

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54595; File No. SR-Amex-2006-78]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Generic Listing Standards for Series of Portfolio Depository Receipts and Index Fund Shares Based On International or Global Indexes

October 12, 2006.

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 August 18, 2006, the American Stock Exchange LLC ("Amex" 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 prepared by the Exchange. On October 12, 2006, submitted Amendment No. 1 to the proposal.³ 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

The Exchange proposes to revise Amex Rules 1000 and 1000A to include generic listing standards for series of portfolio depository receipts ("PDRs") and index fund shares ("IFSs") that are based on international or global indexes or on indexes. Additionally, the Exchange proposes to revise Amex Rules 1000 and 1000A to include generic listing standards for PDRs and IFSs that are based on indexes or portfolios previously approved by the Commission as an underlying benchmark for the trading of PDRs, IFSs, options or other specified index-based securities. The Amex also proposes to

make minor changes to Amex Rules 1000, 1002, 1000A and 1002A.

The text of the proposed rule change is available on the Amex's Web site (<http://www.amex.com>), at Amex's principal office, and at the Commission's Public Reference Room. The text of Exhibit 5 to the proposed rule change is also available on the Commission's Web site (<http://www.sec.gov/rules/sro.shtml>).

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 Amex 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. The Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise Commentary .03 to Rule 1000 and Commentary .02 to Rule 1000A to include generic listing standards for series of PDRs and IFSs (PDRs and IFSs together referred to as "exchange-traded funds" or "ETFs") that are based on international or global indexes, or on indexes previously approved by the Commission under Section 19(b)(2) of the Exchange Act for the trading of ETFs, options or other index-based securities. This proposal will enable the Exchange to list and trade exchange-traded funds pursuant to Rule 19b-4(e)⁴ of the Exchange Act if each of the conditions set forth in Commentary .03 to Rule 1000 or Commentary .02 to Rule 1000A is satisfied. 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 SRO's trading rules, procedures and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.⁵

Exchange-Traded Funds

Amex Rules 1000 *et seq.* allow for the listing and trading on the Exchange of PDRs. PDRs represent interests in a unit investment trust registered under the Investment Company Act of 1940⁶ ("1940 Act") that operates on an open-end basis and that holds the securities that comprise an index or portfolio. Amex Rules 1000A *et seq.* provide standards for the listing and trading of IFSs, which are securities issued by an open-end management investment company (open-end mutual fund) based on a portfolio of stocks or fixed income securities that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index or fixed income securities index. Pursuant to Rules 1000 *et seq.* and 1000A *et seq.*, PDRs and IFSs 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. When aggregated in the same specified minimum number, PDRs and IFSs must be redeemed by the issuer for the securities and/or cash, with a value equal to the next determined net asset value. The net asset value 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, dividend and yield performance of the underlying index, ETFs may use a "replication" strategy or a "representative sampling" strategy with respect to the ETF portfolio.⁷ An ETF, using a replication strategy, will invest in each stock found in 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 of the component securities of the underlying index, but it may not invest in all of the component securities of its underlying index and will hold stocks that, in the aggregate, are intended to approximate the full index in terms of key characteristics, such as

five business days after the SRO begins trading the new derivative securities products. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

⁶ 15 U.S.C. 80a.

⁷ In either case, many ETFs, by their terms, may be considered invested in the securities of the underlying index to the extent the ETFs invest in sponsored American Depository Receipts ("ADRs"), Global Depository Receipts ("GDRs"), or European Depository Receipts ("EDRs") representing securities in the underlying index that trade on an exchange with last sale reporting.

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Amex revised the proposed rule text and clarified certain aspects of its proposal.

⁴ 17 CFR 240.19b-4(e).

⁵ When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within

price/earnings ratio, earnings growth, and dividend yield.

In addition, ETF portfolios may be adjusted in accordance with changes in the composition of the underlying indexes or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code ("IRC").⁸

Generic Listing Standards for Exchange-Traded Funds

The Exchange notes that the Commission has previously approved generic listing standards pursuant to Rule 19b-4(e)⁹ of the Exchange Act for ETFs based on indexes that consist of stocks listed on U.S. exchanges.¹⁰ In general, the proposed criteria for the underlying component securities in the international and global indexes are similar to those for the domestic indexes, but with modifications as appropriate for the issues and risks associated with non-U.S. securities.

In addition, the Commission has previously approved the listing and trading of ETFs based on international indexes—those based on non-U.S. component stocks—as well as global indexes—those based on non-U.S. and U.S. component stocks.¹¹

The Exchange notes that the Commission has also approved listing standards for other index-based derivatives that permit the listing and trading pursuant to Rule 19b-4(e)¹² of such securities where the Commission had previously approved the trading of

specified index-based derivatives on the same index, on the condition that all of the standards set forth in those orders, in particular with respect to surveillance sharing agreements, continued to be satisfied.¹³

In approving ETFs for Exchange trading, the Exchange states that the Commission thoroughly considered the structure of the ETFs, their usefulness to investors and to the markets, and Amex rules that govern their trading. The Exchange believes that adopting additional generic listing standards for these ETFs based on international and global indexes and applying Rule 19b-4(e)¹⁴ should fulfill the intended objective of that Rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading, 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)¹⁵ would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2),¹⁶ requesting Commission approval to list and trade a particular ETF.

Requirements for Listing and Trading ETFs Based on International and Global Indexes

The Exchange states that exchange-traded funds listed pursuant to these generic standards for international and global indexes would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to ETFs and would be covered under the Exchange's surveillance program for ETFs.¹⁷

In order to list a PDR or an IFS pursuant to the proposed generic listing standards for international or global indexes, the index underlying the PDR or IFS must satisfy all the conditions contained in proposed Commentary .03 to Rule 1000 (for PDRs) or proposed Commentary .02 to Rule 1000A (for IFSs). As with the existing generic standards for ETFs based on domestic indexes, the Exchange states that 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 1000 and Rule 1000A—section (b)—would be revised to include definitions of US Component Stock and Non-US 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-US Component Stock" would mean an equity security issued by an entity that (a) is not organized, domiciled or incorporated in the United States; (b) is not registered under Sections 12(b) or 12(g) of the Exchange Act; and (c) is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives). This definition is designed to create a category of component stocks that are issued by companies that are not based in the U.S., but that also are not subject to oversight through Commission registration, and would include sponsored GDRs and EDRs. This definition would appear in new subsection (4) of Rule 1000(b) and new subsection (5) of Rule 1000A(b). A "US Component Stock" would mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act, which would include an equity security registered under Section 12(b) or 12(g) of the Exchange Act underlying ADRs.

Equity securities underlying ADRs that are registered pursuant to the Exchange Act are considered US Component Stocks because the issuers of those securities are subject to Commission jurisdiction and must comply with Commission rules. This definition would appear in new subsection (3) of Rule 1000(b) and new subsection (4) of Rule 1000A(b).

The Exchange proposes that in order to list a PDR or an IFS based on an international or global index pursuant to the generic standards, the index must meet the following criteria:

- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum worldwide market value of at least \$100 million (Rule 1000, Commentary .03(a)(B)(1) and Rule 1000A, Commentary .02(a)(B)(1));

⁸ In order for an ETF to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC. Among these is the requirement that, at the close of each quarter of the ETF's taxable year, (i) at least 50% of the market value of the ETF's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value if the ETF's assets and not greater than 10% of the outstanding voting securities of such issuer, and (ii) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or two or more issuers that are controlled by the ETF (within the meaning of Section 851 (b)(4)(B) of the IRC) and that are engaged in the same or similar trades or businesses or related trades or business (other than U.S. government securities or the securities of other regulated investment companies).

⁹ 17 CFR 240.19b-4(e).

¹⁰ See Commentary .03 to Amex Rule 1000 and Commentary .02 to Amex Rule 1000A. See also Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000).

¹¹ See, e.g., Securities Exchange Act Release Nos. 50189 (August 12, 2004), 69 FR 51723 (August 20, 2004) (approving the listing and trading of certain Vanguard International Equity Index Funds); 44700 (August 14, 2001), 66 FR 43927 (August 21, 2001) (approving the listing and trading of series of the iShares Trust based on certain S&P global indexes).

¹² 17 CFR 240.19b-4(e).

¹³ See *Amex Company Guide* Section 107D (Index-Linked Securities), Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005).

¹⁴ 17 CFR 240.19b-4(e).

¹⁵ 17 CFR 240.19b-4(e).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ See Amex Rules 1000 through 1006 and 1000A through 1005A.

- Component stocks representing at least 90% of the weight of the index or portfolio shall have a minimum monthly worldwide trading volume during each of the last six months of at least 250,000 shares (Rule 1000, Commentary .03(a)(B)(2) and Rule 1000A, Commentary .02(a)(B)(2));

- 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 (Rule 1000, Commentary .03(a)(B)(3) and Rule 1000A, Commentary .02(a)(B)(3));

- The index or portfolio shall include a minimum of 20 component stocks (Rule 1000, Commentary .03(a)(B)(4) and Rule 1000A, Commentary .02(a)(B)(4)); and

- Each U.S. Component Stock in the index or portfolio shall be listed on a national securities exchange and shall be an NMS Stock as defined in Rule 600 of Regulation NMS under the Exchange Act, and each Non-US Component Stock in the index or portfolio shall be listed on an exchange that has last-sale reporting (Rule 1000, Commentary .03(a)(B)(5) and Rule 1000A, Commentary .02(a)(B)(5)).

The Exchange believes that these proposed standards are reasonable for international and global indexes, and, when applied in conjunction with the other listing requirements, will result in ETFs that are sufficiently broad-based in scope and not readily susceptible to manipulation. The Exchange also believes that the proposed standards will 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 the ETFs based on international or global indexes could become a surrogate for trading in unregistered securities.

The Exchange 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 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 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.¹⁸ 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-US Component Stock included in the index or portfolio be listed and traded on an exchange that has last-sale reporting.

The Exchange also proposes to modify Commentary .03(b)(iii) to Rule 1000 and Commentary .02(b)(iii) to Rule 1000A to require that the index value for ETFs 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 trades on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours. In contrast, index values for ETFs 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-US Component Stocks and that in many cases, trading hours for overseas markets overlap only in part, or not at all, with Exchange trading hours. In addition, Commentary .03(c) to Rule 1000 and Commentary .02(c) to Rule 1000A are being modified to define the term "Indicative Intraday Value" as the estimate that is updated every 15 seconds of the value of a share of each ETF, for ease of reference in these rules and also in Rules 1002 and 1002A regarding continued listing standards. The Exchange also proposes to clarify in Commentary .03(c) to Rule 1000 and Commentary .02(c) to Rule 1000A that the Intraday Indicative Value will be updated during the hours the ETF

shares trade on the Exchange to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated.

The Exchange is also proposing to add a subsection (i) to Commentary .03 to Rule 1000 and a subsection (j) to Commentary .02 to Rule 1000A regarding the creation and redemption process for ETFs and compliance with Federal securities laws for, in particular, ETFs listed pursuant to the generic standards for international and global indexes. These new subsections will apply to PDRs listed pursuant to Commentary .03(a)(B) or (C) and for IFSS listed pursuant to Commentary .02(a)(B) or (C). They will 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 1933.¹⁹

The Exchange states that the Commission has approved generic standards providing for the listing pursuant to Rule 19b-4(e)²⁰ of other derivative products based on indexes previously approved by the Commission under Section 19(b)(2) of the Exchange Act. The Exchange proposes to include in the generic standards for the listing of PDRs and IFSS, in new Commentary .03(a)(C) to Rule 1000 and Commentary .02(a)(C) to Rule 1000A, indexes that have been approved by the Commission as underlying benchmarks in connection with the listing of options, PDRs, IFSS, Index-Linked Exchangeable Notes or Index-Linked Securities. The Exchange believes that the application of this standard to ETFs is appropriate because the underlying index will have been subject to detailed and specific Commission review in the context of the approval of listing of other derivatives. For example, Section 107D (Index-Linked Securities) of the Amex Company Guide includes as one element of the standards for listing Index-Linked Exchangeable Notes pursuant to Rule 19b-4(e)²¹ the previous review and approval for trading of options or other derivatives by the Commission under Section

¹⁸ The Exchange states that "market value" is calculated by multiplying the total shares outstanding by the price per share of the component stock.

¹⁹ 15 U.S.C. 77a *et seq.*

²⁰ 17 CFR 240.19b-4(e).

²¹ 17 CFR 240.19b-4(e).

19b(2) of the Exchange Act and rules thereunder.²²

This new generic standard will be limited to stock indexes and will require that each component stock be either (i) 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 under the Exchange Act or (ii) a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

The Exchange is also proposing to include additional continued listing standards relating to ETFs that substitute new indexes, either in the instance where the value of the index or portfolio of securities on which the ETF is based is no longer calculated or available, or in the event that the ETF chooses to substitute a new index or portfolio for the existing index or portfolio. In both instances, the Exchange would commence delisting proceedings if the new index or portfolio does not meet the requirements of and listing standards set forth in Rules 1000 *et seq.* or Rules 1000A *et seq.*, as applicable. If, for example, an ETF chose to substitute an index that did not meet any of the generic listing standards for listing of ETFs pursuant to Rule 19b-4(e),²³ then for continued listing, approval by the Commission of a separate filing pursuant to Section 19(b)(2)²⁴ to list and trade that ETF would be required.

The Exchange proposes to modify the initial and continued listing standards relating to disseminated information to formalize in the rules existing best practices for providing equal access to material information about the value of ETFs. Pursuant to Rules 1002(a)(ii) and 1002A(a)(ii), prior to approving an ETF for listing, the Exchange will obtain a representation from the ETF issuer that the net asset value per share will be calculated daily and made available to all market participants at the same time. Proposed Rules 1002(b)(ii) and 1002A(b)(ii) set out the trading halt parameters for ETFs. In particular, the proposed rules specifically set out that if the Intraday Indicative Value (as defined in Commentary .03 to Rule 1000 and Commentary .02 to Rule 1000A) or the index value applicable to that series of ETFs is not being disseminated as required, the Exchange 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, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

The Exchange is proposing other minor and clarifying changes to Rules 1000, 1002, 1000A and 1002A. The standards set out in Commentary .03(a)(A) to Rule 1000 and Commentary .02(a)(A) to Rule 1000A are being modified to make the wording of each requirement consistent; in addition, standard (5) has been modified to reflect the adoption of Regulation NMS.²⁵ Proposed Commentary .03(b)(iv) to Rule 1000 and Commentary .02(b)(iv) to Rule 1000A have been added reflect make sure that entities that advise index providers or calculators and related entities have in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETF.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Exchange Act,²⁶ in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,²⁷ in particular, 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, and 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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

The Exchange did not receive any written comments on the proposed rule change.

²⁵ 17 CFR 242.600 *et seq.* See also Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("Regulation NMS Approval Order").

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

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

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

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of the proposed rule change, as amended, at the end of a 15-day comment period.²⁸

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 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-Amex-2006-78 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-Amex-2006-78. 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

²⁸ Amex has requested accelerated approval of this proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of the filing thereof, following the conclusion of a 15-day comment period.

²² See *supra* note 5.

²³ 17 CFR 240.19b-4(e).

²⁴ 15 U.S.C. 78s(b)(2).

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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2006-78 and should be submitted on or before November 3, 2006.

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

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54598; File No. SR-NASDAQ-2006-042]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Nasdaq Rule 4760 Relating to the Operation of the Nasdaq Crossing Network

October 13, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 4, 2006, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq is proposing to modify Nasdaq Rule 4760 relating to the operation of the Nasdaq Crossing Network. Nasdaq plans to implement the proposed rule change on November 6, 2006. The text of the proposed rule change is available on Nasdaq's Web site (<http://www.nasdaq.com>), at Nasdaq's principal office, and at the Commission's Public Reference Room.

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

On July 5, 2006, the Commission approved Nasdaq Rule 4760 which governs the operation of the Nasdaq Crossing Network.⁵ The Nasdaq Crossing Network will provide a new execution option to market participants trading in Nasdaq and other exchange-listed securities that will facilitate the execution of trades quickly and anonymously. Nasdaq expects to launch the operation of the Crossing Network on or about November 6, 2006.⁶

In anticipation of the launch, Nasdaq has proposed some minor modifications to Nasdaq Rule 4760. Due to the intervening approval of Nasdaq's Single

⁵ See Securities Exchange Act Release No. 54248 (July 31, 2006), 71 FR 44738 (August 7, 2006) (SR-NASDAQ-2006-019). Prior to the effective date of Nasdaq's operation as an exchange for Nasdaq-listed securities, the rule governing the Nasdaq Crossing Network had been approved as an NASD rule (NASD Rule 4716). Securities Exchange Act Release No. 54101 (July 5, 2006), 71 FR 39382 (July 12, 2006) (SR-NASD-2005-140).

⁶ Telephone conference between Jan Woo, Attorney, Division of Market Regulation, Commission, and Jeffrey Davis, Senior Associate General Counsel, Nasdaq, on October 4, 2006 (correcting a typographical error in the filing which stated that Nasdaq plans to launch the operation of the Crossing Network on or about October 30, 2006).

Book integration rule proposal⁷ which has caused a conflict regarding the numbering of certain Nasdaq rules, Nasdaq proposes to renumber the provisions governing the operation of the Nasdaq Crossing Network as Nasdaq Rule 4770.

In addition, in response to input from our members and other market participants, Nasdaq proposes to modify the times of the Reference Price Crosses during the regular hours session. Under the proposed rule change, the regular hours session crosses would commence at 10:45 a.m., 12:45 p.m., and 2:45 p.m. Eastern Time.

Nasdaq also proposes to add a clarification to Nasdaq Rule 4770 about how Reference Price Cross orders will be allocated. The existing rule provides that Reference Price Cross orders will be allocated on a pro-rata basis, so that shares will be allocated pro-rata in round lots to eligible orders based on the original size of the order. If additional shares remain after the initial pro-rata allocation, those shares will continue to be allocated pro-rata to eligible orders until a number of round lots remain that is less than the number of eligible orders. The proposed rule change clarifies that any remaining shares will be allocated to the order which has designated the smallest minimum acceptable execution quantity. If more than one such order exists, any remaining shares will be allocated to the oldest eligible order.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 6 of the Act,⁸ in general and with section 6(b)(5) of the Act,⁹ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change is consistent with these requirements in that the changes are designed to address market participant input and issues raised in testing relating to Nasdaq's proposed reference price crossing product, which

⁷ See Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR-NASDAQ-2006-001).

⁸ 5 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).