

attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of a Feeder Fund allocated to a particular class of Shares will be borne on a pro rata basis by each outstanding Share of that class. Applicants state that the Feeder Fund will comply with the provisions of rule 18f-3 under the Act as if it were an open-end investment company.

9. In the event the Feeder Fund imposes a CDSC, the applicants will comply with the provisions of rule 6c-10 under the Act, as if that rule applied to closed-end management investment companies. With respect to any waiver of, scheduled variation in, or elimination of the CDSC, the Feeder Fund will comply with rule 22d-1 under the Act as if the Feeder Fund were an open-end investment company.

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of Shares of the Feeder Fund may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that permitting multiple classes of Shares of the Feeder Fund may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(c) and 18(i) to permit

the Feeder Fund to issue multiple classes of Shares.⁸

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit the Feeder Fund to facilitate the distribution of its Shares and provide investors with a broader choice of shareholder options. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f-3 under the Act. Applicants state that the Feeder Fund will comply with the provisions of rule 18f-3 as if it were an open-end investment company.

CDSCs

1. Applicants believe that the requested relief meets the standards of section 6(c) of the Act. Rule 6c-10 under the Act permits open-end investment companies to impose CDSCs, subject to certain conditions. Applicants state that any CDSC imposed by the Feeder Fund will comply with rule 6c-10 under the Act as if the rule were applicable to closed-end investment companies. The Feeder Fund also will disclose CDSCs in accordance with the requirements of Form N-1A concerning CDSCs as if the Feeder Fund were an open-end investment company. Applicants further state that the Feeder Fund will apply the CDSC (and any waivers or scheduled variations of the CDSC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d-1 under the Act.

Asset-Based Service and/or Distribution Fees

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section

⁸ The Master Fund will not issue multiple classes of its shares and is an applicant because of the master-feeder structure.

17(d) and rule 17d-1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d-3 under the Act provides an exemption from section 17(d) and rule 17d-1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b-1 under the Act. Applicants request an order under section 17(d) and rule 17d-1 under the Act to permit the Feeder Fund to impose asset-based service and/or distribution fees. Applicants have agreed to comply with rules 12b-1 and 17d-3 as if those rules applied to closed-end investment companies.

Applicants' Condition

The Feeder Fund agrees that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c-10, 12b-1, 17d-3, 18f-3 and 22d-1 under the Act, as amended from time to time, or replaced as if those rules applied to closed-end management investment companies, and will comply with the NASD Conduct Rule 2830, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-28951 Filed 11-29-12; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68287; File No. SR-NASDAQ-2012-131]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Listing Requirements for Other Securities Listed Under Rule 5730

November 26, 2012.

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 November 16, 2012, The NASDAQ

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange proposes to modify the listing requirements for Other Securities listed under Rule 5730. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.³

5730. Listing Requirements for Securities Not *Otherwise Specified [Above] (Other Securities)*

(a) *Initial Listing Requirements*

(1) Nasdaq will consider listing on the Global Market any security not otherwise covered by the criteria in the Rule 5400 or 5700 Series, provided the instrument is otherwise suited to trade through the facilities of Nasdaq. Such securities will be evaluated for listing against the following criteria:

(A) No change.

(B) *For equity securities, there [There] must be:*

(i) a minimum of 400 holders of the security[, provided, however, that if the instrument is traded in \$1,000 denominations, there must be a minimum of 100 holders.]; and

(ii) a minimum public distribution of 1,000,000 trading units. However, if the instrument is redeemable at the option of the holders thereof on at least a weekly basis, these requirements shall not apply.

(C) [For equity securities listed pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units.

(D)] The aggregate market value/principal amount of the security shall be at least \$4 million.

(2)–(3) No change.

(b) No Change.

* * * * *

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,

³ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

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

Nasdaq Rule 5730 provides rules for listing “Other Securities,” which are not described elsewhere in Nasdaq’s listing requirements.⁴ Generally, this rule allows the listing of innovative securities of substantially-sized companies, which are not readily categorized under the traditional listing standards. It is not intended to accommodate the listing of securities that raise significant new regulatory issues, which would require a separate rule filing submitted pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder.⁵

The issuer of a security listed under Rule 5730 must have assets in excess of \$100 million, stockholders’ equity of at least \$10 million, and income of at least \$1 million; assets in excess of \$200 million and stockholders’ equity of at least \$10 million; or assets in excess of \$100 million and stockholders’ equity of at least \$20 million.⁶ In addition, the security generally must have a minimum of 400 holders, an aggregate market value/principal amount of at least \$4 million, and, in the case of equity securities, there must be a minimum public distribution of 1 million trading units.⁷ Prior to the trading of a security under this rule, Nasdaq evaluates the nature and complexity of the issue and, if appropriate, distributes a circular to the membership providing guidance regarding member firm compliance responsibilities and requirements when handling transactions in such securities.⁸

⁴ Securities Exchange Act Release No. 32988 (September 29, 1993), 58 FR 52124 (October 6, 1993) (SR–NASD–93–15). This order approved the predecessor to current Nasdaq Rule 5730 while Nasdaq was a facility of the NASD, now FINRA.

⁵ 15 U.S.C. 78s(b) and 17 CFR 240.19b–4.

⁶ Rule 5730(a)(1)(A).

⁷ Rule 5730(a)(1)(B), (C) and (D). A security traded in one thousand dollar denominations must only have 100 holders.

⁸ Rule 5730(a)(3).

This rule was based on a rule of the New York Stock Exchange (“NYSE”)⁹ and is also similar to a rule of NYSE MKT.¹⁰ Nasdaq now proposes changes to Rule 5730 to more closely align that rule with those other markets’ rules.

Specifically, the proposed rule change would modify the holder requirement so that it applies only to equity securities, and thereby eliminate the holder requirement for listing debt securities. In this way, the revised rule will more closely track the NYSE’s requirement, which does not impose a holder requirement on such listings.¹¹ In addition, Nasdaq proposes to adopt an exception adopted by NYSE MKT to the holder and public distribution requirements for securities that are redeemable at the option of their holders on at least a weekly basis.¹² Finally, Nasdaq also proposes to change the title of the rule, to clarify its applicability to only securities that do not otherwise have specific listing standards, wherever they may be in the rulebook.

b. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹³ in general, and with Section 6(b)(5) of the Act,¹⁴ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, Nasdaq notes that the proposed changes will conform Rule 5730 with the rules of other national securities exchanges, while continuing to limit the availability of the rule to more financially substantial companies, which can satisfy the assets, equity, income, and other requirements of Rule 5730(a). In addition, Nasdaq is unaware

⁹ See Section 703.19 of the NYSE Listed Company Manual.

¹⁰ See Section 107 of the NYSE MKT Company Guide.

¹¹ The proposed rule change would also remove the 100 holder requirement for securities that trade in \$1,000 denominations because such securities are debt securities, which would no longer be subject to the holder requirement.

¹² Securities Exchange Act Release No. 55733 (May 10, 2007), 72 FR 27602 (May 16, 2007) (SR–Amex–2007–34).

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

of any problems related to the trading of instruments that have qualified under the other markets' lower holder and distribution requirements.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Instead, the proposed rule change will allow Nasdaq to list securities that can already be listed on other exchanges, thereby increasing competition with other national securities exchanges.

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

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 if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

The Exchange has requested the Commission to waive the 30-day operative delay period to allow the proposed rule change to become operative upon filing.¹⁷ The Commission believes it is consistent with the public interest to waive the 30-day operative delay. The proposed rule change is substantially similar in all material respects to Section 703.19 of the NYSE Listed Company Manual and Section 107A(b) of the NYSE MKT Listed Company Guide, 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 operative 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.¹⁸

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-2012-131 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-2012-131. 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 statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 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-2012-131 and should be submitted on or before December 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-28943 Filed 11-29-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68288 File No. SR-OCC-2012-22]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Clarify the Use of Certain Amounts Credited to the Liquidating Settlement Account To Settle Mark-to-Market Payments Arising From Stock Loan and Borrow Positions Carried in the Customers' Account

November 26, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² notice is hereby given that on November 13, 2012, The Options Clearing Corporation ("OCC") 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 primarily by OCC. 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

OCC proposes to make certain changes to Rule 1104 in order to eliminate potential ambiguity as to OCC's right, in connection with the suspension of a clearing member, to use

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.