SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55815; File No. SR-NASDAQ-2007-027)

May 25, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Generic Listing Standards for Portfolio Depositary Receipts and Index Fund Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 23, 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, II, and III below, which Items have been substantially prepared by Nasdaq. On May 8, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is simultaneously approving the proposal on an accelerated basis.

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

Nasdaq proposes to amend its existing rules to eliminate the requirement that the calculation methodology for the index underlying an exchange traded fund ("ETF") be a methodology specified by rule and to adopt generic listing standards for a series of ETFs based solely or in part on fixed income indexes or securities. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and http://nasdaq.complinet.com.

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

2 17 CFR 240.19b-4.

3 Amendment No. 1 replaces and supersedes the original filing in its entirety.

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

Rule 19b-4(e) under the Act[4] provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,[5] if the Commission has approved, pursuant to Section 19(b) of the Act,[6] the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivatives securities product, and the self-regulatory organization has a surveillance program for the product class.[7] Nasdaq has adopted generic listing standards to satisfy this rule for the listing and trading of portfolio depositary receipts ("PDRs")[8] and index fund shares ("IFSs")[9] (collectively, exchange traded funds or "ETFs"), among others. The proposed rule change will eliminate from these generic

4 17 CFR 240.19b-4(e).

5 17 CFR 240.19b-4(c)(1).

6 15 U.S.C. 78s(b).

7 See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

8 Nasdaq Rule 4420(i).

9 Nasdaq Rule 4420(j).

listing standards the requirement that the calculation methodology for the index underlying an ETF be a methodology specified by rule. In addition, the proposed rule change will establish generic listing standards, trading rules, and procedures, including surveillance, to permit the listing and trading pursuant to Rule 19b-4(e) under the Act of ETFs based solely on fixed income indexes ("Fixed Income Indexes") or on a combination of equity and fixed income indexes ("Combination Indexes").

Index Methodology Change

Nasdaq rules currently permit Nasdaq to list an ETF without filing a proposed rule change if the ETF meets certain requirements.[10] Among those requirements is the requirement in Rules 4420(i)(3)(B) and 4420(j)(3)(B) that the index be calculated based on the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting or a methodology weighting components of the index based on any, some or all of the following: sales, cash flow, book value and dividends. Nasdaq recently made a filing with the Commission to expand this list to accommodate new products and now proposes to remove this requirement to provide greater flexibility to index providers and ETF issuers to develop indexes that meet the investment objectives of investors. Further, removing these requirements will reduce the time required for products based on innovative index calculation methodologies to be brought to market. The indexes underlying ETFs would continue to be required to meet the other requirements of the generic listing standards. For example, domestic indexes require, without limitation, that the most heavily weighted component stock of an index not exceed 30% of the weight of the index, and the five most heavily weighted component stocks of an index not

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10 Nasdaq Rules 4420(i) and 4420(j).

exceed 65% of the weight of the index,[11] and that an index include a minimum of 13 component stocks.[12] Similarly, the generic listing standards for international or global indexes require, without limitation, that the most heavily weighted component stock of an index not exceed 25% of the weight of the index, and the five most heavily weighted component stocks of an index not exceed 60% of the weight of the index,[13] and that an index include a minimum of 20 component stocks.[14] Nasdaq believes that such requirements will ensure that underlying indexes are sufficiently diversified, and that their components are sufficiently liquid to serve as the basis for an ETF.[15]

Use of Fixed Income and Combination Indexes

The Commission has previously approved the trading on Nasdaq of a number of ETFs that are based on Fixed Income Indexes.[16] Nasdaq now proposes to establish generic listing standards, trading rules, and procedures, including surveillance, to permit the listing and trading pursuant to Rule 19b-4(e) of ETFs based solely on Fixed Income Indexes and Combination

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11 Nasdaq Rules 4420(i)(3)(A)(i)c. and 4420(j)(3)(A)(i)c.

12 Nasdaq Rules 4420(i)(3)(A)(i)d. and 4420(j)(3)(A)(i)d.

13 Nasdaq Rules 4420(i)(3)(A)(ii)c. and 4420(j)(3)(A)(ii)c.

14 Nasdaq Rules 4420(i)(3)(A)(ii)d. and 4420(j)(3)(A)(ii)d.

15 The Commission recently approved similar changes to the rules of other exchanges. See Securities Exchange Act Release Nos. 55544 (March 27, 2007), 72 FR 15923 (April 3, 2007) (approving an American Stock Exchange LLC ("Amex") proposal (the "Amex Methodology Change")); 55545 (March 27, 2007), 72 FR 15928 (April 3, 2007) and 55546 (March 27, 2007), 72 FR 15929 (April 3, 2007) (approving, on an accelerated basis, similar changes to the rules of the New York Stock Exchange ("NYSE") and NYSE Arca, respectively).

16 Securities Exchange Act Release No. 55300 (February 15, 2007), 72 FR 8227 (February 23, 2007) (SR-Nasdaq-2007-002, relating to the trading, pursuant to unlisted trading privileges, of 14 ETFs).

Indexes. The Commission recently approved similar standards for Amex.[17] The proposed rule is substantially similar to the Amex Rule.[18] Adopting generic listing standards for these securities and applying Rule 19b-4(e) should fulfill the intended objective of that Rule by allowing ETFs that satisfy the proposed generic listing standards to commence trading, without the need for a public comment period and Commission approval. This has the potential to reduce the time frame for bringing securities to market and thereby reduce the burdens on issuers and other market participants. If a particular index does not comply with the proposed generic listing standards under Rule 19b-4(e), Nasdaq may submit a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade the particular index-linked product.

Proposed Rules 4420(i) and (j) define the term "Fixed Income Securities" to include notes, bonds (including convertible bonds), debentures, or evidence of indebtedness that include, but are not limited to, U.S. Treasury securities ("Treasury Securities"), securities of government-sponsored entities ("GSE Securities"), municipal securities, trust-preferred securities,[19] supranational debt,[20] and debt of a foreign country or subdivision thereof. For purposes of the

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[17] Securities Exchange Act Release No. 55437 (March 9, 2007), 72 FR 12233 (March 15, 2007) (the "Amex Rule").

[18] The Amex Rule includes certain provisions that already appear elsewhere in Nasdaq's rules and are therefore not repeated. See, e.g., Rules 4420(i)(4) and 4420(j)(4) (proposed to be renumbered as Rules 4420(i)(7) and 4420(j)(7)) relating to the trading hours for PDRs and IFSs, respectively. See also Rule 4613(a)(1)(B) relating to the minimum trading increment on Nasdaq.

[19] Trust-preferred securities are undated cumulative securities issued from a special purpose trust in which a bank or bank holding company owns all of the common securities. The trust's sole asset is a subordinated note issued by the bank or bank holding company. Trust preferred securities are treated as debt for tax purposes so that the distributions or dividends paid are a tax-deductible interest expense.

[20] Supranational debt represents the debt of international organizations such as the World Bank, the International Monetary Fund, regional multilateral development banks, and multilateral financial institutions. Examples of regional multilateral development banks

proposed definition, a convertible bond is deemed to be a Fixed Income Security until it is converted into its underlying common or preferred stock.[21] Once converted, the equity security may no longer continue as a component of a fixed income index under the proposed rules and, accordingly, would have to be removed from the index for the ETF to remain listed pursuant to the proposed rule.

Fixed Income Index Criteria

To list an ETF pursuant to the proposed generic listing standards for Fixed Income Indexes, the index underlying the ETF must satisfy all the conditions contained in proposed Rule 4420(i)(4) (for PDRs) or proposed Rule 4420(j)(4) (for IFSs). As with existing generic listing standards for ETFs based on domestic and international or global indexes, these listing criteria are designed to ensure that securities with substantial market distribution and liquidity account for a substantial portion of the weight of a Fixed Income Index.[22]

To list an ETF based on a Fixed Income Index pursuant to the proposed generic listing standards, the index must meet the following criteria:

- The index or portfolio must consist of Fixed Income Securities;

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include the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, and the Inter-American Development Bank. In addition, examples of multilateral financial institutions include the European Investment Bank and the International Fund for Agricultural Development.

21 Under the Section 3(a)(11) of the Act, 15 U.S.C. 78c(a)(11), a convertible security is an equity security. However, for the purposes of the proposed generic listing criteria, Nasdaq believes that defining a convertible security (prior to its conversion) as a Fixed Income Security is consistent with the objectives and intention of the generic listing standards for fixed-income-based ETFs as well as the Act.

22 The index criteria are loosely based on the standards contained in Commission and Commodity Futures Trading Commission ("CFTC") rules regarding the application of the definition of narrow-based security index to debt security indexes. See Securities Exchange Act Release No. 54106 (July 6, 2006), 71 FR 39534 (July 13, 2006) (File No. S7-07-06) (the "Joint Rules").

- Components that in aggregate account for at least 75% of the weight of the index or portfolio must have a minimum original principal amount outstanding of $100 million or more;
- No component Fixed Income Security (excluding a Treasury Security) represents more than 30% of the weight of the index, and the five highest weighted component fixed income securities in the index do not in the aggregate account for more than 65% of the weight of the index;[23]
- An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers;[24] and
- Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either:[25]
  - From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act;[26]
  - From issuers that have a worldwide market value of outstanding common equity held by non-affiliates of $700 million or more;

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23 This is consistent with the standard for U.S. equity ETFs set forth in Rules 4420(i)(3)(A)c. and 4420(j)(3)(A)c. and the standard set forth by the Commission and the CFTC in the Joint Rules.

24 The required number of unaffiliated issuers parallels the diversification requirement applicable to U.S. equity ETFs as set forth in Rules 4420(i)(3)(A)d. and 4420(j)(3)(A)d.

25 Nasdaq notes that this proposed standard is consistent with a similar standard in the Joint Rules and is designed to ensure that the component fixed income securities have sufficient publicly available information.

26 15 U.S.C. 78m and 78o(d).

- From issuers that have outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least $1 billion;
- Exempted securities, as defined in Section 3(a)(12) of the Act;[27] or
- From issuers that are governments of foreign countries or political subdivisions of foreign countries.

The proposed generic listing requirements for ETFs based on Fixed Income Indexes would not require that component securities in an underlying index have an investment-grade rating.[28] In addition, the proposed requirements do not include a minimum trading volume, due to the lower trading volume that generally occurs in the fixed income markets as compared to the equity markets.[29]

Listing and Trading of ETFs Based on Combination Indexes

To list an ETF pursuant to the proposed generic listing standards for Combination Indexes, an index underlying the ETF must satisfy all the conditions contained in proposed Rule 4420(i)(5) (for PDRs) or Rule 4420(j)(5) (for IFSs). As with ETFs based solely on Fixed Income Indexes, the generic listing standards are intended to ensure that securities with substantial market distribution and liquidity account for a substantial portion of the weight of both the equity and fixed income portions of a Combination Index.

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27 15 U.S.C. 78c(a)(12).

28 See Joint Rules, 71 FR at 30537.

29 Nasdaq believes that the requirement to have a minimum principal amount outstanding of $100 million, coupled with the proposed concentration requirements, would reduce the likelihood that an ETF listed under the proposal would be readily susceptible to manipulation.

The proposed rules provide that Nasdaq may list and trade ETFs based on a combination of indexes or a series of component securities representing the U.S. or domestic equity market, the international equity market, and the fixed income market, pursuant to Rule 19b-4(e) under the Act, provided that: (i) such portfolio or combination of indexes has been described in an exchange rule approved by the Commission for the trading of options, PDRs, IFSs, Index-Linked Exchangeable Notes, or Index-Linked Securities, and all of the standards set forth in the approval order are satisfied by the exchange employing generic listing standards; or (ii) the equity portion and fixed income portion of the component securities separately meet the criteria set forth in Rule 4420(i)(3) (equities) and proposed Rule 4420(i)(4) (fixed income) for PDRs and Rule 4420(j)(3) (equities) and proposed Rule 4420(j)(4) (fixed income) for IFSs.

Index Maintenance and Information

Nasdaq proposes to establish requirements regarding the maintenance and dissemination of index information in connection with ETFs based on Fixed Income Indexes and Combination Indexes. These rules would require that the underlying value of a Fixed Income Index be widely disseminated by one or more major market data vendors at least once a day during the time when the corresponding ETF trades on Nasdaq.[30] The rules also would require that the underlying value of a Combination Index be widely disseminated by one or more major market data vendors at least once every 15 seconds during the time when the corresponding ETF trades on Nasdaq, provided that, with respect to the fixed income components of the Combination Index, their impact on the index is required to be updated only once each day.[31] Nasdaq believes that these provisions reflect the nature of the fixed income markets as well as the frequency of intra-day

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30 Nasdaq Rules 4420(i)(4)(B)(ii) and 4420(j)(4)(B)(ii).

31 Nasdaq Rules 4420(i)(5)(A)(ii) and 4420(j)(5)(A)(ii).

trading information with respect to Fixed Income Securities. 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 trading hours.

Moreover, if a Fixed Income Index or Combination Index underlying an ETF is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "firewall" around the personnel who have access to information concerning changes and adjustments to the index.[32] In addition, any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on index composition, methodology, and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the index.[33]

Application of General Rules

Proposed Rules 4420(i)(6) and 4420(j)(6) set forth requirements governing any ETF based on a Fixed Income Index or Combination Index. These include initial shares outstanding and the dissemination of the Intraday Indicative Value, which is an estimate of the value of a share of each ETF, updated at least every 15 seconds.

ETF Listing Criteria, Trading Rules, and Procedures

Under Nasdaq's proposal, an ETF based on a Fixed Income Index or Combination Index would be subject to the listing criteria set out in proposed Rules 4420(i)(9) and 4420(j)(9)[34] Accordingly, an ETF's NAV must be calculated at least once each day and disseminated to all

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32 Rules 4420(i)(4)(B)(i), 4420(i)(5)(A)(i), 4420(j)(4)(B)(i), and 4420(j)(5)(A)(i).

33 Rules 4420(i)(4)(B)(iii), 4420(i)(5)(A)(iii), 4420(j)(4)(B)(iii), and 4420(j)(5)(A)(iii).

34 These rules will be renumbered from Rules 4420(i)(6) and 4420(j)(6).

market participants at the same time.[35] Also, where the value of the underlying index or portfolio of securities on which the ETF is based is no longer calculated or available, or if the ETF replaces the underlying index or portfolio with a new index or portfolio, Nasdaq would commence delisting proceedings unless the new index or portfolio meets the requirements of and listing standards set forth in Rules 4420(i) and 4420(j), as applicable.[36] Nasdaq proposes to clarify that if a sponsor of an ETF chose to replace an index or portfolio that did not meet any of Nasdaq's generic listing standards, approval by the Commission of a separate filing pursuant to Section 19(b)(2) of the Act to list and trade that ETF would be required.[37] An ETF based on a Fixed Income Index or Combination Index would be traded, in all respects, under Nasdaq's existing trading rules and procedures that apply to ETFs generally, including with respect to delisting and trading halts. In particular, Rule 4120(a)(9) provides that, if the Intraday Indicative Value or the index value applicable to that series of ETFs is not being disseminated as required, Nasdaq may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value 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.[38]

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35 See proposed Rules 4420(i)(9)(A)(ii) and 4420(j)(9)(A)(ii) (requiring that, before approving an ETF for listing, Nasdaq will obtain a representation from the ETF issuer that the NAV per share will be calculated daily and made available to all market participants at the same time).

36 See proposed Rules 4420(i)(9)(B)(i)b. and 4420(j)(9)(B)(i)b.

37 The Commission previously approved a similar clarification to the rules of the American Stock Exchange. See Securities Exchange Act Release No. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (approving SR-Amex-2006-78).

38 If an ETF is traded on Nasdaq pursuant to unlisted trading privileges, Nasdaq would halt

As noted above, if a broker-dealer is responsible for maintaining (or has a role in maintaining) the underlying index, the broker-dealer would be required to erect and maintain a "firewall," in a form satisfactory to Nasdaq, to prevent the flow of non-public information regarding the underlying index from the personnel involved in the development and maintenance of such index to others such as sales and trading personnel.

Surveillance

Nasdaq represents that an ETF based on a Fixed Income Index or Combination Index would be covered under NASD Regulation's surveillance program for ETFs, which NASD Regulation administers for Nasdaq under a regulatory services agreement. NASD Regulation will implement written surveillance procedures for ETFs based on either a Fixed Income Index or a Combination Index.[39] Nasdaq represents that NASD Regulation's surveillance procedures are adequate to properly monitor the trading of ETFs listed pursuant to the proposed new listing standards. In addition, Nasdaq also has a general policy prohibiting the distribution of material, non-public information by its employees.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[40] in general and with Section 6(b)(5) of the Act,[41] in particular, in that the proposal 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

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trading if the primary listing market halts trading in such ETF because the Intraday Indicative Value and/or the index value is not being disseminated. See Rule 4120(b)(9).

39 See proposed Rules 4420(i)(6)(C) and 4420(j)(6)(C).

40 15 U.S.C. 78f.

41 15 U.S.C. 78f(b)(5).

regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

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

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 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-2007-027 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-2007-027. 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 the File Number SR-NASDAQ-2007-027 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[42] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act[43] 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

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42 In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

43 15 U.S.C. 78f(b)(5).

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.

Currently, the Exchange must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act[44] and Rule 19b-4 thereunder[45] to list or trade any ETF based on Fixed Income Securities. The Exchange also must file a proposed rule change to list or trade an ETF based on a Fixed Income or Combination Index described in an exchange rule previously approved by the Commission as an underlying benchmark for a derivative security. Rule 19b-4(e) under the Act, however, 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 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. The Exchange'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 Fixed Income Securities or (2) indexes or portfolios described in exchange rules previously 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.[46]

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44 15 U.S.C. 78s(b)(1).

45 17 CFR 240.19b-4.

46 The Commission notes that failure of a particular ETF to satisfy the Exchange's generic listing standards does not preclude the Exchange from submitting a separate proposal to list and trade such ETF.

The Commission has approved for listing and trading ETFs based on certain fixed income indexes and structured notes linked to a basket or index of Fixed Income Securities.[47] Further, the Commission approved substantially similar generic listing standards for ETFs based on Fixed Income Indexes and Combination Indexes to be traded on Amex.[48] The Commission believes that adopting generic listing standards for ETFs based on Fixed Income and Combination Indexes should fulfill the intended objective of that rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading without a rule filing. Taken together, the Commission finds that the Nasdaq proposal meets the requirements of Rule 19b-4(e). All products listed under the proposed generic listing standards will be subject to existing Nasdaq rules governing the trading of ETFs.

Proposed Rule 4420(i) (for PDRs) and proposed Rule 4420 (j) (for IFSs) establish the standards for the composition of a Fixed Income Index or Combination Index underlying an ETF. These requirements are designed, among other things, to ensure 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 these standards are reasonably designed to ensure that a substantial portion of any underlying index or portfolio consists of securities about which information is publicly available, and that when applied in conjunction with the other applicable listing requirements, will permit the listing and trading only of ETFs that are sufficiently broad-based in scope to minimize potential manipulation. The Commission further believes that the proposed listing standards are reasonably designed to

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[47] See note 16 supra.

[48] See note 17 supra.

preclude Nasdaq from listing and trading an ETF that might be used as a surrogate for trading in unregistered securities.

The proposed generic listing standards also will permit Nasdaq to list and trade an ETF if the Commission previously has approved a rule of another exchange that contemplates listing and trading a derivative security based on the same underlying index. Nasdaq would be able to rely on the Commission's earlier approval order, provided that Nasdaq complies with the commitments undertaken by the other exchange set forth in the prior order, including any surveillance-sharing arrangements.

The Commission believes that Nasdaq's proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[49] 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. Under the Exchange's proposed listing standards, the underlying value of a Fixed Income Index is required to be widely disseminated by one or more major market data vendors at least once a day during the time when the corresponding ETF trades on the Exchange. Likewise, the underlying value of a Combination Index is required to be widely disseminated by one or more major market data vendors at least once every 15 seconds during the time when the corresponding ETF trades on the Exchange, provided that, with respect to the fixed income components of the Combination Index, the impact on the index is required to be updated only once each day.

Furthermore, the Commission believes that the proposed rules are reasonably designed to promote fair disclosure of information that may be necessary to price an ETF appropriately. If a

[49] 15 U.S.C. 78k-1(a)(1)(C)(iii).

Fixed Income Index or Combination Index underlying such an ETF is maintained by a broker-dealer or fund advisor, that entity must erect a firewall around the personnel who have access to information concerning changes and adjustments to the index. Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on index composition, methodology, or related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the index. The Commission also notes that proposed Rules 4420(i)(9)(A)(ii) and 4420(j)(9)(A)(ii), which would apply to an ETF listed and traded pursuant to this proposal, require that, before approving an ETF for listing, the Exchange will obtain a representation from the ETF issuer that the NAV per share will be calculated daily and made available to all market participants at the same time.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in an ETF when transparency cannot be assured. Rule 4120(a)(9) provides that, if the Intraday Indicative Value or the index value applicable to an ETF is not disseminated as required, the Exchange may halt trading during the day in which the interruption occurs. If the interruption continues, the Exchange will halt trading no later than the beginning of the next trading day.[50] Also, the Exchange will commence delisting proceedings in the event that the value of the underlying index is no longer calculated and widely disseminated on at least a 15-second basis (for Combination Indexes) or at least once a day (for Fixed Income Indexes).

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[50] Nasdaq may also exercise discretion to halt trading in a series of Portfolio Depository Receipts or Index Fund Shares based on a consideration of the following factors: (A) trading in underlying securities comprising the index applicable to that series has been halted in the primary market(s), (B) the extent to which trading has ceased in securities underlying the index, or (C) the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market. See Nasdaq Rule 4120(a)(9).

The Commission notes that the Exchange represented that NASD Regulation will implement written surveillance procedures for ETFs based on either a Fixed Income Index or Combination Index.[51] In approving this proposal, the Commission has relied on the Exchange's representation that its surveillance procedures are adequate to properly monitor the trading of ETFs listed pursuant to this proposal. This approval order is conditioned on the continuing accuracy of that representation.

Acceleration

The Commission finds good cause to approve the proposal, as amended, prior to the thirtieth day after the proposal was published for comment in the Federal Register. The Commission believes that accelerating approval of the proposed rule change will expedite the listing and trading of additional ETFs based on Fixed Income and Combination Indexes by the Exchange, subject to consistent and reasonable standards. The Commission also notes that Nasdaq's proposed generic listing standards are substantially similar to the Amex Rules that were approved by the Commission. Thus, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[52] to grant accelerated approval of the proposed rule change.

51 See proposed Nasdaq Rules 4420(i)(6)(C) and 4420(j)(6)(C).

52 15 U.S.C. 78s(b)(2).

V. <u>Conclusion</u>

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASDAQ-2007-027), as amended, is hereby approved on an accelerated basis.[53]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[54]

Florence E. Harmon
Deputy Secretary

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[53] 15 U.S.C. 78s(b)(2).

[54] 17 CFR 200.30-3(a)(12).