

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55386; File No. SR-NASDAQ-2007-016]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Trading of 16 Commodity-Related Securities Pursuant to Unlisted Trading Privileges on a Pilot Basis

March 2, 2007.

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 March 1, 2007, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

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

Nasdaq proposes to amend Rule 4630 to govern trading in any Commodity-Related Security (as defined below) and to make conforming amendments to Rule 4120. Pursuant to the amended rule and in accordance with the terms and conditions specified in this filing, Nasdaq also proposes to trade, pursuant to unlisted trading privileges, the 16 Commodity-Related Securities described below.

The text of the proposed rule change is available from Nasdaq's Web site at <http://nasdaq.complinet.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, 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 III 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 is proposing to trade the following securities pursuant to UTP for a pilot period of three months beginning on March 5, 2007: (1) Shares of the PowerShares DB Commodity Index Tracking Fund, (2) shares of the PowerShares DB G10 Currency Harvest Fund, (3) shares of the PowerShares DB Agricultural Fund, (4) shares of the PowerShares DB Oil Fund, (5) shares of the PowerShares DB Base Metals Fund, (6) shares of the PowerShares DB Energy Fund, (7) shares of the PowerShares DB Silver Fund, (8) shares of the PowerShares DB Gold Fund, (9) shares of the PowerShares DB Precious Metals Fund, (10) iPath Dow Jones-AIG Commodity Index Total Return Exchange-Traded Notes, (11) iPath GSCI Total Return Index Exchange-Traded Notes, (12) iPath Goldman Sachs Crude Oil Total Return Index Exchange-Traded Notes, (13) shares of the iShares GSCI Commodity-Indexed Trust, (14) units of the United States Oil Fund, LP, (15) Claymore MACROShares Oil Up Tradeable Shares, and (16) Claymore MACROShares Oil Down Tradeable Shares (collectively, the "Covered Securities"). The Commission previously approved the original listing and trading of each of the Covered Securities by the New York Stock Exchange ("NYSE") or the American Stock Exchange ("Amex").<sup>3</sup> Since the

time of their listing on NYSE or Amex, the Covered Securities have traded on an over-the-counter ("OTC") basis on systems operated as facilities of NASD by Nasdaq and its affiliates. Specifically, the products are currently traded on the ITS/CAES System, which Nasdaq operates for NASD pursuant to a Transitional System and Regulatory Services Agreement (the "Transitional Agreement").

Under Rule 602 of Regulation NMS (the "Quote Rule"),<sup>4</sup> NASD is required to collect the best bid, best offer, and quotation sizes communicated otherwise than on an exchange by each NASD member acting in the capacity of an "OTC market maker" for any "NMS stock,"<sup>5</sup> unless the executed volume of such member, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security (the "1% Rule").<sup>6</sup>

Nasdaq has operated ITS/CAES under the Transitional Agreement in order to allow NASD to fulfill its Quote Rule obligation to provide a quotation facility for non-Nasdaq exchange-listed securities ("CQS Securities"). On March 5, 2007, NASD expects to begin to fulfill its obligation to provide a quotation facility for CQS Securities without Nasdaq's assistance through its Alternative Display Facility (the "ADF").<sup>7</sup> Also at that time, Nasdaq expects to stop operating the ITS/CAES System.

On July 28, 2006, the Commission granted NASD a limited exemption<sup>8</sup>

Goldman Sachs Crude Oil Total Return Index Exchange-Traded Notes); Securities Exchange Act Release No. 54013 (June 16, 2006), 71 FR 36372 (June 26, 2006) (SR-NYSE-2006-17) (iShares GSCI Commodity-Indexed Trust); Securities Exchange Act Release No. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR-Amex-2005-127) (United States Oil Fund, LP); Securities Exchange Act Release No. 54839 (November 29, 2006), 71 FR 70804 (December 6, 2006) (SR-Amex-2006-82) (MACROShares Oil Up and Oil Down Tradeable Shares).

<sup>4</sup> 17 CFR 242.602.

<sup>5</sup> "OTC market maker" means any dealer that holds itself out as being willing to buy from and sell to its customers, or others, in the United States, an NMS stock for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than block size. See 17 CFR 242.600(b)(52). "NMS stock" means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. See 17 CFR 242.600(b)(47).

<sup>6</sup> OTC market makers that are not subject to the 1% Rule may nevertheless elect to communicate quotations in exchange-listed securities to NASD, in which case NASD must disseminate such quotations.

<sup>7</sup> NASD already uses the ADF to fulfill its obligations under the Quote Rule with respect to Nasdaq-listed securities.

<sup>8</sup> See Letter from Robert L.D. Colby, Acting Director, Division of Market Regulation,

Continued

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Securities Exchange Act Release No. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR-Amex-2005-059) (PowerShares DB Commodity Index Tracking Fund); Securities Exchange Act Release No. 54351 (August 23, 2006), 71 FR 51245 (August 29, 2006) (SR-Amex-2006-44) (PowerShares DB G10 Currency Harvest Fund); Securities Exchange Act Release No. 55029 (December 29, 2006), 72 FR 806 (January 8, 2007) (SR-Amex-2006-76) (seven PowerShares DB commodity funds); Securities Exchange Act Release No. 53876 (May 25, 2006), 71 FR 32158 (June 2, 2006) (SR-NYSE-2006-16) (iPath Dow-Jones AIG Commodity Index Total Return Exchange-Traded Notes); Securities Exchange Act Release No. 53849 (May 22, 2006), 71 FR 30706 (May 30, 2006) (SR-NYSE-2006-20) (iPath GSCI Total Return Index Exchange-Traded Notes); Securities Exchange Act Release No. 54177 (July 19, 2006), 71 FR 42700 (July 27, 2006) (SR-NYSE-2006-19) (iPath

from the Quote Rule and granted OTC market makers a limited exemption from the 1% Rule by providing that an OTC market maker is not required to provide quotations to NASD, and NASD is not required to collect and disseminate such quotations, if the OTC market maker provides its quotations to a national securities exchange that in turn disseminates the quotations of each such OTC market maker, even if such quotations do not reflect the exchange's best bid and offer. Thus, because Nasdaq disseminates depth-of-book information reflecting the quotations of each of its market makers, an OTC market maker may satisfy its 1% Rule obligations by quoting on Nasdaq.

The Covered Securities have been eligible to trade on ITS/CAES because the Quote Rule requires NASD, as a national securities association, to provide a means for its members to post quotes for all NMS stocks. As an exchange, however, Nasdaq may not trade securities on a UTP basis unless Nasdaq "has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges,"<sup>9</sup> and, in the case of "new derivatives securities products" within the meaning of SEC Rule 19b-4(e),<sup>10</sup> it either has generic listing standards applicable to the product in question or receives Commission approval for a rule filing under Section 19 of the Act<sup>11</sup> to allow trading of the product. The Covered Securities are new derivative securities products for which Nasdaq does not have generic listing standards, and therefore Nasdaq must obtain Commission approval of a filing before trading them as an exchange.

It had been Nasdaq's expectation that it would not trade all of the Covered Securities as of March 5, 2007, in light of low trading volumes of some of the Covered Securities and the administrative requirements associated with product-specific filings. Based on input from its members and NASD, however, Nasdaq has concluded that there are OTC market makers in each of the Covered Securities that may be subject to the 1% Rule, based on recent trading volumes. Moreover, although the ADF is scheduled to become

operational for CQS Securities on March 5, 2007, an NASD member that is not already an ADF participant might not have sufficient time to move its quotations in the Covered Securities to the ADF by March 5. Accordingly, Nasdaq believes that it must begin trading the Covered Securities by March 5 in order to prevent disruptions in the markets for the Covered Securities and forestall regulatory compliance issues for OTC market makers subject to the 1% Rule in the Covered Securities.

It does not appear that there would be sufficient time between now and March 5 for Nasdaq and Commission staff to process a detailed filing regarding each of the Covered Securities. Moreover, in cases where Covered Securities are issued by pooled investment vehicles that invest in commodity futures that are traded on futures exchanges that are not members of the Intermarket Surveillance Group ("ISG"), securities exchanges trading the Covered Securities have entered into regulatory information-sharing agreements with such futures exchanges. At this time, Nasdaq is in the process of entering into such agreements with ICE Futures and the Kansas Board of Trade, and is in the process of amending its existing agreement with the New York Mercantile Exchange ("NYMEX") to cover additional commodities. Nasdaq has just completed an agreement with the London Metals Exchange, and expects to complete the remaining agreements in the near future, but not by March 5, 2007.

In light of all of these considerations, Nasdaq is seeking Commission approval for a proposal to trade the Covered Securities for a three-month pilot period. During the pilot period, Nasdaq will complete all required regulatory information sharing agreements and will submit detailed product-specific filings covering each of the Covered Securities.

Nasdaq deems the Covered Securities to be equity securities, thus rendering trading in the Covered Securities subject to its existing rules governing the trading of equity securities. During the period while a Covered Security is trading under this pilot filing, its trading hours will be 9:30 a.m. to 4 p.m., Eastern Time ("ET"). Nasdaq may, however, propose longer trading hours for some of the Covered Securities in a subsequent product-specific filing, depending on the extent of dissemination of intraday values and index values related to the Covered Security.

Nasdaq will halt trading in a Covered Security under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a

regulatory halt by the listing market. UTP trading in the Covered Securities will also be governed by provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of (i) the Intraday Indicative Value, Intraday Optimized Portfolio Value, or other comparable intraday valuation for a Covered Security; or (ii) the value of any index or any commodity-related value underlying a Covered Security.<sup>12</sup> Additionally, Nasdaq may cease trading a Covered Security if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq will stop trading a Covered Security if the listing market delists it.

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Covered Securities on Nasdaq. Trading of the Covered Securities through ITS/CAES is currently subject to NASD's surveillance procedures for equity securities in general and ETFs in particular. After Nasdaq begins to trade the Covered Securities as an exchange, NASD, on behalf of Nasdaq, will continue to surveil Nasdaq trading, including Nasdaq trading of the Covered Securities. Nasdaq's transition to exchange status will not result in any change in the surveillance process with respect to the Covered Securities.<sup>13</sup>

Nasdaq is able to obtain information regarding trading in the Covered Securities and the underlying futures through its members in connection with the proprietary or customer trades that such members effect on any relevant market. In addition, Nasdaq may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG, including the Chicago Board

<sup>12</sup> Nasdaq is amending Rule 4120 to make it applicable to any Commodity-Related Security (as defined below) and to include the term "commodity-related value" in the definition of a Required Value that must be disseminated under the conditions described in the rule. Thus, for example, the term "commodity-related value" would include the price of crude oil futures contracts on which the United States Oil Fund is based.

<sup>13</sup> Surveillance of all trading on NASD facilities operated by Nasdaq, including the trading of the Covered Securities, is currently being conducted by NASD. After Nasdaq begins to trade the Covered Securities as an exchange, NASD will continue to surveil trading pursuant to a regulatory services agreement. Nasdaq is responsible for NASD's performance under this regulatory services agreement.

Commission, to T. Grant Callery, Executive Vice President and General Counsel, NASD (July 28, 2006).

<sup>9</sup> 17 CFR 240.12f-5.

<sup>10</sup> "New Derivative Security Product" is defined as any type of option, warrant, hybrid securities product, or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. See 17 CFR 240.19b-4(e).

<sup>11</sup> 15 U.S.C. 78s.

of Trade. In addition, Nasdaq has a regulatory information sharing agreement with NYMEX covering gold and silver futures, and is in the process of amending the agreement to cover crude oil, heating oil, natural gas, copper, and unleaded gasoline. Nasdaq has also just entered into a regulatory sharing agreement with the London Metals Exchange related to aluminum, copper, lead, nickel, tin, and zinc. Nasdaq is also in the process of entering into information-sharing agreements with ICE Futures related to crude oil and gas oil, and with the Kansas Board of Trade related to wheat.

Nasdaq will inform its members in Information Circulars of the special characteristics and risks associated with trading the Covered Securities. Specifically, the Information Circulars will discuss the following: (a) Applicable procedures for purchases and redemptions of Covered Securities; (b) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in Covered Securities to customers; (c) how information regarding applicable intraday values is disseminated; (d) prospectus delivery requirements; and (e) trading information.

In addition, the Information Circulars will reference that the Covered Securities are subject to various fees and expenses described in their applicable Registration Statements. The Information Circulars will also reference the fact that there is no regulated source of last-sale information regarding physical commodities, and that the Commission has no jurisdiction over the trading of physical commodities such as aluminum, gold, crude oil, heating oil, corn, and wheat, or the futures contracts on which the value of the certain Covered Securities are based. The Information Circulars will describe the public availability of information about the Covered Securities and underlying indexes or prices. The Information Circular will also discuss any relief granted by the Commission or the staff from any rules under the Act.

In November 2006, the Commission approved Nasdaq Rule 4630 to govern the trading of Commodity-Based Trust Shares.<sup>14</sup> Commodity-Based Trust Shares were defined as trust-issued receipts based on the value of an underlying commodity or index of commodities held by a trust. Nasdaq is now proposing to amend the rule to make it apply broadly to trading in any

security issued by any trust, partnership, commodity pool or similar entity that invests, directly or through another entity, in any combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, or the value of which is determined by the value of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives (a "Commodity-Related Security").<sup>15</sup> All of the Covered Securities under this filing are Commodity-Related Securities and therefore governed by the amended rule. Under the amended rule:

- A member acting as a registered market maker in a Commodity-Related Security will be obligated to establish adequate information barriers when such market maker engages in inter-departmental communications. For purposes of a Commodity-Related Security, "inter-departmental communications" are defined to include communications to other departments within the same firm or the firm's affiliates that involve trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

- A member acting as a registered market maker in a Commodity-Related Security must file with Nasdaq Regulation in a manner prescribed by Nasdaq Regulation and keep current a list identifying all accounts for trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, that the market maker may have or over which it may exercise investment discretion.

- A member acting as a registered market maker in a Commodity-Related Security shall make available to Nasdaq Regulation such books, records, or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading commodities, futures contracts, options on futures contracts, forward

contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, as may be requested by Nasdaq Regulation.

- In connection with trading a Commodity-Related Security or commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying a Commodity-Related Security, the member acting as a market maker in a Commodity-Related Security shall not use any material nonpublic information received from any person associated with the member or employee of such person regarding trading by such person or employee in the commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

The amended rule also requires members to provide a prospectus to all purchasers of a newly issued Commodity-Related Security. Finally, the amended rule stipulates that Nasdaq will file proposals under Section 19(b) of the Act before trading separate and distinct Commodity-Based Securities designated on different underlying commodity-related investments, and that the proposal filed with respect to particular Commodity-Related Security will specify the applicable trading hours for such Commodity-Related Security.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>16</sup> in general and Section 6(b)(5) of the Act<sup>17</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, Nasdaq believes that the proposal is consistent with Rule 12f-5 under the Act<sup>18</sup> because it deems the Covered Securities to be an equity securities, thus rendering trading in the Covered Securities subject to Nasdaq's existing rules governing the trading of equity securities.

## 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 that is not

<sup>14</sup> Securities Exchange Act Release No. 54765 (November 16, 2006), 71 FR 67668 (November 22, 2006) (SR-NASDAQ-2006-009).

<sup>15</sup> The amended rule is thus intended to apply to instruments that have been defined as "investment shares," "commodity-based trust shares," "currency trust shares," "commodity index trust shares," or "partnership units" under the rules of Amex and NYSE Arca. The amended rule is also intended to apply to securities that have been defined as "paired trust shares" under such rules, with a reference price that is related to commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives.

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 17 CFR 240.12f-5.

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 on the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-016 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2007-016. 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. Copies of such filing also will be available for inspection and copying at the principal office 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-2007-016 and

should be submitted on or before March 30, 2007.

### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>19</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>20</sup> which requires that an exchange have rules designed, among other things, 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 this proposal should benefit investors by increasing competition among markets that trade the Covered Securities.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,<sup>21</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>22</sup> The Commission notes that it previously approved the listing and trading of each of the Covered Securities on either NYSE or Amex.<sup>23</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>24</sup> which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Covered Securities to be equity securities, thus rendering trading in the Covered Securities subject to the Exchange's existing rules governing the trading of equity securities.

<sup>19</sup> In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> 15 U.S.C. 78l(f).

<sup>22</sup> Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

<sup>23</sup> See *supra* note 3.

<sup>24</sup> 17 CFR 240.12f-5.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>25</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Covered Securities are disseminated through the facilities of the CTA and the Consolidated Quotation System. Furthermore, (i) the Intraday Indicative Value, Intraday Optimized Portfolio Value, or other comparable intraday valuation for a Covered Security; or (ii) the value of any index or any commodity-related value underlying a Covered Security, is calculated by the original listing market and published via the facilities of the Consolidated Tape Association on a 15-second delayed basis throughout the trading hours for the Covered Securities. In addition, if the listing market halts trading when either (i) the Intraday Indicative Value, Intraday Optimized Portfolio Value, or other comparable intraday valuation for a Covered Security; or (ii) the value of any index or any commodity-related value underlying a Covered Security, is not being calculated or disseminated, the Exchange would halt trading in such Covered Security.

The Commission notes that, if a Covered Security should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Covered Security pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Covered Securities.
2. Prior to the commencement of trading, the Exchange would inform its members in an Information Bulletin of the special characteristics and risks associated with trading the Covered Securities.
3. Prior to the commencement of trading, the Exchange would inform its members in an Information Bulletin the requirement that members deliver a prospectus to investors purchasing newly issued Covered Securities prior to or concurrently with the confirmation of a transaction.

<sup>25</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

This approval order is conditioned on the Exchange's adherence to these representations.

Exchanges that trade commodity-related securities generally have in place surveillance arrangements with markets that trade the underlying commodities. The Commission notes that the Exchange has indicated that it currently is in the process of entering into information-sharing agreements with the ICE Futures and the Kansas Board of Trade, as well as amending its current information sharing agreement with NYMEX. Although the Exchange has not finalized these agreements, the Commission believes nevertheless that the Exchange's proposal to trade the Covered Securities on a pilot basis is consistent with the Act in view of (1) the limited duration of the pilot period (three months), (2) the Exchange's representation that these information-sharing agreements would be complete "in the near future," and (3) the fact that the Exchange must submit a proposed rule change addressing each Covered Security, to continue trading the securities after the expiration of the pilot period.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of each of the Covered Securities by either NYSE or Amex is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or would preclude the trading of the Covered Securities on the Exchange pursuant to UTP. Furthermore, accelerated approval of this proposal is necessary to facilitate compliance by certain OTC market makers with the 1% Rule. Market disruption could result if these OTC market makers have no venue where they can publish their quotations in the Covered Securities. For these reasons, the Commission finds good cause to approve the amended proposal on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-NASDAQ-2007-016), be and it hereby is, approved on an accelerated basis for a three-month pilot period which will commence on March 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>27</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55393; File No. SR-NASD-2007-016]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASD Rules 4632C and 4632D To Reflect "As/Of" Trade Reporting and the Automated Reporting of Trade Cancellations to the NASD/NSX and NASD/BSE Trade Reporting Facilities

March 2, 2007.

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 February 27, 2007, the National Association of Securities Dealers, Inc. ("NASD") 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 substantially by the NASD. The NASD has filed this proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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 NASD proposes to amend NASD Rules 4632C, "Transaction Reporting," and 4632D, "Transaction Reporting," to reflect "as/of" (T+1) trade reporting and the automated reporting of trade cancellations to the NASD/NSX Trade Reporting Facility (the "NASD/NSX TRF") and the NASD/BSE Trade Reporting Facility (the "NASD/BSE TRF"), respectively. The proposed amendments are substantially identical

to the current language of NASD Rule 4632, "Transaction Reporting," relating to the NASD/Nasdaq Trade Reporting Facility ("NASD/Nasdaq TRF"), which the Commission approved on June 30, 2006.<sup>6</sup> The text of the proposed rule change is available at the NASD, in the Commission's Public Reference Room, and at <http://www.nasd.com>.

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

In its filing with the Commission, the NASD 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 NASD 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 Commission approved the establishment of the NASD/NSX TRF<sup>7</sup> and the NASD/BSE TRF<sup>8</sup> on November 6, 2006, and December 13, 2006, respectively. The NASD/NSX TRF and NASD/BSE TRF provide members with additional mechanisms for reporting locked-in trades in exchange-listed securities executed otherwise than on an exchange.

Currently, the NASD/NSX TRF does not accept reports of trades on an "as/of" or next day (T+1) basis and the NASD/BSE TRF rules also do not contemplate the submission of "as/of" trade reports. The rules relating to the NASD/NSX TRF and the NASD/BSE TRF expressly provide that members must use an alternative electronic

<sup>6</sup> See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving File No. SR-NASD-2005-087).

<sup>7</sup> See Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006) (order approving File No. SR-NASD-2006-108). The NASD/NSX TRF commenced operation for the reporting of over-the-counter ("OTC") trades in Nasdaq-listed securities on November 27, 2006, and began accepting reports of OTC trades in non-Nasdaq exchange-listed securities on February 20, 2007.

<sup>8</sup> See Securities Exchange Act Release No. 54931 (December 13, 2006), 71 FR 76409 (December 20, 2006) (order approving File No. SR-NASD-2006-115). The NASD/BSE TRF will commence operation upon successful completion of system testing and certification (currently anticipated to be in the first quarter of 2007).

<sup>27</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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

<sup>5</sup> The NASD has asked the Commission to waive the 30-day operative delay provided in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>26</sup> 15 U.S.C. 78s(b)(2).