SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55269; File No. SR-NASDAQ-2006-050)

February 9, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendment No. 3 Thereto Adopting Generic Listing Standards for Exchange-Traded Funds Based on International or Global Indexes or Indexes Described in Exchange Rules Previously Approved by the Commission as Underlying Benchmarks for Derivative Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 28, 2006, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. On November 28, 2006, Nasdaq filed Amendment No. 1 to the proposal. On January 29, 2007, Nasdaq filed Amendment No. 2 to the proposal. On February 9, 2007, Nasdaq filed Amendment No. 3 to the proposal. This order provides notice of the proposal, as amended, and approves the proposal on an accelerated basis.

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

Nasdaq proposes to revise its listing standards to include generic listing standards for series of portfolio depository receipts ("PDRs") and index fund shares ("IFSs") (PDRs and IFSs together referred to as "exchange-traded funds" or "ETFs") that are based on international or global indexes or on indexes described in exchange rules that have been previously approved by the Commission for the trading of ETFs or other

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

specified index-based securities. The text of the proposed rule change is available at Nasdaq, from the Commission's Public Reference Room, and on Nasdaq's Web site (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 III 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 to revise its listing standards to include generic listing standards for series of PDRs and IFSs that are based on international or global indexes or on indexes described in rules previously approved by the Commission for the trading of ETFs or other specified index-based securities.

This proposal would enable Nasdaq to list and trade ETFs pursuant to Rule 19b-4(e) under the Exchange Act.[3] Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the trading rules of the SRO procedures and listing standards for the product class that would include

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[3] 17 CFR 240.19b-4(e).

the new derivatives securities product, and the SRO has a surveillance program for the product class.[4]

Background

Exchange-Traded Funds

Currently, Nasdaq Rule 4420(i) allows for the listing and trading on Nasdaq of PDRs. PDRs represent interests in a unit investment trust registered under the Investment Company Act of 1940[5] ("1940 Act") that holds the securities that comprise an index or portfolio. Nasdaq Rule 4420(j) provides standards for listing IFSs, which are securities issued by an open-end management investment company registered under the 1940 Act and based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index. Pursuant to these rules, PDRs and IFSs, eligible for listing on Nasdaq, must be issued in a specified aggregate minimum number in return for a deposit of specified securities and/or a cash amount, with a value equal to the next determined net asset value ("NAV"). When aggregated in the same specified minimum number, PDRs or IFSs must be redeemed by the issuer for the securities and/or cash, with a value equal to the next determined NAV. The NAV is calculated once a day after the close of the regular trading day.

To meet the investment objective of providing investment returns that correspond to the price and the dividend and yield performance of the underlying index, an ETF may use a "replication" strategy or a "representative sampling" strategy with respect to the

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4 When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after it begins trading the new derivative securities products. See 17 CFR 240.19b-4(e)(2)(ii).

5 15 U.S.C. 80a.

ETF portfolio.[6] An ETF using a replication strategy will invest in each stock of the underlying index in about the same proportion as that stock is represented in the index itself. An ETF using a representative sampling strategy will generally invest in a significant number but not all of the component securities of the underlying index, and will hold stocks that, in the aggregate, are intended to approximate the full index in terms of key characteristics, such as price/earnings ratio, earnings growth, and dividend yield. In addition, an ETF portfolio may be adjusted in accordance with changes in the composition of the underlying index or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code.

Generic Listing Standards for Exchange-Traded Funds

Nasdaq currently does not have generic listing standards for ETFs that are based on international or global indexes or on previously approved indexes, but systems operated by Nasdaq and its affiliates currently trade such ETFs on an over-the-counter basis as facilities of NASD. Nasdaq proposes that after Nasdaq begins to operate as an exchange for trading securities not listed on Nasdaq, it would continue trading such ETFs pursuant to unlisted trading privileges ("UTP") in much the same manner as they are being traded currently. Nasdaq also proposes to makes its facilities available for listing these ETFs.

The Commission recently approved generic listing standards of the American Stock Exchange pursuant to Rule 19b-4(e) under the Exchange Act for ETFs based on

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6 In either case, an ETF, by its terms, may be considered invested in the securities of the underlying index to the extent the ETF invests in sponsored American Depository Receipts ("ADRs"), Global Depository Receipts ("GDRs"), or European Depository Receipts ("EDRs") that trade on exchanges with last-sale reporting representing securities in the underlying index.

international or global indexes, as well as on indexes described in exchange rule changes that have been previously approved by the Commission under Section 19(b)(2) of the Exchange Act for the trading of ETFs or other index-based securities. Nasdaq believes that approval of its comparable generic listing standards and applying Rule 19b-4(e) should fulfill the intended objective of that rule by allowing those ETFs that currently trade on Nasdaq systems to continue trading on Nasdaq as an exchange, without the need for the public comment period and Commission approval. The proposed rules have the potential to reduce the time frame for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular ETF to comply with the proposed generic listing standards under Rule 19b-4(e) would not, however, preclude Nasdaq from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list a particular ETF.

Requirements for Listing and Trading ETFs Based on International and Global Indexes or Previously Approved Indexes

ETFs that are listed pursuant to the proposed generic listing standards or that are traded UTP would be traded, in all other respects, under Nasdaq's existing trading rules and procedures that apply to ETFs and would be covered under Nasdaq's surveillance program for ETFs. To list a PDR or an IFS pursuant to the proposed generic listing standards for international and global indexes, the index underlying the PDR or IFS must satisfy all the conditions contained in the proposed amendments to Rule 4420(i) (for PDRs) or Rule 4420(j) (for IFSs). As with the existing generic standards for ETFs based on domestic indexes, these generic listing standards are intended to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio. While the standards in this proposal are based on the standards contained in the current generic listing standards for ETFs based on domestic indexes, they have been adapted as appropriate to apply to international and global indexes.

As proposed, the definition section of each of Rule 4420(i) and (j) would be revised to include definitions of U.S. Component Stock and Non-U.S. Component Stock. These new definitions would provide the basis for the standards for indexes with either domestic or international stocks, or a combination of both. A "Non-U.S. Component Stock" would mean an equity security: (1) that is not registered under Section 12(b) or 12(g) of the Exchange Act;[7] (2) that is issued by an entity that is not organized, domiciled, or incorporated in the United States; and (3) that is issued by an entity that is an operating company (including a real estate investment trust (REIT) or income trust, but excluding an investment trust, unit trust, mutual fund, or derivative). This definition is designed to create a category of component stocks that are issued by companies that are not based in the United States, are not subject to oversight through Commission registration, and would include sponsored GDRs and EDRs. A "U.S. Component Stock" would mean an equity security that is registered under Section 12(b) or 12(g) of the Exchange Act or an ADR, the underlying equity security of which is registered under Section 12(b) or 12(g) of the Exchange Act. An ADR with an underlying equity security that is registered pursuant to the Exchange Act is considered a U.S. Component Stock because the issuer of that security is subject to Commission jurisdiction and must comply with Commission rules.

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7 15 U.S.C. 78l(b) or (g).

Nasdaq proposes that, to list a PDR or an IFS based on an international or global index or portfolio pursuant to the generic listing standards, such index or portfolio must meet the following criteria:

- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least $100 million;

- Component stocks representing at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares;

- The most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio;

- The index or portfolio shall include a minimum of 20 component stocks; and

- Each U.S. Component Stock in the index or portfolio shall be listed on a national securities exchange and an NMS stock as defined in Rule 600 of Regulation NMS under the Exchange Act, and each Non-U.S. Component Stock in the index or portfolio shall be listed on an exchange that has last-sale reporting.

Nasdaq believes that these proposed standards are reasonable for international and global indexes, and, when applied in conjunction with the other listing requirements, would result in the listing and trading on Nasdaq of ETFs that are sufficiently broad-based in scope and not readily susceptible to manipulation. Nasdaq also believes that the proposed standards would result in ETFs that are adequately diversified in weighting for any single security or small group of securities to significantly reduce concerns that trading in an ETF based on an international or global index could become a surrogate for the trading of securities not registered in the United States.

Nasdaq further notes that, while these standards are similar to those for indexes that include only U.S. Component Stocks, they differ in certain important respects and are generally more restrictive, reflecting greater concerns over portfolio diversification with respect to ETFs investing in components that are not individually registered with the Commission. First, in the proposed standards, component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least $100 million, compared to a minimum market value of at least $75 million for indexes with only U.S. Component Stocks.[8] Second, in the proposed standards, the most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, in contrast to a 30% standard for an index or portfolio comprised of only U.S. Component Stocks. Third, in the proposed standards, the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio, compared to a 65% standard for indexes comprised of only U.S. Component Stocks. Fourth, the minimum number of stocks in the proposed standards is 20, in contrast to a minimum of 13 in the standards for an index or portfolio with only U.S. Component Stocks. Finally, the proposed standards require that each Non-U.S. Component Stock included in the index or portfolio be listed and traded on an exchange that has last-sale reporting.

Nasdaq also proposes to modify Rules 4420(i) and (j) to require that the index value for an ETF listed pursuant to the proposed standards for international and global indexes be widely disseminated by one or more major market data vendors at least every 60 seconds during the time when the ETF shares trade on Nasdaq. If the index value does not change during some or all of the period when trading is occurring on Nasdaq, the last official calculated index value must remain available throughout Nasdaq's trading

[8] Market value is calculated by multiplying the total shares outstanding by the price per share of the component stock.

hours. In contrast, the index value for an ETF listed pursuant to the existing standards for domestic indexes must be disseminated at least every 15 seconds during the trading day. This modification reflects limitations, in some instances, on the frequency of intra-day trading information with respect to Non-U.S. Component Stocks and that, in many cases, trading hours for overseas markets overlap only in part, or not at all, with Nasdaq's trading hours.

In addition, Rules 4420(i) and (j) would be modified to define the term "Intraday Indicative Value" ("IIV") as the estimate of the value of a share of each ETF that is updated at least every 15 seconds during regular market hours and during any pre-market trading session for the ETF.[9] Nasdaq also proposes to clarify in these rules that the IIV would be updated at least every 15 seconds during regular market hours and during any pre-market trading session for the ETF to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. If the IIV does not change during some or all of the period when trading is occurring on Nasdaq, then the last official calculated IIV must remain available throughout Nasdaq's trading hours.

Nasdaq is proposing that it may designate an ETF for trading during its pre-market session and/or its post-market session as long as the index value and IIV dissemination requirements of Nasdaq Rules 4420(i)(3)(B)(iii) and 4420(i)(3)(C) and 4420(j)(3)(B)(iii) and 4420(j)(3)(C) are met. If there is no overlap with the trading hours of the primary market trading the underlying components of an ETF, Nasdaq may designate the ETF for pre-market trading as long as the last official calculated IIV

9 Nasdaq's regular market hours are 9:30 a.m. to 4:00 p.m. or 4:15 p.m. Eastern Time. Its pre-market session begins at 7:00 a.m. Eastern Time, and its post-market session ends at 8:00 p.m. Eastern Time.

remains available. Although the IIV does not need to be calculated during Nasdaq's current post-market session, the last official calculated IIV must also remain available during such post-market trading session.

Nasdaq is also proposing to add provisions regarding the creation and redemption process for ETFs and compliance with federal securities laws for ETFs listed pursuant to the new generic listing standards. These new provisions would require that the statutory prospectus or the application for exemption from provisions of the 1940 Act for the ETF being listed pursuant to these new standards must state that the ETF must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

Nasdaq also proposes to include, in the generic standards for the listing of PDRs and IFSs, indexes that have been approved by the Commission in connection with the listing of options, PDRs, IFSs, index-linked exchangeable notes, or index-linked securities. Nasdaq believes that the application of that standard to ETFs is appropriate because the underlying index would have been subject to detailed and specific Commission review in the context of the approval of listing of those other derivatives. This new generic standard would be limited to stock indexes and would require that each component stock be either: (1) a U.S. Component Stock that is listed on a national securities exchange and is an NMS stock as defined in Rule 600 of Regulation NMS; or (2) a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting.

Nasdaq represents that its surveillance procedures are adequate to properly monitor the trading of the PDRs and IFSs that would be listed pursuant to the proposed new listing standards or traded on a UTP basis. Specifically, Nasdaq would rely on its existing surveillance procedures governing PDRs and IFSs. Nasdaq has a general policy prohibiting the distribution of material, non-public information by its employees. It should also be noted that, as provided by existing Nasdaq Rule 4420, Nasdaq would commence delisting proceedings for an ETF if the value of the underlying index or portfolio is no longer calculated or available.

Nasdaq also proposes to modify the initial and continued listing standards relating to disseminated information relating to ETFs to formalize in the rules existing best practices for providing equal access to material information about the value of ETFs. Prior to approving an ETF for listing, Nasdaq would obtain a representation from the ETF issuer that the NAV per share would be calculated daily and made available to all market participants at the same time. With regard to trading halts, the proposed rules specifically set out that if the IIV or the index value applicable to an ETF that Nasdaq lists is not being disseminated as required, Nasdaq may halt trading during the day in which the interruption to the dissemination of the IIV or the index value occurs. If the interruption to the dissemination of the IIV or the index value persists past the trading day in which it occurred, Nasdaq would halt trading no later than the beginning of the trading day following the interruption. The rule change would also include language providing that Nasdaq has discretion to halt trading in a series of PDRs or IFSs based on a consideration of the following factors: (1) trading in securities comprising the underlying index applicable to that series has been halted in the primary market(s); (2)

the extent to which trading has ceased in securities underlying the index; or (3) the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.[10]

With respect to PDRs, IFSs, and other "Derivative Securities Products"[11] that Nasdaq trades on a UTP basis, Nasdaq is adopting a new trade halt provision to reflect the scope of Nasdaq's deference to trading halts called by the listing market when a "Required Value" relating to the product is not being disseminated. The rule would define Required Value as: (1) the value of any index underlying a Derivative Securities Product; and (2) the indicative optimized portfolio value, intraday indicative value, or other comparable estimate of the value of a share of a Derivative Securities Product updated regularly during the trading day.

If a Derivative Securities Product begins trading on Nasdaq in its Pre-Market Session[12] and subsequently a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value, Nasdaq may continue to trade the

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10 Nasdaq notes that the new language is reflective of Nasdaq's existing policies with regard to trading halts of ETFs listed on Nasdaq, as discussed in the predecessor NASD rule change to establish listing standards for ETFs. In particular, Nasdaq's general policy has been to halt trading in an ETF listed on Nasdaq when securities accounting for 20% or more of the value of the underlying index are halted or suspended. See Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002) (SR-NASD-2002-45).

11 The term "Derivative Securities Product" is defined to include a series of PDRs, IFSs, or Trust Issued Receipts (as defined in Nasdaq Rule 4420), a series of Commodity-Based Trust Shares (as defined in Nasdaq Rule 4630), securities representing interests in unit investment trusts, investment companies, or commodity pools, or securities representing interests in partnerships that invest in any combination of futures contracts, options on futures contracts, forward contracts, commodities, and/or securities.

12 The rule defines the "Pre-Market Session" as the trading session for that begins at 7:00 a.m. and continues until 9:30 a.m. Eastern Time.

Derivative Securities Product for the remainder of the Pre-Market Session. During Nasdaq's Regular Market Session,[13] if a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value with respect to a Derivative Securities Product that Nasdaq trades pursuant to UTP, Nasdaq, upon notification by the listing market of a halt due to such temporary interruption, also shall immediately halt trading in the Derivative Securities Product on its market.

If an applicable Required Value continues not to be calculated or widely disseminated after the close of the Regular Market Session, Nasdaq may trade the Derivative Securities Product in its Post-Market Session[14] only if the listing market traded the Derivative Securities Product until the close of its regular trading session without a halt. If an applicable Required Value continues not to be calculated or widely disseminated as of the beginning of the Pre-Market Session on the next trading day, Nasdaq shall not commence trading of the Derivative Securities Product in the pre-market session that day. If an interruption in the calculation or wide dissemination of a Required Value continues, Nasdaq may resume trading in the Derivative Securities Product only if calculation and wide dissemination of the applicable Required Value resumes or trading in the Derivative Securities Product resumes in the listing market.

Nasdaq is also amending Rule 4420 to stipulate that, as provided by Commission Rule 12f-5,[15] Nasdaq may extend unlisted trading privileges to any security, such as

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[13] The rule defines the "Regular Market Session" as the trading session that runs from 9:30 a.m. to 4:00 or 4:15 p.m. Eastern Time.

[14] The rule defines the "Post-Market Session" as the trading session for UTP trading that begins at 4:00 p.m. or 4:15 p.m., and that continues until 8:00 p.m. Eastern Time.

[15] 17 CFR 240.12f-5.

PDRs or IFSs, for which Nasdaq has in effect rules providing for transactions in such class or type of security. Provisions of Rule 4420 that govern trading hours and surveillance procedures, and that relate to information circulars and prospectus delivery, also apply to securities traded on a UTP basis (as do applicable trade halt provisions of Rule 4120). Nasdaq does not, however, apply quantitative listing standards to securities traded on a UTP basis. Accordingly, language in Rule 4420(l) that could be read to require unlisted securities to meet Nasdaq's quantitative listing standards for Trust Issued Receipts in order to trade on a UTP basis is being deleted.

Proposed rules 4420(i)(3)(B)(iv) and (j)(3)(B)(iv) would be added to make sure that an entity that advises index providers or calculators and related entities has in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETF. Finally, Nasdaq is proposing several minor and clarifying changes to Rules 4120 and 4420, such as deletion of certain redundant language, correction of typographical errors, and clarification of the hours during which ETFs are eligible to trade.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Exchange Act,[16] in general, and with Section 6(b)(5) of the Exchange Act,[17] 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 a free and open market and a national market system, and, in general, to protect investors and the public interest.

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[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(5).

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

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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. 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 Exchange 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-2006-050 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-2006-050. 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 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-2006-050 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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 Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Exchange Act[19] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and

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18 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).

19 15 U.S.C. 78f(b)(5).

perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Currently, Nasdaq does not have generic listing standards for ETFs based on international or global indexes or on indexes described in exchange rules that have been previously approved by the Commission, but systems operated by Nasdaq and its affiliates currently trade such ETFs on an over-the-counter basis as facilities of NASD. After Nasdaq begins to operate as an exchange for non-Nasdaq-listed securities, Nasdaq proposes to continue trading such ETFs pursuant to UTP in substantially the same manner as they trade currently and to trade additional ETFs as the original listing market. Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. Nasdaq's proposed rules for the listing and trading of ETFs pursuant to Rule 19b-4(e) based on (1) certain indexes with components that include foreign securities or (2) indexes or portfolios previously described in exchange rules that have been approved by the Commission as underlying benchmarks for derivative securities, fulfill these requirements. Use of Rule 19b-4(e) by Nasdaq to list and trade such ETFs should promote competition, reduce burdens on issuers and other market participants, and make such ETFs available to investors more quickly.[20]

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[20] The Commission notes, however, that the failure of a particular ETF to meet these generic listing standards would not preclude Nasdaq from submitting a separate proposed rule change to list and trade the ETF.

The Commission previously has approved generic listing standards for other exchanges, the American Stock Exchange LLC ("Amex") and the New York Stock Exchange LLC ("NYSE"), that are substantially similar to those proposed here by Nasdaq.[21] This proposal does not appear to raise any novel regulatory issues. Therefore, the Commission finds that Nasdaq's proposal is consistent with the Exchange Act on the same basis that it approved Amex's and NYSE's generic listing standards for ETFs based on international or global indexes or on indexes or portfolios described in exchange rules that have been previously approved by the Commission as underlying benchmarks for derivative securities.

Proposed Nasdaq Rules 4420(i)(3)(A)(ii) and 4420(j)(3)(A)(ii) establish standards for the composition of an index or portfolio underlying an ETF. These requirements are designed, among other things, to require that components of an index or portfolio underlying the ETF are adequately capitalized and sufficiently liquid, and that no one security dominates the index. The Commission believes that, taken together, these standards are reasonably designed to ensure that securities with substantial market capitalization and trading volume account for a substantial portion of any underlying index or portfolio, and with the other applicable listing requirements will permit the

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21 See Securities Exchange Act Release No. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR-Amex-2006-78) (approving generic listing standards for ETFs based on international or global indexes or indexes described in exchange rules that have been previously approved by the Commission as underlying benchmarks for derivative securities); Securities Exchange Act Release No. 55018 (December 28, 2006), 72 FR 1040 (January 9, 2007) (SR-Amex-2006-109) (making clarifying changes to the generic listing standards set forth in SR-Amex-2006-78); Securities Exchange Act Release No. 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101) (approving generic listing standards for ETFs based on international or global indexes or indexes described in exchange rules that have been previously approved by the Commission as underlying benchmarks for derivative securities).

listing and trading of ETFs that are sufficiently broad-based to minimize potential manipulation. The Commission further believes that the proposed listing standards are reasonably designed to preclude Nasdaq from listing and trading ETFs that might be used as surrogate for trading in unregistered securities. The requirement that each component security underlying an ETF be an NMS stock (in the case of a U.S. Component Stock) or listed on an exchange and subject to last-sale reporting (in the case of a Non-U.S. Component Stock) also should contribute to the transparency of the market for these ETFs.

The proposed generic listing standards will permit Nasdaq to list and trade an ETF if the Commission has previously approved an SRO rule that contemplates listing and trading a derivative product based on the same underlying index. Nasdaq would be able to rely on that earlier approval order, provided that: (1) the securities comprising the underlying index consist of U.S. Component Stocks or Non-U.S. Component Stocks, as set forth in proposed Nasdaq Rules 4420(i)(1)(C) and (D) and 4420(j)(1)(C) and (D); and (2) Nasdaq complies with the commitments undertaken by the other SRO set forth in the prior order, including any surveillance-sharing arrangements with a foreign market.

The Commission believes that Nasdaq's proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[22] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Nasdaq's proposal requires the value of the index or portfolio underlying an ETF based on a global

[22] 15 U.S.C. 78k-1(a)(1)(C)(iii).

or international index to be disseminated at least once every 60 seconds during Nasdaq trading hours.[23] Nasdaq has represented that, if an underlying index or portfolio value is no longer calculated or available, it would commence delisting proceedings for the associated ETF. Furthermore, these generic listing standards provide that the issuer of an ETF must represent that it will calculate the NAV and make it available daily to all market participants at the same time.[24]

In addition, an IIV, which represents an estimate of the value of a share of each ETF, must be updated and disseminated at least once every 15 seconds during regular market hours and during any pre-market trading session for the ETF. The IIV must reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. When there is no overlap with the trading hours of the primary market or markets trading the underlying components of an ETF, Nasdaq may trade such ETF during any pre-market trading session without an IIV being updated, as long as the last official calculated IIV remains available. Although the IIV is not calculated during any post-market trading session, the last official calculated IIV must also remain available during such post-market session. The Commission believes that the proposed rules regarding the dissemination of the index value and the IIV are reasonably designed to promote transparency in the pricing of ETFs and thus are consistent with the Exchange Act.

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23 See proposed Nasdaq Rules 4420(i)(3)(B)(iii)(b) and (c) and 4420(j)(3)(B)(iii)(b) and (c). If an index or portfolio value does not change for some of the time that the ETF trades on the Exchange, the last official calculated value must remain available throughout Exchange trading hours.

24 See proposed Nasdaq Rules 4420(i)(6)(A)(ii) and 4420(j)(6)(A)(ii).

Similarly, Nasdaq's trading halt rules are reasonably designed to prevent trading in an ETF when transparency cannot be assured. Proposed Nasdaq Rule 4120(a)(9) provides that, when Nasdaq is the listing market, Nasdaq may halt trading when an interruption occurs in the calculation or dissemination of the IIV or index value applicable to an ETF. If the interruption continues, Nasdaq would halt trading no later than the beginning of the next trading day. In addition, proposed Nasdaq Rule 4120(b) sets forth trading halt procedures when Nasdaq trades the ETF pursuant to UTP. This rule is substantially similar to those recently adopted by other exchanges and found by the Commission to be consistent with the Exchange Act.[25]

In approving this proposal, the Commission relied on Nasdaq's representation that its surveillance procedures are adequate to properly monitor the trading of the PDRs and IFSs listed pursuant to the proposed new listing standards or traded on a UTP basis. This approval is conditioned on the continuing accuracy of that representation.

Acceleration

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the Federal Register. The Commission notes that Nasdaq's proposal is substantially similar to Amex and NYSE proposals that have been approved by the Commission.[26] The Commission does not believe that Nasdaq's proposal raises any novel regulatory issues and, therefore, that good cause exists for approving the filing before the conclusion

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25 See NYSE Arca Equities Rule 7.34; NYSE Rule 1100(f)(2); Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006) (SR-NYSEArca-2006-77); Securities Exchange Act Release No. 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101).

26 See supra note 21.

of a notice-and-comment period. Accelerated approval of the proposal will expedite the listing and trading of additional ETFs by Nasdaq, subject to consistent and reasonable standards. 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 the such trading. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Exchange Act,[27] to approve the proposed rule change, as amended, on an accelerated basis.

[27] 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,[28] that the proposed rule change (SR-NASDAQ-2006-050), as amended, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Florence E. Harmon
Deputy Secretary

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28 Id.

29 17 CFR 200.30-3(a)(12).