulting trades, either through direct membership at NSCC or indirectly through a clearing broker with which it has established a relationship. Under the proposed change, a Canadian broker-dealer that is a member of CDS may make use of CDS, and its direct membership in NSCC, to clear and settle the resulting trades. Specifically, the clearing report for the trade will "lock in" CDS, making reference to the CDS membership of the Canadian broker-dealer, as a party to the trade.<sup>6</sup> NSCC will then look to CDS for the satisfaction of the clearance and settlement obligations of the Canadian broker-dealer. NSCC requires CDS to commit collateral to the NSCC clearing fund like any other NSCC member, the amount of which is based on a risk-

based margining methodology. In a similar manner, CDS requires its participants to commit collateral to CDS. The sole risk incurred by NASDAQ and then by NSCC in the arrangement is the highly remote risk that CDS itself might default on its obligations to clear and settle on behalf of the Canadian broker-dealer. This risk is conceptually indistinguishable from the risk of a clearing broker default, but because the value of the trades of the Canadian broker-dealers cleared through the mechanism is likely to be small in comparison to the values cleared through many large U.S. clearing brokers, the magnitude of this risk is correspondingly smaller.

The relationship between NSCC and CDS was established more than two decades ago, and various aspects of the relationship have been recognized through several prior filings<sup>7</sup> and no-action letters.<sup>8</sup> A recent description of the parameters of the relationship may be found in NSCC's Assessment of Compliance with the CPSS/IOSCO Recommendations for Central Counterparties.<sup>9</sup> The most prominent use of the relationship arises under FINRA Rule 7220A, which allows over-the-counter trades executed on behalf of CDS members to be reported through the FINRA/NASDAQ Trade Reporting Facility and cleared through the CDS/NSCC relationship. NASDAQ also understands that the EDGA Exchange and the EDGX Exchange permit clearance of trades executed on behalf of Canadian broker-dealers through this mechanism.

In order to clearly establish that use of the CDS/NSCC relationship is a permissible method of clearing transactions executed on NASDAQ, NASDAQ is proposing to amend Rule

<sup>7</sup> See, e.g., Securities Exchange Act Release No. 34-36918 (March 4, 1996), 61 FR 9739 (March 11, 1996) (SR-NASD-95-49) (approving access to Automated Confirmation Transaction Service for CDS members); Securities Exchange Act Release No. 34-40523 (October 6, 1998), 63 FR 54739 (October 13, 1998) (approving establishment of a CDS omnibus account at DTC to facilitate cross-border clearing).

<sup>8</sup> See, e.g., Letter from Dan W. Schneider, Deputy Associate Director, Commission, to Karen L. Saperstein, Assistant General Counsel, NSCC (November 26, 1984) (available at 1984 WL 47355) (taking no-action position with respect to use of CDS and NSCC with respect to clearing of trades executed on behalf of Canadian broker-dealers on the Boston Stock Exchange); Letter from Dan W. Schneider, Deputy Associate Director, Commission, to Karen L. Saperstein, Assistant General Counsel, NSCC (October 24, 1984) (available at 1984 WL 47356) (taking no-action position with respect to CDS becoming a member of NSCC).

<sup>9</sup> "Assessment of Compliance with the CPSS/IOSCO Recommendations for Central Counterparties," NSCC (November 14, 2011) (available at [http://www.dtcc.com/legal/compliance/NSCC\\_Self\\_Assessment.pdf](http://www.dtcc.com/legal/compliance/NSCC_Self_Assessment.pdf)).

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> The Commission has modified the text of the summaries prepared by NASDAQ.

<sup>5</sup> CDS was formerly known as The Canadian Depository for Securities Limited.

<sup>6</sup> As an NSCC member, CDS is responsible for the clearing and settling of its participants' trades conducted with U.S. broker-dealers. For purposes of "locking-in" parties, certain CDS participants have discrete NSCC participant codes that identify the Canadian broker-dealer and its participation in the NSCC/CDS clearing arrangement. On midnight of T+1, NSCC takes on the buyer's credit risk and the seller's delivery risk.

4618. Currently, the rule provides that trades must be cleared through a registered clearing agency using a continuous net settlement ("CNS") system and that this requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency. NSCC is currently the only registered clearing agency using a CNS system for trades executed on NASDAQ. While it is possible that the term "direct clearing services" could be construed to cover CDS's participation in NSCC on behalf of its members because CDS is a direct member of NSCC for the purpose of providing clearing services to its members the term has not previously been construed by NASDAQ in that manner. Accordingly, NASDAQ believes that the clarity of the rule would be enhanced by directly recognizing the CDS/NSCC relationship in the rule text. NASDAQ proposes amending the rule to provide that the rule may be satisfied through "use of the services of CDS Clearing and Depository Services, Inc. in its capacity as a member of such a clearing agency." Whenever a clearing arrangement making use of CDS's membership in NSCC is established, the NASDAQ member, the Canadian broker on whose behalf it is acting, CDS, and NASDAQ will sign a short agreement addressed to NSCC in which the parties acknowledge their use of the CDS/NSCC arrangement.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act<sup>10</sup> in general and with Section 6(b)(5) of the Act<sup>11</sup> in particular in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable practices 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, by allowing Canadian broker-dealers whose trades are executed on NASDAQ to make use of the long-standing arrangement between NSCC and CDS for clearing transactions, NASDAQ believes that the proposed rule change will directly foster cooperation and coordination with the

two primary North American cash equities clearinghouses and their respective members and will thereby promote a free and open market. Because the arrangement between NSCC and CDS, which has been in place in varying forms for over two decades, includes mechanisms to provide for the collateralization of the obligations arising thereunder, NASDAQ believes that the proposed change is fully consistent with the protection of investors and the public interest.

### *(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. The proposed change will ensure that Canadian broker-dealers whose trades are executed on NASDAQ are able to make use of an additional option for clearing such transactions, thereby promoting competition with respect to the availability of clearing services. The change will enhance NASDAQ's ability to compete in the over-the-counter market with other exchanges that offer the ability to clear through the CDS/NSCC relationship.

### *(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not been solicited or received. NASDAQ will notify the Commission of any written comments received by NASDAQ.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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 immediately effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day prefiling requirement.

NASDAQ has requested that the Commission waive the 30-day operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii). The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the arrangement between NSCC and CDS countenanced by the proposed rule change has been in place and has been used for over two decades, includes mechanisms to provide for the collateralization of the obligations arising thereunder, and has long been recognized under FINRA and NASD rules for use in clearing over-the-counter transactions. The technology changes at NASDAQ necessary to allow implementation of the proposed rule change have already been made.

Accordingly, the Commission believes that the change does not significantly affect the protection of investors or the public interest and does promote competition. Conversely, because delay of implementation would only serve to delay the availability of a well-established clearing mechanism for clearing certain trades executed on NASDAQ and would thereby inhibit customer choice and flexibility without advancing any regulatory goal, it would be consistent with the protection of investors and the public interest to waive the waiting period. Therefore, the Commission designates the proposed rule change as operative upon filing.<sup>14</sup>

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 change should be approved or disapproved.

## 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

<sup>14</sup> 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).

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2012-015 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-2012-015. This file number should be included on the subject line if email 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 Web site 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 a.m. and 3 p.m. Copies of such filings 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 Number SR-NASDAQ-2012-015 and should be submitted on or before February 29, 2012.

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

**Kevin O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-2832 Filed 2-7-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66311; File No. SR-NYSEARCA-2012-07]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting the Text of NYSE Arca Equities Rule 5.2(b)(1) and Adopting New NYSE Arca Equities Rule 5190 That Is Substantially the Same as Financial Industry Regulatory Authority Rule 5190

February 2, 2012.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 23, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "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 Substance of the Proposed Rule Change

The Exchange proposes to delete the text of NYSE Arca Equities Rule 5.2(b)(1) and adopt new NYSE Arca Equities Rule 5190 that is substantially the same as Financial Industry Regulatory Authority ("FINRA") Rule 5190. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.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, the self-regulatory organization 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 those 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 parts of such statements.

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

##### 1. Purpose

The Exchange proposes to delete the text of NYSE Arca Equities Rule 5.2(b)(1) and adopt new NYSE Arca Equities Rule 5190 that is substantially the same as FINRA Rule 5190.<sup>4</sup> The proposed rule change will further harmonize the Exchange's rules with the rules of FINRA, NYSE, and NYSE Amex. The Exchange believes the proposed rule change will help reduce duplicative reporting requirements for ETP holders who are also FINRA members and/or NYSE or NYSE Amex member organizations, because ETP Holders will not be required to submit an additional Regulation M notification to the Exchange if they have already provided a notification to FINRA, NYSE, or NYSE Amex pursuant to their respective rules.

##### Background

NYSE Arca Equities Rule 5.2(b)(1) requires ETP Holders that act as a lead underwriter of an offering to notify the Exchange of such offering in the form and manner as required by the Exchange, including the information specified in the rule. NYSE Arca Equities Rule 5.2(b)(1) covers the same material as FINRA Rule 5190, which was adopted to consolidate certain Regulation M-related notification requirements and applies uniformly to distributions of listed and unlisted securities.<sup>5</sup> FINRA Rule 5190 imposes certain notice requirements on members participating in distributions of listed and unlisted securities, and is designed to ensure that FINRA receives pertinent distribution-related information from its members in a timely fashion to facilitate its Regulation M compliance program. FINRA recently amended FINRA Rule 5190 to clarify members' notice obligations under the rule.<sup>6</sup> NYSE and NYSE Amex Equities each adopted a version of FINRA Rule 5190 for their respective markets, which incorporate

<sup>4</sup> See Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR-FINRA-2008-039). The Exchange's affiliates, New York Stock Exchange LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex"), previously adopted versions of FINRA Rule 5190; See Securities Exchange Act Release Nos. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (SR-NYSE-2009-25) and 59975 (May 26, 2009), 74 FR 26449 (June 2, 2009) (SR-NYSEALTR-2009-26).

<sup>5</sup> See Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR-FINRA-2008-039).

<sup>6</sup> See Securities Exchange Act Release No. 62970 (September 22, 2010), 75 FR 59771 (September 28, 2010) (SR-FINRA-2010-037).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>15</sup> 17 CFR 200.30-3(a)(12).