

proposed rule change, as amended, was published for comment in the **Federal Register** on October 13, 2006.<sup>4</sup> The Commission received no comments regarding the proposal, as amended. This order approves the proposed rule change, as amended.

## II. Description of the Proposal

Under its current rules, the ISE generally charges execution and comparison fees of \$.15 and \$.03 per contract, respectively, for Firm Proprietary orders.<sup>5</sup> The ISE states that it has noted increased volume in certain customer transactions in Complex Orders. According to the ISE, customers that use highly developed trading systems are able to take liquidity quickly from ISE's complex order book.<sup>6</sup> To place customer orders on a more equal footing with broker-dealer orders, the ISE proposes to amend its Schedule of Fees to adopt execution and comparison fees of \$.15 and \$.03 per contract, respectively, for customer Complex Orders that take liquidity from the ISE's complex order book.

## III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>8</sup> which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Under its current rules, the ISE generally charges execution and comparison fees of \$.15 and \$.03 per contract, respectively, for Firm

Orders, and not to Complex Orders that trade with customer orders in the regular order book.

<sup>4</sup> See Securities Exchange Act Release No. 54571 (October 4, 2006), 71 FR 60593.

<sup>5</sup> For Firm Proprietary Complex Orders, the execution fee is charged only for the leg of the trade with the most contracts.

<sup>6</sup> Under the ISE's proposal, an order takes liquidity when it interacts with a Complex Order resident on the ISE's complex order book. The ISE determines the liquidity provider and the liquidity taker based on time, *i.e.*, the order that arrives first on the ISE's complex order book is the liquidity provider. The fees established in the proposal apply solely to customer Complex Orders that take liquidity from the ISE's complex order book, but not to customer Complex Orders that trade with orders in the regular order book. Similarly, the fees do not apply to customer orders in the regular order book that trade with Complex Orders.

<sup>7</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

Proprietary orders. The proposal establishes execution and comparison fees of \$.15 and \$.03 per contract, respectively, for customer Complex Orders that take liquidity from the ISE's complex order book.<sup>9</sup> Accordingly, the Commission believes that the proposal provides for the equitable allocation of fees among members and other persons using the ISE's facilities, consistent with Section 6(b)(4) of the Act.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-ISE-2006-56), as amended, is approved.

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

Nancy M. Morris,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54765; File No. SR-NASDAQ-2006-009]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendments No. 1 and 2 Thereto To Permit Trading Pursuant to Unlisted Trading Privileges of streetTRACKS Gold Shares and To Establish Trading Rules to Trade, Pursuant to Unlisted Trading Privileges, Certain Securities Whose Value Is Linked to the Value of One or More Commodities

November 16, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 15, 2006 The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On October 10, 2006, the Exchange submitted Amendment No. 1 to the proposal,<sup>3</sup> and on November 14, 2006, the Exchange

<sup>9</sup> As with the current execution fee for Firm Proprietary Complex Orders, the execution fee will be charged only for the leg of the trade with the most contracts.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

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

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

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

<sup>3</sup> Amendment No. 1 replaced the original filing in its entirety.

submitted Amendment No. 2 to the proposal.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and is granting accelerated approval to the proposal, as amended.

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

Nasdaq is making this filing to enable it to continue trading pursuant to unlisted trading privileges ("UTP") of streetTRACKS Gold Shares ("Shares") and to add Nasdaq Rule 4630 to establish trading rules to trade, pursuant to UTP, certain securities whose value is linked to the value of one or more commodities.

The text of the proposed rule change is below. Proposed new language is in *italics*.<sup>5</sup>

\* \* \* \* \*

### 4630. Trading in Commodity-Based Trust Shares

(a) *Nasdaq will consider for trading pursuant to unlisted trading privileges, Commodity-Based Trust Shares that meet the criteria of this Rule.*

(b) *Applicability. This Rule is applicable only to Commodity-Based Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of Rule 4420(l) and all other Nasdaq Rules shall be applicable to the trading on Nasdaq of such securities. Commodity-Based Trust Shares are included within the definition of "security" or "securities" as such terms are used in the Nasdaq Rules.*

(c) *Definitions. The following terms shall, unless the context otherwise requires, have the meaning herein specified:*

(1) *Commodity-Based Trust Shares. The term "Commodity-Based Trust Shares" means a security (a) that is issued by a trust ("Trust") that holds a specified commodity deposited with the Trust; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity.*

(2) *Commodity. The term "commodity" is defined in Section 1(a)(4) of the Commodity Exchange Act.*

<sup>4</sup> Amendment No. 2 replaced Amendment No. 1 in its entirety.

<sup>5</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://www.complinet.com/nasdaq>.

(d) *Information Barriers.* A member acting as a registered market maker in Commodity-Based Trust Shares is obligated to establish adequate information barriers when such market maker engages in inter-departmental communications. Members should refer to NASD/NYSE Joint Memo on Chinese Wall Policies and Procedures (NASD Notice to Members 91-45) for guidance on the “minimum elements” of adequate Chinese Wall policy and procedures.” For purposes of Commodity-Based Trust Shares only, “inter-departmental communications” shall include communications to other departments within the same firm or the firm’s affiliates that involve trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives.

(e) *Market Maker Accounts.* A member acting as a registered market maker in Commodity-Based Trust Shares must file with Nasdaq Regulation in a manner prescribed by Nasdaq Regulation and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, that the market maker may have or over which it may exercise investment discretion. No market maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a market maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, that has not been reported as required by this Rule.

(f) The member acting as a registered market maker in Commodity-Based Trust Shares shall make available to Nasdaq Regulation such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by Nasdaq Regulation.

(g) In connection with trading the underlying physical commodity, related commodity futures or options on commodity futures or any other related commodity derivative (including Commodity-Based Trust Shares), the member acting as a market maker in Commodity-Based Trust Shares shall not use any material nonpublic information received from any person

associated with the member or employee of such person regarding trading by such person or employee in the physical commodity, commodity futures or options on commodity futures, or any other related commodity derivatives.

(h) Nasdaq requires that members provide all purchasers of newly issued Commodity-Based Trust Shares a prospectus for the series of Commodity-Based Trust Shares.

(i) Transactions in Commodity-Based Trust Shares will occur during the trading hours specified in Rule 4617.

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## 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

##### a. streetTRACKS Gold Shares

##### (1) General Description

The Nasdaq Stock Market, Inc. (“Nasdaq Market”), the parent of Nasdaq, currently trades the Shares. After Nasdaq begins to operate as an exchange for trading securities not listed on Nasdaq, it proposes to continue trading the Shares pursuant to UTP in much the same manner as they are being traded by the Nasdaq Market currently. Nasdaq’s surveillance procedures applicable to the Shares will not change as a result of the transition to exchange status.

The Commission previously approved the listing and trading of the Shares on the New York Stock Exchange (“NYSE”).<sup>6</sup> The Shares represent units of fractional undivided beneficial interest in and ownership of the streetTRACKS Gold Trust (“Trust”).

The Trust is an investment trust and is not managed like a corporation or an active investment vehicle. The Trust has no board of directors or officers or

persons acting in a similar capacity. The Trust is not an investment company under the Investment Company Act of 1940. The purpose of the Trust is to hold gold bullion. The investment objective of the Trust is for the Shares to reflect the performance of the price of gold, less the Trust’s expenses.

World Gold Trust Services, LLC, a wholly owned limited liability company of the World Gold Council,<sup>7</sup> is the sponsor of the Trust (“Sponsor”). The Bank of New York is the trustee; HSBC Bank USA, an indirect wholly owned subsidiary of HSBC Holdings plc, is the custodian (“Custodian”); and State Street Global Markets LLC, a wholly owned subsidiary of State Street Corporation, is the marketing agent (“Marketing Agent”).

Generally, the assets of the Trust (e.g., gold bullion) will be sold to pay Trust expenses and management fees. These expenses and fees will reduce the value of an investor’s Shares as gold bullion is sold to pay such costs. Ordinary operating expenses of the Trust include: (a) Fees paid to the Sponsor; (b) fees paid to the Trustee; (c) fees paid to the Custodian; (d) fees paid to the Marketing Agent; and (e) various Trust administration fees, including printing and mailing costs, legal and audit fees, registration fees, and Nasdaq listing fees. The Trust’s estimated ordinary operating expenses are accrued daily and reflected in the net asset value (“NAV”) of the Trust.

The Trust will create Shares on a continuous basis only in aggregations of 100,000 Shares (such aggregation referred to as a “Basket”). Authorized Participants are the only persons that may place orders to create and redeem Baskets by making an in kind deposit of gold together with, if applicable, a specified cash payment. Similarly, the Trust will redeem Shares only in Baskets, principally in exchange for gold and, if applicable, a cash payment. Because the creation and redemption process facilitates the potential for arbitrage, the NYSE stated that the Sponsor believed that the Shares would not trade at a material discount or premium to the underlying gold held by the Trust.

##### (2) Availability of Information About the Shares

The global trade in gold consists of over-the-counter transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options. The NYSE

<sup>6</sup> See Securities Exchange Act Release No. 50603 (October 28, 2004) 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (“NYSE Approval Order”).

<sup>7</sup> The World Gold Council is a not-for-profit association registered under Swiss law.

Listing Order contains descriptions of the key components of the gold market.

The last sale price for the Shares is disseminated over the Consolidated Tape. Gold pricing information based on the spot price for a troy ounce of gold from various financial information service providers, such as Reuters and Bloomberg, is available on a 24-hour basis. Complete real-time data for gold futures and options prices traded on the COMEX (a division of the NYMEX) is available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. Nasdaq, via a link from its own public Web site (<http://www.nasdaq.com>) to the Trust Web site (<http://www.streettracksgoldshares.com>), will provide at no charge continuously updated bids and offers indicative of the spot price of gold.<sup>8</sup>

The Trust Web site also will provide a calculation of the estimated NAV (also known as the Intraday Indicative Value or "IIV") of a Share as calculated by multiplying the indicative spot price of gold by the quantity of gold backing each Share. Comparing the IIV with the last sale price of the Shares helps an investor to determine whether, and to what extent, Shares may be selling at a premium or a discount to the NAV. Although provided free of charge, the indicative spot price and IIV per Share will be provided on an essentially real-time basis.<sup>9</sup> The Trust Web site provides the NAV of the Trust as calculated each business day by the Sponsor. In addition, the Trust Web site contains the following information, on a per-Share basis, for the Trust: (a) The IIV as of the close of the prior business day and the midpoint of the bid/ask price<sup>10</sup> in relation to such IIV ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such IIV; and (b) data in chart format displaying the frequency distribution of discounts and premiums

<sup>8</sup> The Trust's Web site's gold spot price will be provided by The Bullion Desk (<http://thebulliondesk.com>). The Trust's Web site will indicate that there are other sources for obtaining the gold spot price. In the event that the Trust's Web site should cease to provide this indicative spot price from an unaffiliated source (and the intraday indicative value) of the Shares, Nasdaq will cease to trade the Shares.

<sup>9</sup> The Trust's Web site, to which the Nasdaq Web site will link, will disseminate an indicative spot price of gold and the IIV and indicate that these values are subject to an average delay of five to ten seconds.

<sup>10</sup> The bid/ask price is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day IIV.

of the Bid/Ask Price against the IIV, within appropriate ranges, for each of the four previous calendar quarters. The Trust Web site also provides the Trust's prospectus, as well as the two most recent reports to stockholders. The Trust Web site provides the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay.<sup>11</sup> Finally, the Shares will trade during all hours that Nasdaq is open, as specified in Nasdaq Rule 4617.<sup>12</sup>

### (3) Trading Rules

Trading in the Shares will be subject to Nasdaq's existing rules governing the trading of equity securities and will occur during the hours when other equity securities are traded on Nasdaq. The minimum price variation will be as set forth in the Nasdaq rules specifically with respect to equity securities listed on the NYSE.

Nasdaq is trading the Shares pursuant to UTP, but will cease trading in the Shares during all trading sessions if: (a) The primary market stops trading the Shares because of a regulatory halt and/or a halt because dissemination of the IIV and/or the unaffiliated gold value has ceased or Nasdaq no longer provides a hyperlink to the Trust's Web site; or (b) the primary market delists the Shares. Additionally, Nasdaq may cease trading the Shares if such other event shall occur or condition exists which in the opinion of Nasdaq makes further dealings on Nasdaq inadvisable.

Because Nasdaq is trading pursuant to UTP the Shares during its early and late trading sessions, when the primary market is closed, Nasdaq will monitor the unaffiliated value of gold and IIV per Share and ensure that trading of the Shares will cease during the early and late trading sessions, if the unaffiliated value of gold and IIV per Share (used by the primary listing exchange) is no longer calculated or available during the early and late trading sessions, or Nasdaq stops providing a hyperlink on its Web site to such unaffiliated gold value or IIV per Share.

<sup>11</sup> The last sale price of the Shares in the secondary market is available on a real-time basis for a fee from regular data vendors.

<sup>12</sup> The Nasdaq system operates from 7 a.m. to 8 p.m. (all times herein refer to Eastern Standard Time) on each business day, unless modified by Nasdaq. A Nasdaq market maker shall be open for business as of 9:30 a.m. and shall close no earlier than 4 p.m. A Nasdaq market maker may voluntarily open for business prior to 9:30 a.m. and remain open for business later than 4 p.m. Nasdaq market makers whose quotes are open prior to 9:30 a.m. or after 4 p.m. are obligated to comply, while their quotes are open, with all Nasdaq Rules that are not by their express terms, or by an official interpretation of Nasdaq, inapplicable to any part of the 7 a.m. to 9:30 a.m. or 4 p.m. to 8 p.m. period.

### (4) Surveillance

Nasdaq believes its surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, the NASD relies on its existing surveillance procedures for equity securities. After Nasdaq begins to operate as an exchange for trading securities not listed on Nasdaq, the NASD, on behalf of Nasdaq, will continue to surveil Nasdaq trading, including Nasdaq trading of the Shares. Nasdaq's transition to exchange status will not result in any change in the surveillance process with respect to the Shares.<sup>13</sup>

In addition, for intermarket surveillance purposes, Nasdaq entered into a reciprocal Memorandum of Understanding with NYMEX, which is a comprehensive surveillance sharing arrangement,<sup>14</sup> for the sharing of information related to any financial instrument based, in whole or in part, upon an interest in or performance of gold.

### (5) Information Circular

In connection with its commencement of operations as an exchange for trading non-Nasdaq securities, Nasdaq will issue an information circular ("Circular"), which, among other things, will identify certain securities, such as the Shares, that present special characteristics and risks associated with their trading. The Circular will refer to the information publicly available about the identified securities, alert members to possible prospectus delivery requirements, and remind them of the suitability rules.

Specifically, the Circular, among other things, will discuss what the Shares are, how a Basket is created and redeemed, the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction, applicable Nasdaq rules, dissemination of information regarding the indicative price of gold and IIV, trading information, and the applicability of suitability rules. The Circular will also explain that the Trust is subject to various fees and expenses described in

<sup>13</sup> Surveillance of all trading on the Nasdaq Market, including the trading of Shares, is currently being conducted by NASD, Inc. Following Nasdaq's transition to exchange status, NASD, Inc. will continue to surveil trading, pursuant to a regulatory services agreement. Nasdaq is responsible for NASD, Inc.'s performance under this regulatory services agreement.

<sup>14</sup> Telephone conversation between Jonathan Cayne, Associate General Counsel, Nasdaq, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, November 15, 2006.

the Registration Statement, and that the number of ounces of gold required to create a Basket or to be delivered upon a redemption of a Basket will gradually decrease over time because the Shares comprising a Basket will represent a decreasing amount of gold due to the sale of the Trust's gold to pay the Trust's expenses. The Circular will also reference the fact that there is no regulated source of last sale information regarding physical gold, and that the Commission has no jurisdiction over the trading of gold as a physical commodity.

The Circular will also set forth the procedures for purchases and redemptions of the Shares in Baskets and that the Shares are not individually redeemable but are redeemable only in Basket-size aggregations or multiples thereof. The Circular will also advise members of their suitability obligations with respect to recommended transactions to customers in the Shares. The Circular will also discuss any relief if granted by the Commission or the staff from any rules under the Act.

#### b. Commodity-Based Trust Shares

Nasdaq is also adopting Rule 4630 to govern the trading, pursuant to UTP, of Commodity-Based Trust Shares (including the Shares). Nasdaq currently does not list (and does not have listing rules for) Commodity-Based Trust Shares, but its facilities are currently being used for the over-the-counter trading of such securities if they are listed on the NYSE or the American Stock Exchange ("Amex"). Once Nasdaq's separation from the NASD is complete and Nasdaq begins to operate as a national securities exchange with respect to securities listed on the NYSE and Amex, Nasdaq plans to continue trading NYSE- and Amex-listed Commodity-Based Trust Shares pursuant to UTP, subject to Commission approval of UTP trading of such securities. (Nasdaq expects to make appropriate filings with the Commission under Rule 19b-4.<sup>15</sup>)

The proposed rule, which is based on the existing rules of NYSE Arca, Inc. as adapted for UTP trading only, would impose certain requirements on any Nasdaq member registered and acting as a market maker in Commodity-Based Trust Shares.

As the proposed rule's definition of Commodity-Based Trust Shares reflects, these securities are structurally similar to exchange traded funds, except, of course, that their value is a function of the value of the underlying commodity, rather than of an underlying securities index. The

proposed rule will apply to the trading of Commodity-Based Trust Shares at all times. The proposed rule establishes the following requirements for market makers in Commodity-Based Trust Shares:

##### (1) Information Barriers

The proposed rule makes clear that a member acting as a registered market maker in Commodity-Based Trust Shares is obligated to comply with NASD Notice to Members 91-45 pertaining to limitations on dealings when such market maker engages in inter-departmental communications. For purposes of Commodity-Based Trust Shares only, "inter-departmental communications" shall include communications to other departments within the same firm or the firm's affiliates that involve trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives.

##### (2) Market Maker Accounts

A member acting as a registered market maker in Commodity-Based Trust Shares will be required to file and keep current a list of all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, that the market maker may have or over which it may exercise investment discretion.

##### (3) Books and Records

A member acting as a registered market maker in Commodity-Based Trust Shares will be required to make available to Nasdaq Regulation such books, records or other information pertaining to transactions in the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by Nasdaq Regulation.

##### (4) Material Non-public Information

In connection with trading the underlying physical commodity, related commodity futures or options on commodity futures or any other related commodity derivatives (including Commodity-Based Trust Shares), the member acting as a market maker in Commodity-Based Trust Shares would not be permitted to use any material non-public information received from any person associated with the member or employee of such person regarding trading by such person or employee in the physical commodity, commodity futures or options on commodity

futures, or any other related commodity derivatives.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act<sup>16</sup> in general, and with Section 6(b)(5) of the Act<sup>17</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to 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, as amended.

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

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2006-009 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NASDAQ-2006-009. 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

<sup>15</sup> 17 CFR 240.19b-4.

<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(5).

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 publicly available. All submissions should refer to File Number SR-NASDAQ-2006-009 and should be submitted on or before December 13, 2006.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>18</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>19</sup> which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal will benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission believes that the proposal is consistent with Section 12(f) of the Act,<sup>20</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and traded on another exchange.<sup>21</sup> The Commission

notes that it previously approved the listing and trading of the Shares on NYSE<sup>22</sup> and, via UTP, on NYSE Arca.<sup>23</sup> The Commission also believes that the proposal is consistent with Rule 12f-5 under the Act,<sup>24</sup> which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the existing rules of the Exchange governing the trading of equity securities, including rules relating to trading hours, trading halts, and the minimum trading increment.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>25</sup> which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Quotation System. Furthermore, as noted by the Exchange, various means exist for investors to obtain reliable gold price information and thereby monitor the underlying spot market in gold relative to the NAV of their Shares. Additionally, the Trust's Web site provides an continuously updated IIV (subject to an average delay of five to ten seconds). If the Trust ceases to maintain or to calculate the IIV or if the value of the index ceases to be widely available, the Exchange would cease trading the Shares.

The Commission notes that, if the Shares were to be delisted by NYSE, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of the proposal, the Exchange made the following representations:

1. The Exchange's surveillance procedures are adequate to deter manipulation, and its existing surveillance procedures for investment company units will be

security as if it were listed and registered on the exchange even though it is not so listed and registered.

<sup>22</sup> See NYSE Approval Order, *supra* note 6.

<sup>23</sup> See Securities Exchange Act Release No. 51245 (February 23, 2005) 70 FR 10731 (March 4, 2005) (SR-PCX-2004-117).

<sup>24</sup> 17 CFR 240.12f-5.

<sup>25</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

utilized for the Shares. Among other things, the Exchange entered into a reciprocal Memorandum of Understanding with NYMEX for the sharing of information related to any financial instrument based, in whole or in part, upon an interest in or performance of gold.

2. The Exchange will distribute an information circular to its members prior to the commencement of trading of the Shares on the Exchange that explains, among other things, the terms and characteristics of the Shares and the risks associated with their trading.
3. The Exchange will require a member to provide all purchasers of newly-issued Shares on the Exchange to provide that customer with a product prospectus, and will note this prospectus delivery requirement in the information circular.
4. The Exchange will cease trading the Shares during the regular market session (a) If the primary market stops trading the Shares because of a halt because the dissemination of the IIV and/or the unaffiliated underlying gold spot price has ceased to be disseminated by the Trust's Web site or because of a regulatory halt; or (b) if the primary market delists the shares.
5. During its early and late trading sessions, when the primary market is closed, the Exchange will monitor the dissemination of the IIV and the unaffiliated underlying gold spot price by the Trust's Web site, and will cease trading the Shares if this data ceases to be available.
6. The Exchange will cease trading the Shares if the Exchange's Web site for any reason ceases to provide a hyperlink to the Trust's Web site.

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

Finally, the Commission believes that subsections (d) and (e) of the Exchange's proposed Rule 4630, which impose information barriers and trading restrictions on a member acting as a registered market maker in the Shares, are reasonable and consistent with the Act. These provisions would require a member acting as a registered market maker in the Shares to provide the Exchange with information relating to its trading in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives. Further, a member acting as a registered market maker in the Shares would be prohibited under these provisions from using any material nonpublic information received from any person

<sup>18</sup> In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> 15 U.S.C. 78l(f).

<sup>21</sup> Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extend[s] unlisted trading privileges." When an exchange extends UTP to a security, it allows its members to trade the

associated with a member or employee of such person regarding trading by such person or employee in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives.

The Commission finds good cause for approving the proposal, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on NYSE and, pursuant to UTP, on NYSE Arca is consistent with the Act.<sup>26</sup> The Commission presently is not aware of any regulatory issue that should cause the Commission to revisit these earlier findings. Therefore, accelerating approval of the proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change, as amended (SR-Nasdaq-2006-009), is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-19733 Filed 11-21-06; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54768; File No. SR-NASD-2006-110]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto to Establish a Two-Year Pilot Program Exempting from TRACE Reporting Transactions in Bonds Traded on a Facility of NYSE

November 16, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 19, 2006, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and

Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have substantially been prepared by NASD. On September 27, 2006, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments<sup>4</sup> on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

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

NASD is proposing to amend: (1) NASD Rule 6230, to initiate a two-year pilot program exempting certain TRACE-eligible securities from reporting requirements that otherwise would apply; and (2) NASD Rules 6210 and 6230, to reflect the registration of The NASDAQ Stock Market LLC as a national securities exchange. Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deletions are in [brackets].

\* \* \* \* \*

### 6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

\* \* \* \* \*

#### 6210. Definitions

The terms used in this Rule 6200 Series shall have the same meaning as those defined in NASD’s By-Laws and Rules unless otherwise specified.

(a) No Change.

(b) No Change.

(c) The term “reportable TRACE transaction” shall mean any secondary market transaction in a TRACE-eligible security except transactions in TRACE-eligible securities that are listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, when such transactions are executed on, and reported to the exchange and the transaction information is disseminated publicly[, or transactions in TRACE-eligible securities that are listed and quoted on the Nasdaq Stock Market, Inc.

<sup>3</sup> Amendment No. 1, which replaces and supersedes the original filing in its entirety, made various technical changes to the proposal and replaced a reference in the proposed rule text to NYSE’s Automated Bond System with a reference to “a facility of NYSE.”

<sup>4</sup> The Commission received one comment on the proposed rule change prior to issuance of this notice and order. See comment from Ron Klein, Chairman, CEO, General Associates, Inc., dated October 16, 2006. The commenter asked various questions regarding the status of the filing, which are resolved by the Commission’s action in this notice and order.

(Nasdaq), when such transactions are reported to Nasdaq and the transaction information is disseminated publicly].  
(d)–(j) No Change.

\* \* \* \* \*

### 6230. Transaction Reporting

(a) through (d) No Change.

### (e) Transactions Exempt from Reporting

The following types of transactions shall not be reported:

(1) Transactions that are part of a primary distribution by an issuer.

(2) Transactions in TRACE-eligible securities that are listed on a national securities exchange, when such transactions are executed on and reported to the exchange and the transaction information is disseminated publicly[, and transactions in TRACE-eligible securities that are listed and quoted on Nasdaq, when such transactions are reported to Nasdaq and the transaction information is disseminated publicly].

(3) Transactions where the buyer and the seller have agreed to trade at a price substantially unrelated to the current market for the TRACE-eligible security (e.g., to allow the seller to make a gift).

(4) *For the duration of a two-year pilot program, effective upon the later of either: 1) approval of this rule by the Commission, or 2) execution by NASD and the New York Stock Exchange (“NYSE”) of a data sharing agreement addressing data related to transactions covered by this Rule, transactions in TRACE-eligible securities that are executed on a facility of NYSE in accordance with NYSE Rules 1400 and 1401 and reported to NYSE in accordance with NYSE’s applicable trade reporting rules and disseminated publicly by NYSE.*

(f) No Change.

\* \* \* \* \*

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

In its filing with the Commission, NASD 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. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>26</sup> See *supra* notes 6 and 23.

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</sup> 17 CFR 200.30-3(a)(12).

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

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