

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 26	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2013 - * 008	Amendment No. (req. for Amendments *)
Filing by NASDAQ Stock Market Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) <input type="checkbox"/>		Section 806(e)(2) <input type="checkbox"/>	Section 3C(b)(2) <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>			
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="A Proposed Rule Change to Amend Rule 5710."/>				
<b>Contact Information</b>				
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.				
First Name *	<input type="text" value="Jurij"/>	Last Name *	<input type="text" value="Trypupenko"/>	
Title *	<input type="text" value="Associate General Counsel"/>			
E-mail *	<input type="text" value="jurij.trypupenko@nasdaqomx.com"/>			
Telephone *	<input type="text" value="(301) 978-8132"/>	Fax	<input type="text" value="(301) 978-8472"/>	
<b>Signature</b>				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	<input type="text" value="01/10/2013"/>	<input type="text" value="Executive Vice President and General Counsel"/>		
By	<input type="text" value="Edward S. Knight"/>	<input type="text" value="Edward S Knight,"/>		
(Name *)				
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Rule 5710 so that the Exchange may list Linked Securities<sup>3</sup> that provide for three times accelerated payment at maturity.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>4</sup>

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. The text of the proposed rule change is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”)

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> For a discussion of Linked Securities, see Rule 5710.

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

on July 10, 2012. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to Jurij Trypuenko, Associate General Counsel, NASDAQ OMX, at (301) 978-8132.

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

a. 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.<sup>5</sup> 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(j)(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<sup>6</sup> a loss or negative payment at maturity of a Linked Security<sup>7</sup> may be accelerated by a multiple of the performance of an underlying

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<sup>5</sup> The proposal is applicable only to non-option products.

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

<sup>7</sup> 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.

asset (known as the “acceleration provision”). However, in Rule 5710 NASDAQ sets the multiple for the acceleration provision at “twice”;<sup>8</sup> whereas Arca and NYSE both set the acceleration provision multiple at “three times”.<sup>9</sup> Other than changing one word - from “twice” to “three times” - in the Exchange’s acceleration provision in Rule 5710(d), no other change is proposed or made by this filing.<sup>10</sup>

The current requirements for listing Linked Securities, which include Multifactor Index-Linked Securities, Equity Index-Linked Securities, Commodity-Linked Securities, Fixed Income Index-Linked Securities and Futures-Linked Securities, are set forth in Rule 5710. This rule states that NASDAQ will consider Linked Securities for listing and

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<sup>8</sup> 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).

<sup>9</sup> See Arca Equities Rule 5.2(j)(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(j)(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 times (3x)* the performance in NYSE Section 703.22 of the Listed Company Manual, similarly to Arca Equities Rule 5.2(j)(6)).

<sup>10</sup> 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).

trading pursuant to Rule 19b-4(e) under the Act, provided the following requirements are met:<sup>11</sup>

(a) Both the issue and the issuer of such security meet the criteria for other securities set forth in Rule 5730(a), except that if the security is traded in \$1,000 denominations or is redeemable at the option of holders thereof on at least a weekly basis, then no minimum number of holders and no minimum public distribution of trading units shall be required;

(b) The issue has a term of not less than one (1) year and not greater than thirty (30) years;

(c) The issue must be the non-convertible debt of the Company;

(d) The payment at maturity may or may not provide for a multiple of the direct or inverse performance of an underlying index, indexes or Reference Asset; however, in no event will a loss (negative payment) at maturity be accelerated by a multiple that exceeds twice the performance of an underlying index, indexes or Reference Asset;

(e) The Company will be expected to have a minimum tangible net worth in excess of \$250,000,000 and to exceed by at least 20% the earnings requirements set forth in Rule 5405(b)(1)(A);<sup>12</sup>

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<sup>11</sup> 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.

<sup>12</sup> 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

(f) The Company is in compliance with Rule 10A-3 under the Act;

(g) Certain Maintenance and Dissemination standards must be satisfied.<sup>13</sup>

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.

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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 issue 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(e).”

<sup>13</sup> Subsection (g) states, regarding Maintenance and Dissemination: “(i) If the index is maintained by a broker-dealer, the broker-dealer shall erect a “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). (iv) If the value of a Linked Security is based on more than one index, then the dissemination requirement of this paragraph (g) applies to the composite value of such indexes. (v) In the case of a Commodity-Linked Security that is periodically redeemable, the indicative value of the subject Commodity-Linked Security must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during Nasdaq's regular market session.”

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.<sup>14</sup> NASDAQ will also inform its members of NASDAQ Rule 2310, Recommendations to Customers (Suitability), and the requirement that, if members recommend transactions in these

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<sup>14</sup> 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 3x 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.



leveraged securities, they must have a reasonable basis to believe that (1) 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.<sup>15</sup> NASDAQ may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG.<sup>16</sup>

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<sup>15</sup> FINRA surveils trading on NASDAQ pursuant to a regulatory services agreement. NASDAQ is responsible for FINRA's performance under this regulatory services agreement.

<sup>16</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

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.<sup>17</sup>

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>19</sup> 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 times 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

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<sup>17</sup> No other changes are made or intended by this filing and existing listing and trading rules continue to be applicable to leveraged Linked Securities.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

and trading the Linked Securities products and thereby promote broader competition among exchanges.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>20</sup> of the Act and Rule 19b-4(f)(6)(iii) thereunder<sup>21</sup> because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6)(iii).

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests waiver of the operative delay so that it may have rules that are similar to those of other exchanges. This would, from a competitive perspective, enable the Exchange to offer three times leveraged Linked Securities products to traders and investors, particularly as the strategies and components of these products continue to evolve and offer access to a broader range of asset classes. With the increased choices, market participants could diversify their listing strategies while avoiding the risk of concentration on only one exchange.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

This proposal is based on Arca Equities Rule 5.2(j)(6)(A)(d) and NYSE Section 703.22(B)(6) of the Listed Company Manual.<sup>22</sup> Other than the change proposed herein to Rule 5710, no other changes are proposed and no novel issues are raised in this filing. The proposal would make Rule 5710 substantially similar to the current rules of other markets.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
5. Proposed rule text.

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<sup>22</sup> See 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(j)(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-NYSEArca-2009-124)(order approving *three times (3x)* the performance in NYSE Section 703.22 of the Listed Company Manual, similarly to Arca Equities Rule 5.2(j)(6)).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASDAQ-2013-008)

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 5710 so that the Exchange may list Linked Securities<sup>3</sup> that provide for three times accelerated payment at maturity.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>4</sup>

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> For a discussion of Linked Securities, see Rule 5710.

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

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.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 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. 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 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.<sup>5</sup> 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(j)(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<sup>6</sup> a loss or negative payment at maturity of a

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<sup>5</sup> The proposal is applicable only to non-option products.

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

Linked Security<sup>7</sup> 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”;<sup>8</sup> whereas Arca and NYSE both set the acceleration provision multiple at “three times”.<sup>9</sup> Other than changing one word - from “twice” to “three times” - in the Exchange’s acceleration provision in Rule 5710(d), no other change is proposed or made by this filing.<sup>10</sup>

The current requirements for listing Linked Securities, which include Multifactor Index-Linked Securities, Equity Index-Linked Securities, Commodity-Linked Securities,

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<sup>7</sup> 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.

<sup>8</sup> 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).

<sup>9</sup> See Arca Equities Rule 5.2(j)(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(j)(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 times (3x)* the performance in NYSE Section 703.22 of the Listed Company Manual, similarly to Arca Equities Rule 5.2(j)(6)).

<sup>10</sup> 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).



Fixed Income Index-Linked Securities and Futures-Linked Securities, are set forth in Rule 5710. This rule states that NASDAQ will consider Linked Securities for listing and trading pursuant to Rule 19b-4(e) under the Act, provided the following requirements are met:<sup>11</sup>

- (a) Both the issue and the issuer of such security meet the criteria for other securities set forth in Rule 5730(a), except that if the security is traded in \$1,000 denominations or is redeemable at the option of holders thereof on at least a weekly basis, then no minimum number of holders and no minimum public distribution of trading units shall be required;
- (b) The issue has a term of not less than one (1) year and not greater than thirty (30) years;
- (c) The issue must be the non-convertible debt of the Company;
- (d) The payment at maturity may or may not provide for a multiple of the direct or inverse performance of an underlying index, indexes or Reference Asset; however, in no event will a loss (negative payment) at maturity be accelerated by a multiple that exceeds twice the performance of an underlying index, indexes or Reference Asset;

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<sup>11</sup> 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.

- (e) The Company will be expected to have a minimum tangible net worth in excess of \$250,000,000 and to exceed by at least 20% the earnings requirements set forth in Rule 5405(b)(1)(A);<sup>12</sup>
- (f) The Company is in compliance with Rule 10A-3 under the Act;
- (g) Certain Maintenance and Dissemination standards must be satisfied.<sup>13</sup>

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<sup>12</sup> 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 issue 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(e).”

<sup>13</sup> Subsection (g) states, regarding Maintenance and Dissemination: “(i) If the index is maintained by a broker-dealer, the broker-dealer shall erect a “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). (iv) If the value of a Linked Security is based on more than one index, then the dissemination requirement of this paragraph (g) applies to the composite value of such indexes. (v) In the case of a Commodity-Linked Security that is periodically redeemable, the indicative value of the subject Commodity-Linked Security must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during Nasdaq's regular market session.”

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.<sup>14</sup> NASDAQ

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<sup>14</sup> 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 3x 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.

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 (1) 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.<sup>15</sup> NASDAQ may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG.<sup>16</sup>

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<sup>15</sup> FINRA surveils trading on NASDAQ pursuant to a regulatory services agreement. NASDAQ is responsible for FINRA's performance under this regulatory services agreement.

<sup>16</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

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.<sup>17</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>19</sup> 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 times 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

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<sup>17</sup> No other changes are made or intended by this filing and existing listing and trading rules continue to be applicable to leveraged Linked Securities.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

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)<sup>20</sup> of the Act and Rule 19b-4(f)(6)(iii) thereunder<sup>21</sup> 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.

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: (i) necessary or appropriate in the public interest; (ii) for

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6)(iii).

the protection of investors; or (iii) 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.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number 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 Number SR-NASDAQ-2013-008. 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 website viewing and printing in the Commission's Public Reference Room 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 offices 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-2013-008, 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.<sup>22</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).



**EXHIBIT 5**

Proposed new text is underlined. Deleted text is [bracketed].

**NASDAQ Market Rules**

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**5710. Securities Linked to the Performance of Indexes and Commodities (Including Currencies)**

Nasdaq will consider for listing and trading equity index-linked securities ("Equity Index-Linked Securities") and commodity-linked securities ("Commodity-Linked Securities"), fixed income index-linked securities ("Fixed Income Index-Linked Securities"), futures-linked securities ("Futures-Linked Securities") and multifactor index-linked securities ("Multifactor Index-Linked Securities" and, together with Equity Index-Linked Securities, Commodity-Linked Securities, Fixed Income Index-Linked Securities and Futures-Linked Securities, "Linked Securities") that in each case meet the applicable criteria of this Rule.

Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying equity index or indexes (an "Equity Reference Asset").

The payment at maturity with respect to Commodity-Linked Securities is based on one or more physical Commodities or Commodity futures, options or other Commodity derivatives, Commodity-Related Securities, or a basket or index of any of the foregoing (any such basis for payment is referred to below as the "Commodity Reference Asset"). The terms "Commodity" and "Commodity-Related Security" are defined in Rule 4630.

The payment at maturity with respect to Fixed Income Index-Linked Securities is based on the performance of one or more indexes or portfolios of notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing (a "Fixed Income Reference Asset").

The payment at maturity with respect to Futures-Linked Securities is based on the performance of an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b); or (c) CBOE Volatility Index (VIX) Futures (a "Futures Reference Asset").

The payment at maturity with respect to Multifactor Index-Linked Securities is based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Fixed Income Reference Assets or Futures Reference Assets (a "Multifactor Reference Asset", and together with Equity Reference Asset, Commodity Reference Asset, Fixed Income Reference Asset and Futures Reference Asset, "Reference Assets"). A Multifactor Reference Asset may include as a component a notional investment in cash or a cash equivalent based on a widely accepted overnight loan interest rate, LIBOR, Prime Rate, or an implied interest rate based on observed market spot and foreign currency forward rates.

Linked Securities may or may not provide for the repayment of the original principal investment amount. Nasdaq may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Linked Securities that do not otherwise meet the standards set forth below in paragraphs (a) through (k). Nasdaq will consider Linked Securities for listing and trading pursuant to Rule 19b-4(e) under the Act, provided:

(a) - (c) No Change.

(d) The payment at maturity may or may not provide for a multiple of the direct or inverse performance of an underlying index, indexes or Reference Asset; however, in no event will a loss (negative payment) at maturity be accelerated by a multiple that exceeds [~~twice~~]three times the performance of an underlying index, indexes or Reference Asset.

(e) - (k) No Change.

••• *Commentary* -----

No Change.

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