

Shares. Applicants state that, while not intended as a substitute for a Prospectus, the Product Description will contain information about Shares that is tailored to meet the needs of investors purchasing Shares in the secondary market. The Product Description will prominently disclose that the Indexes are created and sponsored by an affiliated person of the Advisor.

*Sections 17(a)(1) and (2) of the Act*

10. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, and any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities.

11. Applicants request an exemption from section 17(a) to the extent necessary to permit (a) persons who are affiliated persons of a Fund solely by virtue of holding with the power to vote 5% or more, or more than 25%, of the Shares of a Fund ("First-Tier Affiliates") and (b) affiliated persons of First-Tier Affiliates who are not otherwise affiliated with the Fund, and persons who are affiliated persons of a Fund solely by virtue of holding with the power to vote 5% or more, or more than 25%, of the outstanding voting securities of other registered investment companies (or series thereof) advised by the Advisor ("Second-Tier Affiliates") to purchase and redeem Creation Units through in-kind purchases and sales of securities. Applicants contend that no useful purpose would be served by prohibiting the First- and Second-Tier Affiliates from purchasing or redeeming Creation Units through in-kind transactions. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as the Portfolio Securities. Therefore, applicants state, the in-kind purchases and redemptions for which relief is requested will afford no opportunity for the affiliated persons of a Fund, or the affiliated persons of such affiliated persons, described above, to effect a transaction detrimental to

other holders of Shares. Applicants also believe that these in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

**Applicants' Conditions**

Applicants agree that any order granting the requested order will be subject to the following conditions:

1. Applicants will not register a Future Fund by means of filing a post-effective amendment to the Corporation's registration statement or by any other means, unless either (a) Applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or (b) the Future Fund will be listed on an Exchange without the need for a filing pursuant to rule 19b-4 under the Exchange Act.

2. Each Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the Funds and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits of section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the Fund regarding the terms of the investment.

3. As long as the Corporation operates in reliance on the requested order, the Shares will be listed on an Exchange.

4. Neither the Corporation nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

5. The Web site maintained for the Corporation, which is and will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) The prior Business Day's NAV and the Bid/Ask Price and a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the

NAV against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Fund will state that the website for the Fund has information about the premiums and discounts at which the Shares have traded.

6. The Prospectus and annual report for each Fund will also include: (a) The information listed in condition 5(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Fund), (i) the cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Underlying Index.

7. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in Shares to deliver a Product Description to purchasers of Shares.

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

**Nancy M. Morris,**  
*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54747; File No. SR-BSE-2006-51]

**Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Exchange Fees and Charges**

November 14, 2006.

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 October 31, 2006, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with

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

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

the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the BSE. On November 13, 2006, the BSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The BSE has designated this proposal as one changing a due, fee, or other charge under Section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

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

The Exchange proposes to amend the existing BSE fee schedules to reflect a new Designated Examining Authority ("DEA") fee to be charged to Members for whom the BSE is the primary DEA. The text of the proposed rule change is available on the Exchange's Web site (<http://www.bostonstock.com>) and at the Commission's Public Reference Room. Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deletions are [bracketed].

\* \* \* \* \*

### MEMBERSHIP AND OTHER FEES

#### (1) Membership

Membership Dues—\$ 1,000 per membership per quarter

Clearing Corporation Deposit—\$ 6,000 (refundable)

Account Maintenance—\$200 per month

SRO Fee—\$100 per month

DEA Fee—\$ [600]2,085 per month for firms where the BSE is the primary DEA, \$400 per month for firms where the BSE is not the primary DEA

BSE Rules and Guides—CCH annual subscription rate

Transfer of Membership—\$500 for intra-firm or inter-firm

Membership Lease Fee—1% per month of last consummated membership (for seats leased from BSE Treasury only)—sale, billed quarterly

\* \* \* \* \*

<sup>3</sup> In Amendment No. 1, the Exchange revised the proposed rule text to correct inadvertent underlining and add additional clarifying language to the discussion of the proposed rule change.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

### 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 BSE included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received regarding the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The purpose of this filing is to amend the existing BSE fee schedules to reflect the new DEA fee to be charged to Members for whom the BSE is the primary DEA. The BSE has entered into an agreement (the "Agreement") with the NASD whereby the NASD has agreed to provide services to the BSE in support of the BSE's exercise of its regulatory authority as a self-regulatory organization, or "SRO," as that term is defined in Section 3(a)(26) of the Act.<sup>6</sup> The Agreement does not allocate regulatory responsibilities pursuant to Rule 17d-2 under the Act, which responsibilities will remain with the BSE. In accordance with the Agreement, the NASD shall perform certain services for Member firms for whom the BSE is the DEA.

The BSE will charge the Member firms for whom the BSE is the primary DEA approximately \$25,000 annually to provide the necessary services for each BSE Member for whom the BSE is the primary DEA. The \$25,000 fee will be charged on a monthly basis over a twelve month time period. The BSE proposes amending its existing fee schedule to increase the DEA fee for Members for whom the BSE is the primary DEA from \$600.00 per month to \$2085.00 per month. The increase in the DEA fee is necessary in order to enable the BSE to properly carry out its regulatory responsibilities. The DEA fee for Members for whom the BSE is the primary DEA is essentially a pass through of the \$25,000 annual fee charged by the NASD to the BSE in connection with the services the NASD will provide in support of the BSE's exercise of its regulatory authority.

<sup>6</sup> 15 U.S.C. 78c(a)(26).

##### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the requirements of Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges and is designed to promote just and equitable principles of trade, and to protect investors and the public interest in that it is designed 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>8</sup>

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

The Exchange does not believe that the proposed rule change, as amended, 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

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

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

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(2) thereunder,<sup>10</sup> because it establishes or changes a due, fee or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, as amended, 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

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (b)(5).

<sup>8</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on November 13, 2006, the date on which the BSE filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2006-51 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-BSE-2006-51. 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 BSE. 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-BSE-2006-51 and should be submitted on or before December 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54752; File No. SR-NASDAQ-2006-040]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto, To Modify Certain Fees for Listing on the Nasdaq Stock Market and To Make Available Products and Services Intended To Assist Companies With Their Disclosure and Regulatory Obligations, Shareholder Communications, and Other Corporate Objectives

November 14, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 2, 2006, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On October 30, 2006, Nasdaq filed Amendment No. 1. Nasdaq filed Amendment No. 2 on October 31, 2006. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to: (i) Modify annual fees for Nasdaq Global Market and Nasdaq Capital Market issuers; (ii) modify entry fees for Nasdaq Capital Market issuers; (iii) modify the listing of additional shares ("LAS") fee for domestic issuers and establish an LAS fee for foreign issuers; (iv) modify fees for issuers seeking written interpretations of Nasdaq's listing rules; and (v) adopt other fee changes related to companies listing on and transferring between Nasdaq markets. The text of the proposed rule change is available at Nasdaq, at the Commission's Public

Reference Room, and at [www.nasdaq.com](http://www.nasdaq.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, 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

Nasdaq proposes several modifications to its listing and other issuer fees as set forth below.

###### (i) Capital Market Entry Fee Changes

Nasdaq proposes to modify the entry fees payable by issuers listing on the Nasdaq Capital Market.<sup>3</sup> This fee is assessed on the date of entry and is calculated based on total shares outstanding. Currently, the minimum entry fee payable by a Nasdaq Capital Market issuer is \$25,000 for listing up to five million shares of securities and the maximum fee is \$50,000 for listing over 15 million shares. Pursuant to the proposed rule change, the minimum entry fee would increase to \$50,000 for an issuer listing up to 15 million shares and the maximum fee would increase to \$75,000 for an issuer listing over 15 million shares. In determining these fees, Nasdaq considered the fees charged by other markets and notes that the proposed Capital Market entry fees remain substantially below those of the New York Stock Exchange ("NYSE") and NYSE Arca, and, are comparable to the fees charged by the American Stock Exchange ("Amex").<sup>4</sup> Nasdaq also considered the time and effort that its staff devotes to the review and consideration of the typical Capital Market application. Finally, Nasdaq considered recent enhancements to its trading markets that facilitate initial public offerings, such as the Nasdaq IPO

<sup>3</sup> Nasdaq entry fees for Capital Market issuers were last increased in 2003. See Securities Exchange Act Release No. 47111 (December 31, 2002), 68 FR 822 (January 7, 2003) (SR-NASD-2002-183).

<sup>4</sup> The proposed Capital Market entry fees range from \$15,000 below to \$5,000 higher than the comparable Amex fee.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>27</sup> 17 CFR 240.19b-4.