

designated class is delisted by the designating exchange but continues to trade on at least one other exchange, any additional series for the class which are added from that point forward would again be subject to the proposed exercise price range limitations, unless the class is subsequently designated by another exchange. The proposal also provides an exchange with a procedure to request, if conditions warrant, additional case-by-case exceptions even when it has already so designated five underlying securities.

In addition, a procedure is created for a Series Listing Exchange to request an exemption, on a case-by-case basis, from the 100 percent range limitation, whereby, if unanimously agreed upon by all exchanges that list the particular options class, the Series Listing Exchange may list options series with strike prices that are more than 100 percent above or below the price of the underlying security.⁶

The proposal would not allow for the listing of options series that would otherwise be prohibited by the rules of a Series Selecting Exchange or the Plan, nor does it restrict the ability of an exchange to list options series that have been properly listed by another exchange. The proposal also expressly eliminates the applicability of the strike price range limitations with regard to: (1) The listing of \$1 strike prices in option classes participating in the \$1 Strike Program, where instead, the Series Selecting Exchange would be permitted to list \$1 strike prices to the fullest extent as permitted under its rules for the \$1 Strike Program; and (2) the listing of series of Flexible Exchange Options.

III. Discussion

After careful review, the Commission finds that Amendment No. 3 is consistent with the requirements of the Act and the rules and regulations thereunder.⁷ Specifically, the Commission finds that Amendment No. 3 to the OLPP is consistent with section 11A of the Act⁸ and Rule 608 thereunder⁹ in that it is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect

⁶ Application of any of the aforementioned exceptions and/or exemptions to the strike price range limitations for an underlying security would be available to all exchanges listing options on such security.

⁷ In approving this proposed Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78k-1.

⁹ 17 CFR 242.608.

the mechanisms of, a national market system.

The Commission notes that according to one study cited by the Plan Sponsor exchanges, the options industry would expect an approximate four percent reduction in the number of series traded, with only a nominal reduction in trading volume, upon implementation of the changes proposed in this Amendment.¹⁰ Therefore, the Commission believes that adopting uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Plan Sponsor exchanges should reduce the number of option series available for trading, and thus should reduce increases in the options quote message traffic because market participants will not be submitting quotes in those series. Accordingly, the Commission believes that it is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to approve Amendment No. 3 to the OLPP.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,¹¹ and Rule 608 thereunder,¹² that proposed Amendment No. 3 to the OLPP be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-20538 Filed 8-25-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60514; File No. SR-NASDAQ-2009-075]

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

August 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,²

¹⁰ See Notice, *supra* note 4.

¹¹ 15 U.S.C. 78k-1.

¹² 17 CFR 242.608.

¹³ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

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

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.

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 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 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.

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All

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*.

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*.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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 September 16, 2009.

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 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.

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).

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")).

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.

[FR Doc. E9-20531 Filed 8-25-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60520; File No. SR-NYSEAmex-2009-45]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of a Proposed Rule Change Amending Rule 476A—Imposition of Fines for Minor Violations of Rules

August 18, 2009.

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 July 29, 2009, NYSE Amex LLC ("NYSE Amex" or the "Exchange") 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 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 amend Rule 476A—Imposition of Fines for Minor Violations of Rules. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange'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, 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE Amex Minor Rule Plan ("MRP") fosters compliance with applicable rules and also helps to reduce the number and extent of rule violations committed by Amex Options Trading Permit ("ATP") Holders and associated persons. The prompt imposition of a financial penalty helps to quickly educate and improve the conduct of ATP Holders and associated persons that have engaged in inadvertent or otherwise minor violations of the Exchange's rules. By promptly imposing a meaningful financial penalty for such violations, the MRP focuses on correcting conduct before it gives rise to more serious enforcement action.

The Exchange is now proposing to incorporate additional violations into the MRP, these violations include (i) trading in restricted classes, (ii) failure to report position and account information and (iii) failure to complete mandatory annual training. The Exchange is also proposing to increase fine levels for certain violations presently included in the MRP. The increases fine levels will be applicable for violations of due diligence, priority rules and order exposure rules. A brief description of each proposed changes is shown below.

Proposed Rules 476A Part 1C(i)(37) and 476A Part 1C(iii)(i)(37)

NYSE Amex Rules 916 and 916C provide, in part, that the Exchange may prohibit any opening purchase transactions in a series of options to the extent it deems such action necessary or appropriate. Accordingly, ATP Holders effecting opening transactions in restricted series, inconsistent with the terms of any such restriction, will be considered to be in violation of Rule 916 or 916C. The Exchange is proposing to incorporate violations related to trading in restricted series into the MRP under Rules 476A Part 1C(i)(37).

The Exchange is proposing to implement a fine of \$1,000 for the first violation in a rolling twenty-four month period. A second violation within the same period would be allocated a

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.