

by the dealer remained subject to all other NASD rules and the federal securities laws, including the anti-fraud provisions.

The MSRB believes that the approach NASD has taken with respect to investment companies is appropriate as well with respect to 529 plans and other municipal fund securities programs and has provided guidance to this effect in the proposed interpretive notice.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. By order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-MSRB-2006-09 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-MSRB-2006-09. 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 MSRB's offices. 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-MSRB-2006-09 and should be submitted on or before March 16, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-3091 Filed 2-22-07; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55300; File No. SR-NASDAQ-2007-002]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Trade the Shares of Certain Exchange-Traded Funds Based on Fixed Income Portfolios Pursuant to Unlisted Trading Privileges

February 15, 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 January 29, 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. On February 13, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change. This Order provides notice of the proposed rule change, as modified by Amendment No. 1, and approves the proposed rule

change, as amended, on an accelerated basis.

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

Nasdaq is proposing to trade shares (the "Shares") of: (1) The iShares Lehman TIPS Bond Fund; (2) the iShares Lehman Aggregate Bond Fund; (3) the iShares iBoxx \$ Investment Grade Corporate Bond Fund; (4) the iShares Lehman 20+ Year Treasury Bond Fund; (5) the iShares 7-10 Year Treasury Bond Fund; (6) the iShares Lehman 1-3 Year Treasury Bond Fund; (7) the iShares Lehman Short Treasury Bond Fund; (8) the iShares Lehman 3-7 Year Treasury Bond Fund; (9) the iShares Lehman 10-20 Year Treasury Bond Fund; (10) the iShares Lehman 1-3 Year Credit Bond Fund; (11) the iShares Lehman Intermediate Credit Bond Fund; (12) the iShares Lehman Credit Bond Fund; (13) the iShares Lehman Intermediate Government/Credit Bond Fund; and (14) the iShares Lehman Government/Credit Bond Fund (collectively, the "Funds") pursuant to unlisted trading privileges ("UTP"). The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and [nasdaq.complinet.com](http://nasdaq.complinet.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 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 pursuant to UTP the Shares of the Funds, which are exchange-traded funds ("ETFs") that invest in fixed income securities. Nasdaq represents that its current generic listing standards for ETFs do not extend to ETFs that invest in fixed income securities. The systems operated by Nasdaq and its affiliates currently trade Shares of the Funds on an over-the-counter basis as facilities of NASD.

<sup>24</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.

The iShares Lehman TIPS Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the inflation-protected sector of the U.S. Treasury market, as defined by the Lehman Brothers U.S. TIPS Index.<sup>3</sup> The Lehman Brothers U.S. TIPS Index measures the performance of inflation-protected public obligations of the U.S. Treasury, commonly known as "TIPS." The Commission previously approved the original listing and trading of shares of this Fund on the New York Stock Exchange, Inc. ("NYSE").<sup>4</sup>

The iShares Lehman Aggregate Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the total U.S. investment-grade bond market, as defined by the Lehman Brothers U.S. Aggregate Index. The Lehman Brothers U.S. Aggregate Index measures the performance of the total U.S. investment-grade bond market, which includes investment-grade U.S. Treasury bonds, government-related bonds, investment-grade corporate bonds, mortgage pass-through securities, commercial mortgage-backed securities, and asset-backed securities that are publicly offered for sale in the United States. The Commission previously approved the original listing and trading of shares of this Fund on the American Stock Exchange LLC ("Amex").<sup>5</sup>

The iShares iBoxx \$ Investment Grade Corporate Bond Fund (formerly the iShares GS \$ InvesTop Corporate Bond Fund) seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of a segment of the U.S. investment-grade corporate bond market, as defined by the iBoxx \$ Liquid Investment Grade Index (formerly the GS \$ InvesTop Index). The iBoxx \$ Liquid Investment Grade Index measures the performance of a fixed number of highly liquid, investment-grade corporate bonds. The Commission previously approved the original listing and trading of shares of this Fund on Amex.<sup>6</sup>

The iShares Lehman 20+ Year Treasury Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the long-term sector of the U.S. Treasury market, as defined by the Lehman Brothers 20+ Year U.S. Treasury Index. The Lehman Brothers 20+ Year Treasury Index measures the performance of public obligations of the U.S. Treasury that have a remaining maturity of 20 or more years. The Commission previously approved the original listing and trading of shares of this Fund on Amex.<sup>7</sup>

The iShares Lehman 7–10 Year Treasury Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the intermediate-term sector of the U.S. Treasury market, as defined by the Lehman Brothers 7–10 Year U.S. Treasury Index. The Lehman Brothers 7–10 Year Treasury Index measures the performance of public obligations of the U.S. Treasury that have a remaining maturity of greater than or equal to seven years and less than ten years. The Commission previously approved the original listing and trading of shares of this Fund on Amex.<sup>8</sup>

The iShares Lehman 1–3 Year Treasury Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the short-term sector of the U.S. Treasury market, as defined by the Lehman Brothers 1–3 Year U.S. Treasury Index. The Lehman Brothers 1–3 Year U.S. Treasury Index measures the performance of public obligations of the U.S. Treasury that have a remaining maturity of greater than or equal to one year and less than three years. The Commission previously approved the original listing and trading of shares of this Fund on Amex.<sup>9</sup>

The iShares Lehman Short Treasury Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the short-term sector of the U.S. Treasury market, as defined by the Lehman Brothers Short U.S. Treasury Index. The Lehman Brothers Short U.S. Treasury Index measures the performance of public obligations of the U.S. Treasury that have a remaining maturity of between one and 12 months. The Commission previously approved

the original listing and trading of shares of this Fund on NYSE.<sup>10</sup>

The iShares Lehman 3–7 Year Treasury Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the intermediate-term sector of the U.S. Treasury market, as defined by the Lehman Brothers 3–7 Year U.S. Treasury Index. The Lehman Brothers 3–7 Year U.S. Treasury Index measures the performance of public obligations of the U.S. Treasury that have a remaining maturity of greater than or equal to three years and less than seven years. The Commission previously approved the original listing and trading of shares of this Fund on NYSE.<sup>11</sup>

The iShares Lehman 10–20 Year Treasury Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the long-term sector of the U.S. Treasury market, as defined by the Lehman Brothers 10–20 Year U.S. Treasury Index. The Lehman Brothers 10–20 Year U.S. Treasury Index measures the performance of public obligations of the U.S. Treasury that have a remaining maturity of greater than or equal to ten years and less than 20 years. The Commission previously approved the original listing and trading of shares of this Fund on NYSE.<sup>12</sup>

The iShares Lehman 1–3 Year Credit Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the investment-grade credit sector of the U.S. bond market, as defined by the Lehman Brothers 1–3 Year U.S. Credit Index. The Lehman Brothers 1–3 Year U.S. Credit Index measures the performance of investment-grade corporate debt and sovereign, supranational, local authority, and non-U.S. agency bonds that have a remaining maturity of greater than or equal to one year and less than three years. The Commission previously approved the original listing and trading of shares of this Fund on NYSE.<sup>13</sup>

The iShares Lehman Intermediate Credit Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the investment-grade credit sector of the U.S. bond market, as defined by the Lehman Brothers Intermediate U.S. Credit Index. The

<sup>10</sup> See Securities Exchange Act Release No. 54916 (December 11, 2006), 71 FR 76008 (December 19, 2006) (SR–NYSE–2006–70).

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*

<sup>13</sup> See *id.*

<sup>3</sup> E-mail from John Yetter, Deputy General Counsel, Nasdaq, to Edward Cho, Special Counsel, Division of Market Regulation, Commission, on February 8, 2007 (correcting the name of the Lehman Brothers U.S. TIPS Index).

<sup>4</sup> See Securities Exchange Act Release No. 48881 (December 4, 2003), 68 FR 69739 (December 15, 2003) (SR–NYSE–2003–39).

<sup>5</sup> See Securities Exchange Act Release No. 48534 (September 24, 2003), 68 FR 56353 (September 30, 2003) (SR–Amex–2003–75).

<sup>6</sup> See Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (SR–Amex–2001–35).

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

Lehman Brothers Intermediate U.S. Credit Index measures the performance of investment-grade corporate debt and sovereign, supranational, local authority, and non-U.S. agency bonds that have a remaining maturity of greater than or equal to one year and less than ten years. The Commission previously approved the original listing and trading of shares of this Fund on NYSE.<sup>14</sup>

The iShares Lehman Credit Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the investment-grade credit sector of the U.S. bond market, as defined by the Lehman Brothers U.S. Credit Index. The Lehman Brothers U.S. Credit Index measures the performance of investment-grade corporate debt and sovereign, supranational, local authority, and non-U.S. agency bonds that have a remaining maturity of greater than or equal to one year. The Commission previously approved the original listing and trading of shares of this Fund on NYSE.<sup>15</sup>

The iShares Lehman Intermediate Government/Credit Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the investment-grade credit sector of the U.S. bond market and the total U.S. Treasury market, as defined by the Lehman Brothers Intermediate U.S. Government/Credit Index. The Lehman Brothers Intermediate U.S. Government/Credit Index measures the performance of U.S. dollar-denominated U.S. Treasury securities and government-related and investment-grade U.S. corporate securities that have a remaining maturity of greater than or equal to one year and less than ten years. The Commission previously approved the original listing and trading of shares of this Fund on NYSE.<sup>16</sup>

The iShares Lehman Government/Credit Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the U.S. government and investment-grade U.S. corporate securities of the U.S. bond market, as defined by the Lehman Brothers U.S. Government/Credit Index. The Lehman Brothers U.S. Government/Credit Index measures the performance of U.S. dollar-denominated U.S. Treasury securities and government-related and investment-grade U.S. corporate securities that have a remaining maturity of greater than or equal to one

year. The Commission previously approved the original listing and trading of shares of this Fund on NYSE.<sup>17</sup>

The foregoing underlying indexes on which the Funds are based are referred to herein collectively as the "Indexes." The exact composition and methodologies of each Index are described in detail in the filings pursuant to which NYSE and Amex sought to originally list and trade the Shares of the Funds.<sup>18</sup>

Quotations for and last sale information regarding the Fund Shares are disseminated through the Consolidated Tape System ("CTS"). On each business day, the list of names and amount of each security constituting the current Deposit Securities<sup>19</sup> and the Balancing Amount<sup>20</sup> effective as of the previous business day will be made available through the National Securities Clearing Corporation ("NSCC"). An amount per Share representing the sum of the estimated Balancing Amount effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per-Share basis (the Intraday Optimized Portfolio Value or "IOPV"), will be calculated by an independent third party, such as Bloomberg L.P., every 15 seconds during Nasdaq's regular trading hours and disseminated every 15 seconds through the CTS. Because NSCC does not disseminate information about the Portfolio Deposit immediately following the end of regular market hours, an updated IOPV cannot be calculated during Nasdaq's post-market trading session, 4:15 p.m. to 8 p.m. Eastern Time ("ET").

Nasdaq states that NYSE and Amex, as applicable, disseminate on a daily basis a variety of data with respect to each Fund by means of the Consolidated Tape Association/Consolidated Quotation High Speed Lines, including information with respect to recent NAV for each Fund, shares outstanding, and the estimated cash amount and total cash amount per Creation Unit

<sup>17</sup> See *id.*

<sup>18</sup> See *supra* notes 4, 5, 6, and 10.

<sup>19</sup> Deposit Securities are the designated portfolio of securities that correspond generally to the price and yield performance of the relevant Fund's Index to be deposited in-kind for the purchase of blocks of 50,000 Shares, each such block referred to as a "Creation Unit Aggregation."

<sup>20</sup> The Balancing Amount is an amount equal to the difference between the net asset value ("NAV") of the Fund and the total aggregate market value, per Creation Unit Aggregation, of the Deposit Securities. The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to as the "Portfolio Deposit," which represents the minimum initial and subsequent investment amount for a Creation Unit Aggregation.

Aggregation. In addition, the iShares Web site ([http://www.ishares.com/fund\\_info](http://www.ishares.com/fund_info)), which is publicly accessible at no charge, contains the following information, on a per-Share basis, for each Fund: (1) The prior business day's NAV; (2) the mid-point of the bid-ask price and a calculation of the premium or discount of such price against such NAV; and (3) data in chart format displaying the frequency distribution of discounts and premiums of the bid-ask price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

The value of each Index is calculated once each trading day and is available from major market data vendors. The NAV for each Fund is calculated and disseminated daily through a number of sources, including the Web sites of the original listing exchanges, as applicable, the iShares Web site, and CTS.

Nasdaq states that it will halt trading in the Shares of a Fund under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a trading halt include a regulatory halt by the original listing market. UTP trading in the Shares will also be governed by provisions of Nasdaq Rule 4120 relating to temporary interruptions in the calculation or wide dissemination of the IOPV or the value of the Index.<sup>21</sup> Additionally, the Exchange states that it may cease trading the Shares if other unusual conditions or circumstances exist, which, in the opinion of the Exchange, make further dealings on the Exchange detrimental to the maintenance of a fair and orderly market. The Exchange represents that it would follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(b).

Nasdaq deems the Shares of the Funds to be equity securities, and therefore, trading in the Shares will be subject to Nasdaq's existing rules governing the trading of equity securities. The primary trading hours for the Shares on Nasdaq will be 9:30 a.m. to 4:15 p.m. ET. The Shares will also be traded on Nasdaq in a post-market session from 4:15 p.m. to 8 p.m. ET.<sup>22</sup> Nasdaq represents that it has in place appropriate rules to facilitate

<sup>21</sup> See Securities Exchange Act Release No. 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR-NASDAQ-2006-050).

<sup>22</sup> Nasdaq relies on the listing market to monitor dissemination of the IOPV during Nasdaq's regular market hours (9:30 a.m. to 4:15 p.m. ET). Currently, updated Index values are not calculated during Nasdaq's post-market session; however, if in the future such values are calculated, Nasdaq would not trade the Fund Shares unless such official Index values were widely disseminated.

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

transactions in the Shares during all trading sessions.

In connection with the trading of the Shares, Nasdaq will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares, as well as the requirements of Nasdaq Rule 2310, which requires Nasdaq members to determine that a particular security is suitable for a customer before recommending a transaction in it. Nasdaq also would require its members to deliver a prospectus or product description to investors purchasing the Shares prior to or concurrently with a transaction in the Shares.

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Shares on Nasdaq. Trading of the Shares through NASD facilities operated by Nasdaq is currently subject to NASD's surveillance procedures for equity securities in general and ETFs in particular. After Nasdaq begins to operate as an exchange with respect to securities not listed on Nasdaq, NASD, on behalf of Nasdaq, will continue to surveil Nasdaq trading, including Nasdaq trading of the Shares. Nasdaq's transition to exchange status will not result in any change in the surveillance process with respect to the Shares.<sup>23</sup>

## 2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act<sup>24</sup> in general and Section 6(b)(5) of the Act<sup>25</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. In addition, the proposal is consistent with Rule 12f-5 under the Act<sup>26</sup> because Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange'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 result in

<sup>23</sup> Surveillance of all trading on NASD facilities operated by Nasdaq is currently conducted by NASD. Following Nasdaq's transition to exchange status, NASD will continue to surveil trading, pursuant to a regulatory services agreement. Nasdaq is responsible for NASD's performance under this regulatory services agreement.

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 17 CFR 240.12f-5.

any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### 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-2007-002 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-2007-002. 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 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-2007-002 and should be submitted on or before March 16, 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, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>27</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>28</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 Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,<sup>29</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>30</sup> The Commission notes that it previously approved the listing and trading of the Shares on NYSE and Amex, as applicable.<sup>31</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>32</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 Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules

<sup>27</sup> 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).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> 15 U.S.C. 78l(f).

<sup>30</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>31</sup> See *supra* notes 4, 5, 6, and 10.

<sup>32</sup> 17 CFR 240.12f-5.

governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>33</sup> 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. Quotations for and last sale information regarding the Fund Shares are disseminated through CTS. Furthermore, an IOPV for each Fund, updated to reflect changes in the amount of the Portfolio Deposit, on a per-Share basis, is calculated and published by a third-party service provider through CTS on a 15-second delayed basis during Nasdaq's regular trading hours. Major market data vendors calculate and disseminate once each trading day the value of each Index and the NAV for each Fund. Amex and NYSE, as applicable, disseminate information with respect to NAV and cash amounts per Creation Unit Aggregation, and the iShares Web site supplies additional trading data for the Shares, both current and historical. If the listing market halts trading in the Shares, or the IOPV or any Index value is not being calculated or disseminated, the Exchange would halt trading in the Shares.

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares 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 address any concerns associated with the trading of the Shares on a UTP basis.

(2) The Exchange would inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares, including suitability recommendation requirements.

(3) The Exchange would require its members to deliver a prospectus or product description to investors purchasing Shares prior to or concurrently with a transaction in such Shares and will note this prospectus delivery requirement in the Information Circular.

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

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 above, the Commission previously found that the listing and trading of the Shares on NYSE and Amex, as applicable, is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on the Exchange pursuant to UTP. Furthermore, accelerated approval of this proposal will facilitate Nasdaq's ability to continue trading certain non-Nasdaq-listed ETFs as Nasdaq becomes an exchange with respect to non-Nasdaq-listed securities, where there appears to be no regulatory concerns about such trading. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such Shares.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> that the proposed rule change (SR-NASDAQ-2007-002), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>35</sup>

**Florence E. Harmon**,  
*Deputy Secretary*.

[FR Doc. E7-3076 Filed 2-22-07; 8:45 am]  
**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55284; File No. SR-NASDAQ-2007-003]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for Nasdaq Members Using the Nasdaq Market Center

February 13, 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 January 29, 2007, The NASDAQ Stock Market LLC ("Nasdaq") 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 substantially by Nasdaq. Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, Nasdaq has designated the proposed rule change as establishing or changing a member due, fee, or other charge, which renders the proposed rule change effective upon filing with the Commission. 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

Nasdaq proposes to modify the pricing for Nasdaq members using the Nasdaq Market Center ("Center"). Nasdaq will implement this proposed rule change on February 1, 2007. The text of the proposed rule change is available at Nasdaq, [www.nasdaq.com](http://www.nasdaq.com), and the Commission's Public Reference Room.<sup>5</sup>

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change 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. Nasdaq 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

This proposed rule change modifies the pricing schedule for trading securities through the Center. In addition to modifying the level of certain fees, the filing also adds language reflecting the fees to be charged for trading non-Nasdaq securities through the Center. Nasdaq anticipates that such trading will begin on February 12, 2007. The fee schedule reflects the volume of a member's use of the Center and also the ITS/CAES and Inet systems operated by Nasdaq and its

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

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

<sup>5</sup> Changes to the proposed rule text are marked to the rule text that appears in the electronic Nasdaq Manual found at [nasdaq.complinet.com/nasdaq/display/index.html](http://nasdaq.complinet.com/nasdaq/display/index.html).

<sup>34</sup> 15 U.S.C. 78s(b)(2).

<sup>35</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>33</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).