

Nasdaq IM-9216 and IM-11110 to correct typographical errors.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and with Section 6(b)(5) of the Act,⁹ in particular, in that it is designed 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that the proposed rule change conforms the Nasdaq Rules 6000, 9000, and 11000 Series of Nasdaq's rules to certain changes made to the corresponding rule series of the rules of NASD since approval of Nasdaq's rules by the Commission in January 2006 and corrects certain errors in the approved rules.

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.

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

Nasdaq has designated the foregoing rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder¹¹ 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.

Nasdaq has requested that the Commission waive the 30-day pre-operative period requirement for "non-controversial" proposals, based upon a representation that such waiver will allow Nasdaq to implement the rule changes, which have either recently been made effective as changes to NASD rules or are technical in nature, prior to the time when Nasdaq begins to operate as a national securities exchange. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day operative period will allow Nasdaq to implement these changes immediately so that they can be in place prior to the time Nasdaq begins to operate as a national securities exchange. Accordingly, the Commission has determined to waive the operative delay, and the proposed rule change has become effective upon filing with the Commission.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2006-022 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-2006-022. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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 Number SR-NASDAQ-2006-022 and should be submitted on or before August 25, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54231; File No. SR-NYSEArca-2006-19]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Trading of the Index-Linked Securities of Barclays Bank PLC Linked to the Performance of the GSCI® Total Return Index Pursuant to Unlisted Trading Privileges

July 27, 2006.

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 May 16, 2006, NYSE Arca, Inc. ("Exchange"),

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or "Corporation"), 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. On July 20, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and is approving the proposal, as amended, on an accelerated basis.

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

Through NYSE Arca Equities, the Exchange proposes to amend its rules governing NYSE Arca, L.L.C. (also referred to as the "NYSE Arca Marketplace"), the equities trading facility of NYSE Arca Equities. Pursuant to NYSE Arca Equities Rule 5.2(j)(6), the Exchange proposes to trade pursuant to unlisted trading privileges ("UTP") the Index-Linked Securities ("Securities") of Barclays Bank PLC ("Barclays"), which are linked to the performance of the GSCI® Total Return Index ("Index").

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

Pursuant to NYSE Arca Equities Rule 5.2(j)(6), the Exchange proposes to trade pursuant to UTP the Securities of Barclays, which are linked to the performance of the Index. Barclays intends to issue the Securities under the name "iPathSM Exchange-Traded Notes." A rule proposal for the original listing and trading of the Securities was

filed with the Commission by the New York Stock Exchange LLC ("NYSE")⁴ and approved by the Commission.⁵ In SR-NYSEArca-2006-17, the Exchange proposed new Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) to accommodate trading in the Securities.⁶

(a) *The Securities and the Index*

(i) *The Securities*

In August 2005, the Commission approved NYSE Arca Equities Rule 5.2(j)(6), which provides general standards for the listing and trading of "Index-Linked Securities." Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. As permitted in NYSE Arca Equities Rule 5.2(j)(6), the Exchange is submitting this rule proposal to the Commission pursuant to Section 19(b)(2) of the Act, to obtain Commission approval to trade the Securities pursuant to UTP.

A description of the Securities and the Index is set forth in the NYSE Proposal.⁸ The Securities are a series of medium-term debt securities of Barclays that provide for a cash payment at maturity or upon earlier exchange at the holder's option, based on the performance of the Index subject to the adjustments described below.

The Securities will not have a minimum principal amount that will be repaid and, accordingly, payment on the Securities prior to or at maturity may be less than the original issue price of the Securities. In fact, the value of the Index must increase for the investor to receive at least the \$50 principal amount per Security at maturity or upon exchange or redemption. If the value of the Index decreases or does not increase sufficiently to offset the investor fee,⁹

the investor will receive less, and possibly significantly less, than the \$50 principal amount per Security. In addition, holders of the Securities will not receive any interest payments from the Securities. The Securities will have a term of 30 years.

Holders who have not previously redeemed their Securities will receive a cash payment at maturity equal to the principal amount of their Securities times the index factor¹⁰ on the Final Valuation Date¹¹ minus the investor fee on the Final Valuation Date.

Prior to maturity, holders may, subject to certain restrictions,¹² redeem their Securities on any Redemption Date¹³ during the term of the Securities provided that they present at least 50,000 Securities for redemption, or they act through a broker or other financial intermediaries (such as a bank or other financial institution not required to register as a broker-dealer to engage in securities transactions) that are willing to bundle their Securities for redemption with other investors' Securities. If a holder chooses to redeem such holder's Securities, the holder will receive a cash payment on the applicable Redemption Date equal to the principal amount of such holder's Securities times the index factor on the applicable Valuation Date minus the investor fee on the applicable Valuation Date. To redeem their Securities, holders must instruct their broker or other person through whom they hold their Securities to follow certain

that day (or, if such day is not a trading day, the index factor on the immediately preceding trading day) divided by 365. The investor fee is the only fee holders will be charged in connection with their ownership of the Securities.

¹⁰ The "index factor" on any given day will be equal to the closing value of the Index on that day divided by the initial index level. The index factor on the Final Valuation Date will be equal to the final index level divided by the initial index level. The "initial index level" is the closing value of the Index on the date of issuance of the Securities (the "Trade Date") and the "final index level" is the closing value of the Index on the Final Valuation Date. Telephone conference between John Carey, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division, Commission, on July 14, 2006.

¹¹ The "Final Valuation Date" is the last Thursday before maturity of the Securities.

¹² Telephone conference between John Carey, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, on July 13, 2006.

¹³ A "Redemption Date" is the third business day following a Valuation Date (other than the Final Valuation Date). A "Valuation Date" is each Thursday from the first Thursday after issuance of the Securities until the last Thursday before the Final Valuation Date inclusive (or, if such date is not a trading day, the next succeeding trading day).

³ In Amendment No. 1, the Exchange clarified certain aspects of its proposal regarding trading rules and surveillance.

⁴ See Securities Exchange Act Release No. 53658 (April 14, 2006), 71 FR 21064 (April 24, 2006) (SR-NYSE-2006-20) (the "NYSE Proposal").

⁵ See Securities Exchange Act Release No. 53849 (May 22, 2006), 71 FR 30706 (May 30, 2006) (SR-NYSE-2006-20) (the "NYSE Order").

⁶ See Securities Exchange Act Release No. 54189 (July 21, 2006) (SR-NYSEArca-2006-17).

⁷ See Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63).

⁸ See *supra* note 4.

⁹ The investor fee is equal to 0.75% per year times the principal amount of a holder's Securities times the index factor, calculated on a daily basis in the following manner. The investor fee on the date of issuance of the Securities will equal zero. On each subsequent calendar day until maturity or early redemption, the investor fee will increase by an amount equal to 0.75% times the principal amount of a holder's Securities times the index factor on

procedures as described in the NYSE Proposal.¹⁴

If an event of default occurs and the maturity of the Securities is accelerated, Barclays will pay the default amount in respect of the principal of the Securities at maturity. More information regarding default procedures, including a quotation period and an objection period, is set forth in the NYSE Proposal.

(ii) *The Index*

The Index was established in May 1991 and is designed to be a diversified benchmark for physical commodities as an asset class. The Index reflects the excess returns that are potentially available through an unleveraged investment in the contracts comprising the GSCI® plus the Treasury Bill rate of interest that could be earned on funds committed to the trading of the underlying contracts.¹⁵ The value of the Index, on any given day, reflects: (i) The price levels of the contracts included in the GSCI® (which represents the value of the GSCI®; (ii) the “contract daily return,” which is the percentage change in the total dollar weight of the GSCI® from the previous day to the current day; and (iii) the Treasury Bill rate of interest that could be earned on funds committed to the trading of the underlying contracts.

The GSCI®, upon which the Index is based, is a proprietary index on a production-weighted basket of futures contracts on physical commodities traded on trading facilities in major industrialized countries. The value of the GSCI® has been normalized such that its hypothetical level on January 2, 1970 was 100. Futures contracts on the GSCI®, and options on such futures contracts, are currently listed for trading on the Chicago Mercantile Exchange. More information regarding the operation, calculation methodology, weighting, and historical performance of the Index is set forth in the NYSE Proposal.

¹⁴ If holders elect to redeem their Securities, Barclays may request that Barclays Capital Inc. (a broker-dealer) purchase the Securities for the cash amount that would otherwise have been payable by Barclays upon redemption. In this case, Barclays will remain obligated to redeem the Securities if Barclays Capital Inc. fails to purchase the Securities. Any Securities purchased by Barclays Capital Inc. may remain outstanding.

¹⁵ The Treasury Bill rate of interest used for purposes of calculating the index on any day is the 91-day auction high rate for U.S. Treasury Bills, as reported on Telerate page 56, or any successor page, on the most recent of the weekly auction dates prior to such day.

(b) *Dissemination and Availability of Information*

(i) *The Intraday Indicative Value*

According to the NYSE Proposal, an “Intraday Indicative Value” (or “IIV”) meant to approximate the intrinsic economic value of the Securities will be calculated and published via the facilities of the Consolidated Tape Association (“CTA”) at least every 15 seconds from 9:30 a.m. to 4 p.m. Eastern Time (“ET”) on each day on which the Securities are traded on the NYSE.¹⁶ Additionally, Barclays or an affiliate will calculate and publish the closing IIV of the Securities on each trading day at <http://www.ipathetn.com>. In connection with the Securities, the term “IIV” refers to the value at a given time determined based on the following equation: $IIV = \text{Principal Amount per Unit (\$50)} \times (\text{Current Index Level} \div \text{Initial Index Level}) - \text{Current Investor Fee}$.¹⁷

The IIV will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and 4 p.m. ET. The value of the Securities may accordingly be influenced by non-concurrent trading hours between the Exchange and the various futures exchanges on which the futures contracts based on the Index commodities are traded.

While the market for futures trading for each of the Index commodities is open, the IIV can be expected to closely approximate the redemption value of the Securities. However, during NYSE Arca Marketplace trading hours when the futures contracts have ceased trading, spreads and resulting premiums or discounts may widen, and therefore, increase the difference between the price of the Securities and their redemption value. The IIV should not be viewed as a real-time update of the redemption value.

(ii) *The Index*

According to the NYSE Proposal, the Index Sponsor makes the official calculations of the GSCI®. At present, this calculation is performed continuously and is reported on Reuters page GSCI® (or any successor or

¹⁶ The IIV calculation will be provided for reference purposes only.

¹⁷ The Current Index Level is the most recent published level of the Index as reported by the Index Sponsor, whereas the Initial Index Level is the Index level on the initial trade date for the Securities.

¹⁸ The Current Investor Fee is the most recent daily calculation of the investor fee with respect to the Securities, determined as described above (which, during any trading day, will be the investor fee determined on the preceding calendar day).

replacement page) and is updated on Reuters¹⁹ at least every 15 seconds²⁰ during business hours on each day on which the offices of the Index Sponsor in New York City are open for business (a “GSCI Business Day”).²¹ The settlement price for the Index is also reported on Reuters page GSCI® (or any successor or replacement page) on each GSCI Business Day between 4 p.m. and 6 p.m., New York time.

(c) *UTP Trading Criteria*

The Exchange will cease trading in the Securities if: (1) The listing market stops trading the Securities because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 or a halt because the IIV or the value of the underlying Index is no longer available on at least a 15-second delayed basis; or (2) the listing market delists the Securities.²² In the event that the Exchange is open for business on a day that is not a GSCI Business Day, the Exchange will not permit trading of the Securities on that day. Additionally, the Exchange may cease trading the Securities if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(d) *Trading Rules*

The Exchange deems the Securities to be equity securities, thus rendering trading in the Securities subject to the Exchange’s rules governing the trading

¹⁹ The intraday information with respect to the Index reported on Reuters is derived solely from trading prices on the principal trading markets for the various Index components. For example, the Index currently includes contracts traded on the Intercontinental Exchange (formerly known as the International Petroleum Exchange, which now operates its futures business through ICE Futures) and the London Metal Exchange (“LME”), both of which are located in London and consequently have trading days that end several hours before those of the U.S.-based markets on which the rest of the Index components are traded. During the portion of the New York trading day when ICE Futures and LME are closed, the last reported prices for Index Components traded on ICE Futures or LME are used to calculate the intraday Index information disseminated on Reuters.

²⁰ Telephone conference between John Carey, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division, Commission, on July 27, 2006 (clarifying that the Index value will be disseminated at least every 15 seconds, not every 3 minutes, during the time the Securities trade on the Exchange).

²¹ NYSE, as the listing exchange, will not permit trading in the Securities if certain information about the Index value is not disseminated on, for example, a date that is not a GSCI Business Day. In such event, NYSE Arca would not permit trading in the Securities. See *supra*.

²² E-mail between Janet Kissane, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division, Commission, dated July 31, 2006 (clarifying that the Securities will cease trading during all trading hours).

of equity securities. Trading in the Securities on the NYSE Arca Marketplace will occur from 4 a.m. to 8 p.m. ET in accordance with NYSE Arca Equities Rule 7.34(a).²³ The Exchange has appropriate rules to facilitate transactions in the Securities during all trading sessions. The minimum trading increment for Securities on the Exchange will be \$0.01.

Further, Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Securities to facilitate surveillance.²⁴ Commentary .01(b)–(c) to NYSE Arca Equities Rule 5.2(j)(6) will require that the ETP Holder acting as a registered Market Maker in the Securities provide the Exchange with necessary information relating to its trading in the Index components, the commodities underlying the Index components, or options, futures or options on futures on the Index, or any other derivatives (collectively, “derivative instruments”) based on the Index or based on any Index component or any physical commodity underlying an Index component. Commentary .01(d) to NYSE Arca Equities Rule 5.2(j)(6) will prohibit the ETP Holder acting as a registered Market Maker in the Securities from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component (including the Securities). In addition, Commentary .01(a) to NYSE Arca Equities Rule

5.2(j)(6) will prohibit the ETP Holder acting as a registered Market Maker in the Securities from being affiliated with a market maker in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Securities. Trading in the Securities may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Securities inadvisable. These may include: (1) The extent to which trading is not occurring in the Index components or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Securities will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange’s “circuit breaker” rule²⁵ or by the halt or suspension of the trading of the Index components.²⁶

The Securities will be deemed “Eligible Listed Securities,” as defined in NYSE Arca Equities Rule 7.55, for purposes of the Intermarket Trading System (“ITS”) Plan and therefore will be subject to the trade through provisions of NYSE Arca Equities Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

(e) Surveillance

The Exchange’s surveillance procedures will incorporate and rely upon existing Exchange surveillance procedures governing equities. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Securities in all trading sessions and to detect violations of Exchange rules, thereby deterring manipulation.

The Exchange’s current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of

all relevant parties for all relevant trading violations.

The Exchange is able to obtain information regarding trading in the Securities and the Index components through ETP Holders in connection with such ETP Holders’ proprietary or customer trades which they affect on any relevant market. In addition, with regard to the Index components, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the New York Mercantile Exchange (“NYMEX”), the Kansas City Board of Trade, ICE Futures, and the LME, pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current Index components are traded are members of the Intermarket Surveillance Group (“ISG”), and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange.

(f) Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Securities. Specifically, the Information Bulletin will discuss the following: (1) The procedures for redemptions of Securities (and that Securities are not individually redeemable but are redeemable only in aggregations of at least 50,000 Securities); (2) NYSE Arca Equities Rule 9.2(a),²⁷ which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Securities; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Securities prior to or

²³ During all NYSE Arca Equities trading sessions, the Exchange represents that if the official Index Sponsor calculates an updated Index value, then such value will be updated and disseminated at least every 15 seconds during such trading session, and always will be so during the Exchange’s core trading session (although during this session, the Exchange may rely on the listing exchange to monitor such calculation and dissemination). The Exchange represents that the official Index Sponsor calculates and disseminates the Index value from 8 a.m. to 4 p.m. ET. Because this product is not in continuous distribution, an IIV is not required to be disseminated at least every 15 seconds in all trading sessions; however, because of the weekly redemption process for this product, such dissemination of the IIV is required during the Exchange’s core trading session. The Exchange may rely on the listing market to monitor such dissemination of the IIV during the Exchange’s core trading session. Telephone conference between John Carey, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2006.

²⁴ See Securities Exchange Act Release No. 54189 (July 21, 2006) (SR–NYSEArca–2006–17).

²⁵ See NYSE Arca Equities Rule 7.12.

²⁶ See “UTP Trading Criteria” above for specific instances when the Exchange will cease trading the Securities.

²⁷ The Exchange recently amended NYSE Arca Equities Rule 9.2(a) (“Diligence as to Accounts”) to provide that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders should make reasonable efforts to obtain information concerning the customer’s financial status, tax status, investment objectives and any other information that they believe would be useful to make a recommendation. See Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR–PCX–2005–115).

concurrently with the confirmation of a transaction; and (5) trading information.

The Information Bulletin 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 Securities is based.

The Information Bulletin will also discuss terms of no-action or exemptive relief by the Commission staff in connection with the Securities under the Act.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is consistent with the requirements under Section 6(b)(5)²⁸ that an exchange have rules that are 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 facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

In addition, the Exchange believes that the proposal is consistent with Rule 12f-5 under the Act²⁹ because it deems the Securities to be equity securities, thus rendering the Securities subject to the Exchange's rules governing the trading of equity securities.³⁰

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 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, 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. Please include File Number SR-NYSEArca-2006-19 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-NYSEArca-2006-19. 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 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-NYSEArca-2006-19 and should be submitted on or before August 25, 2006.

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

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations

thereunder applicable to a national securities exchange.³¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,³² 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.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,³³ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.³⁴ The Commission notes that it previously approved the listing and trading of the Securities on the NYSE.³⁵ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,³⁶ 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. NYSE Arca Equities rules deem the Securities to be equity securities, thus trading in the Securities will be subject to the Exchange's rules governing the trading of equity securities and the specific rules set forth herein for this product class.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,³⁷ which sets forth Congress's 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.

In support of the portion of the proposed rule change regarding UTP of the Securities, the Exchange has made the following representations:

³¹ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³² 15 U.S.C. 78f(b)(5).

³³ 15 U.S.C. 78f(f).

³⁴ Section 12(a) of the Act, 15 U.S.C. 78f(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.

³⁵ See NYSE Order, *supra* note 5.

³⁶ 17 CFR 240.12f-5.

³⁷ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²⁸ 15 U.S.C. 78s(b)(5).

²⁹ 17 CFR 240.12f-5.

³⁰ Telephone conference between John Carey, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2006 (the Exchange requested that the Commission delete the word "existing" to clarify that the Securities will be subject to all applicable Exchange rules governing the trading of equity securities for the Securities).

1. NYSE Arca Equities has appropriate rules to facilitate transactions in this type of security in all trading sessions.

2. NYSE Arca Equities surveillance procedures are adequate to properly monitor the trading of the Securities on the Exchange.

3. NYSE Arca Equities will distribute an Information Bulletin to its members prior to the commencement of trading of the Securities on the Exchange that explains the terms, characteristics, and risks of trading such securities.

4. NYSE Arca Equities will require a member with a customer who purchases newly issued Securities on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Bulletin.

5. The Exchange will cease trading in the Securities if: (1) The primary market stops trading the securities because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because the updated IIV or Index value are not disseminated at least every 15 seconds; or (2) if such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable; or (3) the primary market delists the Securities.

This approval order is conditioned on NYSE Arca Equities' adherence to these representations.

The Commission finds good cause for approving this proposed rule change, as amended, 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 these Securities on the NYSE is consistent with the Act.³⁸ The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Securities.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (NYSEArca-2006-19), as amended, is hereby approved on an accelerated basis.³⁹

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁰

Nancy M. Morris,

Secretary.

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UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed priorities; request for public comment.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the Federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the Commission is seeking comment on possible priority policy issues for the amendment cycle ending May 1, 2007.

DATES: Public comment should be received on or before September 1, 2006.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2-500, South Lobby, Washington, DC 20002-8002, Attention: Public Affairs-Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for Federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The Commission provides this notice to identify tentative priorities for the amendment cycle ending May 1, 2007. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any of the tentative priorities by the statutory deadline of May 1, 2007. Accordingly, it

may be necessary to continue work on some of these issues beyond the amendment cycle ending on May 1, 2007.

As so prefaced, the Commission has identified the following tentative priorities:

(1) Implementation of crime legislation enacted during the 109th Congresses warranting a Commission response, including (A) the Stop Counterfeiting in Manufactured Goods Act, Pub. L. 109-181; (B) the USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. 109-177; (C) the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162; (D) the Trafficking Victims Protection Reauthorization of 2005, Pub. L. 109-164; (E) the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109-59; and (F) other legislation authorizing statutory penalties, creating new offenses, or pertaining to victims, that requires incorporation into the guidelines;

(2) Continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on appropriate responses to *United States v. Booker*, including any appropriate guideline changes in light of the Commission's 2006 report to Congress, *Final Report on the Impact of United States v. Booker on Federal Sentencing*, as well as its continued analysis of post-*Booker* data, case law, and other feedback, including reasons for departures and variances stated by sentencing courts;

(3) Continuation of its policy work regarding immigration offenses, specifically, offenses sentenced under 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) and 2L1.2 (Unlawfully Entering or Remaining in the United States) and implementation of any immigration legislation that may be enacted;

(4) Continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on cocaine sentencing policy, to possibly include a hearing on this issue and a reevaluation of the Commission's 2002 report to Congress, *Cocaine and Federal Sentencing Policy*;

(5) Consideration and possible development of guideline simplification options that might improve the operation of the sentencing guidelines;

(6) Continuation of its policy work, in light of the Commission's prior research on criminal history, to develop and consider possible options that might improve the operation of Chapter Four (Criminal History);

³⁸ See NYSE Order, *supra* note 5.

³⁹ 15 U.S.C. 78s(b)(2).

⁴⁰ 17 CFR 200.30-3(a)(12).