It is therefore ordered, pursuant to Section 19(b)(2) of the Act, 10 that the proposed rule change (File No. SR–OCC–2012–23) be and hereby is approved. 11

For the Commission by the Division of Trading and Markets, pursuant to delegated authority. 12

Kevin M. O’Neill,
Deputy Secretary.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 5710

January 24, 2013.

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 January 10, 2013, 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 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 5710 so that the Exchange may list Linked Securities 3 that provide for three times accelerated payment at maturity. 5 In changing one word in Rule 5710, the Exchange is conforming its rule to the established listing rules of other exchanges.

This proposed amendment to Rule 5710(d) is based, word-for-word, on NYSE Arca (“Arca”) Equities Rule 5.2(6)(A)(d) and NYSE Section 703.22(B)(6) of the Listed Company Manual. NASDAQ, Arca, and NYSE all have rule provisions stating that pursuant to Rule 19b–4(e) under the Act 6 a loss or negative payment at maturity of a Linked Security 7 may be accelerated by a multiple of the performance of an underlying asset (known as the “acceleration provision”). However, in Rule 5710 NASDAQ sets the multiple for the acceleration provision at “twice”, 8 whereas Arca and NYSE both set the acceleration

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 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.

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

1. Purpose

The purpose of this proposed rule change is to amend Rule 5710(d) so that the Exchange may list Linked Securities that provide for three times accelerated payment at maturity. In changing one word in Rule 5710, the Exchange is conforming its rule to the established listing rules of other exchanges.

This proposed amendment to Rule 5710(d) is based, word-for-word, on NYSE Arca (“Arca”) Equities Rule 5.2(6)(A)(d) and NYSE Section 703.22(B)(6) of the Listed Company Manual. NASDAQ, Arca, and NYSE all have rule provisions stating that pursuant to Rule 19b–4(e) under the Act 6 a loss or negative payment at maturity of a Linked Security 7 may be accelerated by a multiple of the performance of an underlying asset (known as the “acceleration provision”). However, in Rule 5710 NASDAQ sets the multiple for the acceleration provision at “twice”, 8 whereas Arca and NYSE both set the acceleration

7 The proposal is applicable only to non-option products.
9 Where NASDAQ refers to “Linked Securities” in its Rule 5710, NYSE and Arca refer to these products as “Index-Linked Securities.” On all exchanges, Linked Securities are based on the performance of various Reference Assets. For a more detailed discussion of Reference Assets, see Rule 5710.
10 See Rule 5710(d). See also Securities Exchange Act Release Nos. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009) (SR–NASDAQ–2009–018) (notice of filing and immediate effectiveness relating to revisions and restructuring of the NASDAQ listing rules, and transference of Rule 5710(d) from Rule 4420(m); and 57269 (February 5, 2008), 73 FR 8092 (February 12, 2008) (SR–NASDAQ–2008–08) (order approving listing standards in Rule 4420(m) to allow twice (2x) the performance of the underlying index, indexes, or Reference Asset).
at least 20% the earnings requirements set forth in Rule 5405(b)(1)(A); 12
(f) The Company is in compliance with Rule 10A–3 under the Act;
(g) Certain Maintenance and Dissemination standards must be satisfied.13
Of the seven specific and extensive requirements in Rule 5710 for listing Linked Securities pursuant to Rule 19b–4(e), the Exchange proposes to change only the multiple by which a Linked Security payment can be accelerated from twice to three times. Each of the other listing requirements remains unchanged.

The principal reason for the proposed amendment is demand for accelerated Linked Securities. There is continuing customer demand for having the ability to list and trade these Linked Securities products on the Exchange, particularly as the strategies and components of these products continue to evolve and offer access to a broader range of asset classes.

Prior to the commencement of trading of three times accelerated Linked Securities, NASDAQ will inform its members in an Information Circular of the special characteristics and risks associated with trading such leveraged securities. In particular, the Information Circular will discuss that leveraged Linked Securities seek returns on a periodic basis (e.g. daily or monthly), and do not seek to achieve their stated investment objective over a period of time greater than one period because compounding prevents these securities from perfectly achieving such results. Accordingly, results for leveraged Linked Securities over periods of time greater than one period (e.g. daily or monthly) typically will not reflect exactly the leveraged multiple of the period return of the applicable Reference Asset benchmark, and may differ from the multiple.14 NASDAQ will also inform its members of NASDAQ Rule 2310, Recommendations to Customers (Suitability), and the requirement that, if members recommend transactions in these leveraged securities, they must have a reasonable basis to believe that the recommendation is suitable for a customer given reasonable inquiry concerning the customer’s investment objectives, financial situation, needs, and any other information known by such Member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the securities. In addition, FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged, and inverse leveraged securities and options on such securities, as described in FINRA Regulatory Notices 09–31 (June 2009), 09–53 (August 2009) and 09–65 (November 2009) (“FINRA Regulatory Notices”). Members that carry customer accounts will be required to follow the FINRA guidance set forth in the FINRA Regulatory Notices. The Information Circular will reference the FINRA Regulatory Notices.

The Exchange believes that its surveillance procedures are adequate to address any concerns about the trading of the securities on NASDAQ. Trading of the securities on NASDAQ will be subject to FINRA’s surveillance procedures for derivative products.15 NASDAQ may obtain information via the Intermarket Surveillance Group.

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9 See Arca Equities Rule 5.2((6)) and NYSE Section 703.22(B)(6) of the Listed Company Manual. See also Securities Exchange Act Release Nos. 59332 (January 30, 2009), 74 FR 6338 (February 6, 2009) [SR–NYSEArca–2008–136] (order approving listing standards in NYSE Arca Equities Rule 5.2((6)) to allow three times (3x) the performance of the underlying Reference Asset); and 61230 (December 23, 2009), 74 FR 69163 (December 30, 2009) [SR–NYSE–2009–124] (order approving three (3x) performance in NYSE Section 703.22 of the Listed Company Manual, similarly to Arca Equities Rule 5.2((6)).

10 In recently approving rule changes to allow listings on NASDAQ that are allowed on Arca by rule, the Commission noted that it “has previously approved substantively identical listing standards for the listing and trading of the Subject Securities on NYSE Arca.” See Securities Exchange Act Release No. 66648 (March 23, 2012), 77 FR 19428 (March 30, 2012) [SR–NASDAQ–2012–013].

11 However, Rule 5710 provides that if Linked Securities do not otherwise meet the Rule 19b–4(e) standards set forth in the rule, NASDAQ may submit a rule filing pursuant to Section 19 of the Act to permit the listing and trading of Linked Securities.

12 Subsection (e) states also, in relevant part, regarding minimum tangible net worth: “In the alternative, the Company will be expected: (i) To have a minimum tangible net worth of $150,000,000 and to exceed by at least 20% the earnings requirement set forth in Rule 5405(b)(1)(A), and (ii) Not to have issued securities where the original price of all the Company’s other index-linked note offerings (combined with index-linked note offerings of the Company’s affiliates) listed on a national securities exchange exceeds 25% of the Company’s net worth. Rule 5710(c).” [sic]

13 Subsection (g) states, regarding Maintenance and Dissemination: “(i) If the index is maintained by a broker-dealer, the broker-dealer shall ensure ‘firewall’ around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer, (ii) Unless the Commission order applicable under paragraph (k) hereof provides otherwise, the current value of the index or the Reference Asset (as applicable) will be widely disseminated at least every 15 seconds during NASDAQ’s regular market session, except as provided in the next clause (iii), (iii) The values of the following indexes need not be calculated and widely disseminated at least every 15 seconds if, after the close of trading, the indicative value of the Equity Index-Linked Security based on one or more of such indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA Buy Write Index(sm), CBOE NASDAQ-100 BuyWrite Index(sm).”

14 The Exchange notes that leveraged exchange trade products are not new to the market; these products trade on NASDAQ, NASDAQ Options Market, and various other equity, options, and futures exchanges. Moreover, as noted in leveraged exchange products have been trading on Arca for years. As such, while the concept of leverage is not novel to the markets, the Information Circular will be distributed to provide additional information to market participants.

15 FINRA surveils trading on NASDAQ pursuant to a regulatory services agreement. NASDAQ is responsible for FINRA’s performance under this regulatory services agreement.
The Exchange believes that by conforming Rule 5710 to the rules of other exchanges (e.g. Arca and NYSE) and allowing listing opportunities on the Exchange that are already allowed by rule on other exchanges, the proposal would offer another venue for listing and trading the Linked Securities products and thereby promote competition. For the noted reasons, the Exchange proposes to change the acceleration provision in its Rule 5710 to exactly match, as described above, what is available on other exchanges.17

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act 18 in general, and furthers the objectives of Section 6(b)(5) of the Act 19 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. For the reasons noted in the filing, the Exchange proposes to change the acceleration provision in its Rule 5710 from a two to a three times multiple of the performance of the underlying asset. This exactly matches what is available on other exchanges. The Exchange believes that by conforming Rule 5710 to the rules of other exchanges (e.g. Arca and NYSE) and allowing listing opportunities on the Exchange that are already allowed by rule on other exchanges, the proposal would offer another venue for listing and trading the Linked Securities products and thereby promote broader competition among exchanges.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, where the current variance in the rules of the exchanges limits competition, the proposal will allow listing additional Linked Securities on the Exchange, thereby promoting increased competition across markets and liquidity on the Exchange.

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

The foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) 20 of the Act and Rule 19b–4(f)(6)(iii) thereunder 21 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.

The Exchange has requested the Commission to waive the 30-day operational delay period to allow the proposed rule change to become operative upon filing. 22 The Commission believes it is consistent with the public interest to waive the 30-day operational delay. The proposed rule change is substantially similar in all material respects to Section 703.22(B)(6) of the NYSE Listed Company Manual and Arca Equities Rule 5.2([6][6](A)(d), and each policy issue raised by the proposed rule change (i) has been considered by the Commission in approving the other exchanges’ rules and (ii) is resolved in a manner generally consistent with the approved rules. As such, the Commission believes that the proposal presents no novel regulatory issues. Waiver of the operational delay will allow the Exchange to list certain securities that can already be listed and traded on other exchanges without undue delay. Therefore, the Commission grants such waiver and designates the proposal operative upon filing. 23

At any time within 60 days of the filing of such 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.

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 email to rule-comments@sec.gov. Please include File No. SR–NASDAQ–2013–008 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 No. SR–NASDAQ–2013–008. 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 Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, 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 10:00 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 available publicly. All submissions should refer to File No. SR–NASDAQ–2013–008 and should be submitted on or before February 20, 2013.
For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Kevin M. O’Neill, Deputy Secretary.

[FR Doc. 2013—01932 Filed 1–29–13; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The NASDAQ Stock Market LLC: Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Mini Options

January 24, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 16, 2013, 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 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

NASDAQ proposes to list and trade option contracts overlying 10 shares of a security (“Mini Options”) applicable to NASDAQ members using The NASDAQ Options Market (“NOM”). NASDAQ’s facility for executing and routing standardized equity and index options.


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 purpose of the proposed rule change is to amend Chapter IV, Section 6 (Series of Options Contracts Open for Trading) and Chapter VI, Section 4 (Meaning of Premium Quotes and Orders) to list and trade Mini Options overlying five (5) high-priced securities for which the standard contract overlying the same security exhibits significant liquidity. Specifically, the Exchange proposes to list Mini Options on SPDR S&P 500 (“SPY”), Apple, Inc. (“AAPL”), SPDR Gold Trust (“GLD”), Google Inc. (“GOOG”) and Amazon.com Inc. (“AMZN”). The Exchange believes that this proposal would allow investors to select among options on various high-priced and actively traded securities, each with a unit of trading ten times lower than that of the regular-sized options contracts, or 10 shares, similar to other options exchanges. In addition, the Exchange proposes a technical amendment to Chapter III, Section 7 (Position Limits) to make the rule text consistent.

For example, with Apple Inc. (“AAPL”) trading at $605.85 on March 21, 2012, ($60,585 for 100 shares underlying a standard contract), the 605 level call expiring on March 23 was trading at $7.65. The cost of the standard contract overlying 100 shares would be $765, which is substantially higher in notional terms than the average equity option price of $250.89. Proportionately equivalent mini-options contracts on AAPL would provide investors with the ability to manage and hedge their portfolio risk on their underlying investment, at a price of $76.50 per contract. In addition, investors who hold a position in AAPL at less than the round lot size would still be able to avail themselves of options to manage their portfolio risk. For example, the holder of 50 shares of AAPL could write covered calls for five mini-options contracts. The table below demonstrates the proposed differences between a mini-options contract and a standard contract with a strike price of $125 per share and a bid or offer of $3.20 per share:

<table>
<thead>
<tr>
<th>Standard</th>
<th>Mini</th>
</tr>
</thead>
<tbody>
<tr>
<td>Share Deliverable Upon Exercise</td>
<td>100 shares</td>
</tr>
<tr>
<td>Strike Price</td>
<td>$125</td>
</tr>
<tr>
<td>Bid/Offer</td>
<td>$3.20</td>
</tr>
<tr>
<td>Premium Multiplier</td>
<td>$100</td>
</tr>
<tr>
<td>Total Value of Deliverable</td>
<td>$12,500</td>
</tr>
<tr>
<td>Total Value of Contract</td>
<td>$320</td>
</tr>
</tbody>
</table>

The Exchange currently lists and trades standardized option contracts on a number of equities and Exchange-Traded Funds (“ETFs”) each with a unit of trading of 100 shares. Except for the difference in the deliverable of shares, the proposed Mini Options would have the same terms and contract characteristics as regular-sized equity and ETF options, including exercise style. All existing Exchange rules applicable to options on equities and ETFs would apply to Mini Options. With respect to position and exercise limits, the applicable position and


3 These issues were selected because they are priced greater than $100 and are among the most actively traded issues, in that the standard contract exhibits average daily volume (“ADV”) over the previous three calendar months of at least 45,000 contracts, excluding LEAPS and FLEX series. The Exchange notes that any expansion of the program would require that a subsequent proposed rule change be submitted to the Commission.

4 A high priced underlying security may have relatively expensive options, because a low percentage move in the share price may mean a large movement in the options in terms of absolute dollars. Average non-FLEX equity option premium per contract January 1–December 31, 2011. See http://www.theocc.com/webapps/monthly-volume-reports/reportClass=equity.

5 Position limits applicable to a regular-priced option contract would also apply to the Mini Options on the same underlying security, with 10 Mini Option contracts counting as one regular-priced contract. Positions in both the regular-priced option contract and Mini Options on the same security will be combined for purposes of calculating positions.