

listing standards for ETFs would potentially reduce the time frame for bringing ETFs based on indexes with nontraditional weighting techniques to the market, thereby reducing the burdens on issuers and other market participants and promoting competition, without compromising investor protection.

The Commission notes that the generic listing standards for domestic indexes will continue to 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 exceed 65% of the weight of the index,<sup>13</sup> and that an index include a minimum of 13 component stocks.<sup>14</sup> 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,<sup>15</sup> and that an index include a minimum of 20 component stocks.<sup>16</sup> Therefore, the Commission believes that indexes underlying ETFs will continue to be sufficiently broad-based in scope to minimize potential manipulation.

The Commission believes that the proposed rule change will enable the Exchange and issuers to benefit from the expected efficiencies resultant from this proposed rule change while at the same time still ensuring adequate protection for investors and the public in general.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-Amex-2007-07), as amended, be, and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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<sup>13</sup> See Commentary .03(a)(A)(3) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(3) to Amex Rule 1000A-AEMI.

<sup>14</sup> See Commentary .03(a)(A)(4) to Amex Rule 1000-AEMI and Commentary .02(a)(A)(4) to Amex Rule 1000A-AEMI.

<sup>15</sup> See Commentary .03(a)(B)(3) to Amex Rule 1000-AEMI and Commentary .02(a)(B)(3) to Amex Rule 1000A-AEMI.

<sup>16</sup> See Commentary .03(a)(B)(4) to Amex Rule 1000-AEMI and Commentary .02(a)(B)(4) to Amex Rule 1000A-AEMI.

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55538; File No. SR-NASD-2007-018]

### Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NASD Rule 7000 Series To Delete References To Systems and Services That Will No Longer Be Provided by NASD

March 27, 2007.

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 March 1, 2007, the National Association of Securities Dealers, Inc. ("NASD") 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 substantially by NASD. NASD has designated this proposal as "establishing or changing a due, fee, or other charge" under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD is proposing to amend the NASD Rule 7000 Series (Charges for Services and Equipment) to delete references to systems and services that will no longer be provided by NASD upon the operation of NASD's Alternative Display Facility (the "ADF") for non-Nasdaq exchange-listed securities, which is anticipated to be March 5, 2007. The Rule 7000 Series only will apply to NASD's OTC Bulletin Board Service, OTC Reporting Facility ("ORF") and Trade Reporting and Compliance Engine ("TRACE"). In this proposed rule change, NASD also is providing notice relating to the calculation of fees under Rule 7010 for use of NASD's Intermarket Trading System/Computer Assisted Execution Service (the "ITS/CAES System") on March 1 and 2, 2007, which will apply if the changes proposed herein are implemented on March 5, 2007 as anticipated. The text of the proposed

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

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

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

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

rule change is available at NASD, the Commission's Public Reference Room, and www.nasd.com.

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

In its filing with the Commission, 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 IV below. NASD 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 June 30, 2006, the Commission approved SR-NASD-2005-087, which, among other things, proposed an implementation strategy for the operation of the Nasdaq Stock Market LLC (the "Nasdaq Exchange") as a national securities exchange for Nasdaq-listed securities during a transitional period.<sup>5</sup> On November 21, 2006, the Commission approved SR-NASD-2006-104, which, among other things, proposed amendments necessary to reflect the complete separation of The Nasdaq Stock Market Inc. ("Nasdaq") from NASD upon the operation of the Nasdaq Exchange as a national securities exchange for non-Nasdaq exchange-listed securities.<sup>6</sup> As described in SR-NASD-2006-135, for a transitional period, Nasdaq has continued to operate the SuperIntermarket (SiM) trading platform on NASD's behalf via the Transitional System and Regulatory Services Agreement, even upon commencement of the Nasdaq Exchange's operation as an exchange for non-Nasdaq exchange-listed securities on February 12, 2007.<sup>7</sup> Upon the operation of the ADF for non-Nasdaq exchange-listed securities, SiM

<sup>5</sup> See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR-NASD-2005-087).

<sup>6</sup> See Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR-NASD-2006-104).

<sup>7</sup> See Securities Exchange Act Release Nos. 54984 (December 20, 2006), 71 FR 78245 (December 28, 2006) (notice of filing and immediate effectiveness of SR-NASD-2006-135) and 55274 (February 12, 2007), 72 FR 7785 (February 20, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-012).

will no longer be operated as a facility of NASD.

Currently, the NASD Rule 7000 Series addresses, among other things, the pricing schedule for the Consolidated Quotation Service and ITS/CAES System, which operate as part of, or in conjunction with, the SiM platform. Once the ADF becomes operational for non-Nasdaq exchange-listed securities, these systems will no longer be operated as NASD facilities and as such, the pricing schedule for use of these systems, as well as associated equipment and other fees, must be deleted from NASD's rules.

Accordingly, NASD is proposing to rename the Rule 7000 Series as "Charges For OTC Reporting Facility, OTC Bulletin Board and Trade Reporting and Compliance Engine Services" and delete from the Rule 7000 Series all fee provisions that are no longer applicable. The current pricing schedule for members' use of the OTC Bulletin Board Service, ORF and TRACE will be retained and renumbered. Specifically, current Rule 7010(g) will be renumbered as Rule 7010 (OTC Reporting Facility) and amended to apply only to the ORF; current Rule 7010(j) will be renumbered as Rule 7020 (OTC Bulletin Board Service); current Rule 7010(k) will be renumbered as Rule 7030 (Trade Reporting and Compliance Engine (TRACE)); and paragraphs (3) and (4) of current Rule 7010(p) will be renumbered as paragraphs (a) and (b) of Rule 7040 (Historical Research and Administrative Reports). NASD is not proposing to modify any of the fees relating to such services in this proposed rule change; it is only deleting those fee provisions that are no longer applicable.<sup>8</sup>

NASD also notes that the fee schedule currently set forth in Rule 7010 relating to the use of the ITS/CAES System varies based upon the member's monthly volume. Assuming implementation of the changes proposed herein on March 5, 2007, the fees in Rule 7010 will apply only to two trading dates in March. Thus, NASD is clarifying that the fees charged for use of the ITS/CAES System on March 1 and

2, 2007 will be based on the member's volume for February 2007. In other words, the fee rates charged to a member for March 1 and 2, 2007 will be the same rates charged to the member for February 2007.

NASD has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be the date upon which the ADF begins operating for non-Nasdaq exchange-listed securities, currently scheduled for March 5, 2007.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>9</sup> in general, and with Section 15A(b)(5) of the Act,<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. NASD is proposing to delete references to fees for systems and services that NASD will no longer provide and is not proposing to modify the fees for use of any of the systems and services that NASD will continue to provide.

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

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

Because the foregoing proposed rule change establishes or changes a member due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4<sup>12</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-NASD-2007-018 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-NASD-2007-018. 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 NASD. 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-NASD-2007-018 and should be submitted on or before April 24, 2007.

<sup>8</sup> NASD notes that NASD members will continue to access the OTC Bulletin Board, which Nasdaq operates on NASD's behalf, via the Nasdaq Workstation. The Nasdaq Workstation also provides access to a variety of Nasdaq Exchange systems and services. Pursuant to the proposed rule change, the fees relating to access to and use of the Nasdaq Workstation will be deleted from NASD's rules as NASD does not charge for this service. However, NASD members are nonetheless required to pay all fees for access to and use of the Nasdaq Workstation pursuant to the applicable rules of the Nasdaq Exchange (*see, e.g.*, Rules 7011 and 7015), which apply to members and non-members of the Nasdaq Exchange.

<sup>9</sup> 15 U.S.C. 78o-3.

<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55543; File No. SR-NYSE-2007-31]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 60 To Allow the Exchange To Identify Its Quotation as Slow Non-Firm During the Manual Reporting of a Block-Sized Transaction

March 27, 2007.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 20, 2007, the New York Stock Exchange LLC ("NYSE" or the "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 substantially prepared by the Exchange. NYSE has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is proposing to amend Rule 60 to provide that when the Exchange quotation is not available for automatic execution due to the manual reporting of a block-sized transaction, the Exchange will identify such quotes with an indicator signifying that they are non-firm within the context of Regulation National Market System ("Reg. NMS").<sup>5</sup> The text of the rule proposal is available on the Exchange's Web site (<http://www.nyse.com>), at the

Exchange, 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, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The NYSE proposes to amend Rule 60 to specify that when a specialist manually reports a block-sized transaction<sup>6</sup> that involves orders in the Display Book®( system ("block-sized transaction"), the Exchange will use an indicator to signify that the NYSE quote is non-firm. During the brief moment it takes a specialist to manually report a block-sized transaction in a security, autoquoting of the highest bid/lowest offer is suspended in that stock.<sup>7</sup> In addition, during that same period of time, automatic executions against the displayed quotation are not available.<sup>8</sup> After the specialist has completed the report of a block-sized transaction, autoquote will resume immediately,<sup>9</sup> and the NYSE quotation will similarly again be available for automatic executions.<sup>10</sup>

In the NYSE Hybrid Market<sup>SM</sup> ("Hybrid Market"), autoquote and the availability of the Exchange quotation for automatic executions are likewise both disengaged for limited periods in connection with two other specific auction market activities: (1) When the specialist gaps the quotation in accordance with Exchange policies and procedures,<sup>11</sup> and (2) when trading on the Exchange reaches a Liquidity

Replenishment Point ("LRP").<sup>12</sup> For both of these situations, as provided in Rule 60(c)(2)(b), the Exchange identifies its quotation as unavailable for automatic execution in accordance with Reg. NMS.

Through this filing, the Exchange proposes to specify in Rule 60(c)(2)(b) that in addition to the two situations described in the preceding paragraph, the NYSE will identify its quotation as non-firm as soon as the report template is opened by the specialist to report a block-sized transaction, and will continue to do so until the trade has been reported. This change is necessary because the quotation that is disseminated when a block-sized transaction is being manually reported may not reflect the current state of the market in the stock, given the temporary suspension of autoquoting of the highest bid/lowest offer that occurs during the reporting of a block-sized transaction. Thus, identifying the quotation as non-firm when autoquote and automatic executions are suspended by a block-sized transaction will provide market participants with more accurate information about the state of the NYSE quotation. Moreover, identifying the NYSE quotation as non-firm will bring the dissemination of the quotation during block-sized transactions more in line with the way in which they are identified during other Exchange manual auction market activities that similarly cause the suspension of autoquote and automatic executions—*i.e.*, gap quotes and LRPs.

The Exchange completed Phase IV of the Hybrid Market<sup>SM</sup> rollout on February 28, 2007. However, the Phase IV software does not contain the coding necessary to properly identify the Exchange quotation as non-firm during the manual report of a block-sized transaction that involves orders in the Display Book. The NYSE has made the software changes required and is currently rolling it out as part of the post-Phase IV software in phases through March 30, 2007, the date by which it currently expects the rollout to be completed.

In addition, the NYSE notes that it has requested from the Commission limited no-action relief from the requirement that the NYSE enforce compliance by its specialist members with NYSE Rule 19 (Locking or Crossing Protected Quotations in NMS Stocks), with respect only to the display of a quotation when a block-sized transaction is being manually reported,

<sup>12</sup> See NYSE Rule 60(e)(i)(C). For a description of LRPs, see Hybrid Market<sup>SM</sup> Approval Order, *supra* note 11.

<sup>6</sup> NYSE Rule 127.10 defines a "block" size as at least 10,000 shares or a quantity of stock having a market value of \$200,000 or more, whichever is less.

<sup>7</sup> See NYSE Rule 60(e)(i)(B).

<sup>8</sup> See NYSE Rule 1000(a)(v).

<sup>9</sup> See NYSE Rule 60(e)(ii)(B).

<sup>10</sup> See NYSE Rule 1000(b).

<sup>11</sup> See NYSE Rule 60(e)(i)(A). For a description of gapped quotations, see Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05) (the "Hybrid Market<sup>SM</sup> Approval Order").

<sup>13</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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).