

executed against the individual orders and quotes in the leg markets.

The Exchange proposes that Lead Market Makers ("LMM") not be afforded any guaranteed allocation either in the execution of a complex strategy nor, if present, at the NYSE Arca BBO when a Complex Order executes against the individual leg markets. There is no obligation for LMMs (or any Market Maker) to quote prices for complex strategies; therefore there is no need for a guaranteed allocation. A market participant that establishes a price for a strategy should be rewarded for setting that price by being granted strict time priority. Similarly, the LMM quotes in the individual leg markets are available to all orders but are not advertising a particular strategy. They should not be granted a guaranteed allocation in any of the leg markets resulting from the execution of a Complex Order. Complex Orders will thus execute against the individual legs of the Consolidated Book in strict price time. The Exchange also proposes to continue to allow the individual legs of Complex Orders to be executed in the minimum applicable trading increments in the designated series in order to achieve the total or net debit/credit, consistent with Rule 6.72.

For purposes of the firm quote rule, the Complex Order in the Consolidated Book shall be considered "firm" at the posted debit or credit.⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁷ in general and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular in that it is designed 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.

NYSE Arca believes the proposed rule change related to Complex Orders is appropriate in that Complex Orders are widely recognized by market participants as invaluable, both as an investment and for risk management and investment strategy. The proposed rule change would provide the opportunity for a more efficient mechanism for carrying out these strategies.

⁶ See Rule 602 of Regulation NMS, 17 CFR 242.602.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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 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

No written comments were solicited or received with respect to the proposed rule change.

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 the Exchange 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.

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. Please include File Number SR-NYSEArca-2008-54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEArca-2008-54. 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, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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-NYSEArca-2008-54 and should be submitted on or before July 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57930; File No. SR-NASDAQ-2008-017]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 1, To Clarify the Listing of Additional Shares Notification Process

June 5, 2008.

I. Introduction

On March 6, 2008, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to modify Nasdaq's listing of additional

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

shares notification process.³ The proposed rule change was published for comment in the **Federal Register** on April 10, 2008.⁴ The Commission received no comments on the proposal as published. On May 7, 2008, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ This order provides notice of the proposed rule change, as modified by Amendment No. 1, and approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

Pursuant to Nasdaq Rules 4310(c)(17) and 4320(e)(15), a company is required to provide 15 days notice to Nasdaq prior to issuing securities or entering into transactions that would result in the issuance of securities in certain specified situations set forth in the rules. These notification requirements are intended to allow Nasdaq to make compliance determinations regarding stock issuances that are potentially subject to the shareholder approval rules.

Nasdaq proposes to make certain modifications to its rules governing the notification process for the listing of additional shares. First, Nasdaq proposes to clarify the timing of the notice requirement contained in Rules 4310(c)(17)(D) and 4320(e)(15)(D). Currently, the rules provide that notifications under these subparagraphs are required prior to "entering into" a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) greater than 10% of either the total shares outstanding or the voting power outstanding on a pre-transaction basis. Nasdaq states that, in practice, it has treated this requirement as being satisfied if the company files the required notification 15 days before

issuing the securities, rather than 15 days prior to entering into the transaction. Because such interpretation is not transparent from the rule, Nasdaq proposes to revise these provisions so that it is clear that notice will instead be required prior to "issuing" such securities.

Second, Nasdaq proposes to modify the notice requirement contained in Rules 4310(c)(17)(A) and 4320(e)(15)(A) as it relates to companies relying on the exception to shareholder approval for inducement grants to new employees contained in Rule 4350(i)(1)(A)(iv).⁶ Currently, the rule provides that an issuer is required to notify Nasdaq at least 15 calendar days prior to establishing or materially amending a stock option plan, purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants without shareholder approval. Nasdaq asserts that, because inducement grants can be made at the time the employment offer is accepted, companies may not be able to provide 15 days of advance notice. Therefore, Nasdaq proposes to modify the notice requirement to require notification of such inducement grants no later than the earlier of: (1) Five calendar days after entering into the agreement to issue the securities; or (2) the date of the public announcement of the award required by Rule 4350(i)(1)(A)(iv).⁷

Third, Nasdaq proposes to amend Rules 4310(c)(17) and 4320(e)(15) to clarify that the notifications required by these rules must be made on a Listing of Additional Shares ("LAS") Notification Form⁸ and that Nasdaq encourages companies to file the form as soon as practicable. In addition, in an effort to provide transparency to the consequences of failing to timely file LAS notifications, Nasdaq proposes to amend the rules to specifically state that if a company fails to timely file the LAS notification, Nasdaq may issue a Staff Determination (pursuant to the Rule 4800 Series) that is a public reprimand letter or a delisting determination. Nasdaq notes that, in determining whether to issue a Staff Determination, and whether such a Staff Determination would be a delisting determination or a

public reprimand letter, Nasdaq would consider whether the issuer has demonstrated a pattern of late filings, the length of such filing delays, the reason for the delays, whether the issuer has been contacted concerning previous violations, whether the underlying transactions were themselves non-compliant, and whether the issuer has taken steps to assure that future violations will not occur.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,⁹ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.¹⁰

The Commission believes that amending the timing requirement in Rules 4310(c)(17)(D) and 4320(e)(15)(D) to require that notification be made 15 days prior to issuing securities, rather than prior to entering into the specified transactions, will provide issuers certainty as to what point in a transaction the latest notification can be provided under Nasdaq's rule, as well as eliminate any ambiguity surrounding the application of this rule. Further, this proposed rule change will make the timing requirement in subparagraph (D) of Rules 4310(c)(17) and 4320(e)(15) consistent with the timing requirement for notification of other types of issuances of stock under the rules, which require notification 15 days prior to the issuance of securities.¹¹ At the same time, Nasdaq has assured the Commission that 15 days notice prior to issuance should continue to give

³ As part of the proposed rule filing, the Exchange submitted a revised Listing of Additional Shares Notification Form conforming the instructions on the Form to the corresponding proposed rule changes.

⁴ See Securities Exchange Act Release No. 57616 (April 3, 2008), 73 FR 19540.

⁵ In Amendment No. 1, the Exchange modified the proposed notice requirement in Rules 4310(c)(17)(A) and 4320(e)(15)(A) relating to companies relying on the exception to shareholder approval for inducement grants to new employees contained in Rule 4350(i)(1)(A)(iv). In the original filing, Nasdaq proposed that notice of such an inducement grant would be required no later than five calendar days after entering into the agreement to issue securities. In Amendment No. 1, Nasdaq proposed to modify this notification requirement so that notice of an inducement grant must be provided no later than the earlier of: (1) Five calendar days after entering into the agreement to issue securities; or (2) the date of the public announcement of the award required by Rule 4350(i)(1)(A)(iv).

⁶ Rule 4350(i)(1)(A)(iv) allows an exception to the requirement to obtain shareholder approval for equity compensation for certain "issuances to a person not previously an employee or director of the company, or following a bona fide period of non-employment, as an inducement material to the individual's entering into employment with the company."

⁷ See Amendment No. 1, *supra* note 5.

⁸ See *supra* note 3.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ In particular, paragraph (B) of Rules 4310(c)(17) and 4320(e)(15) require issuers to notify Nasdaq 15 calendar days *prior to issuing securities* that may potentially result in a change of control of the issuer. Further, paragraph (C) requires issuers to notify Nasdaq 15 calendar days *prior to issuing any common stock* in connection with the acquisition of the stock or assets of another company, if any officer or director or substantial shareholder of the issuer has a 5% or greater interest in the company to be acquired or in the consideration to be paid. (emphasis added)

Nasdaq enough time to review the LAS notifications to ensure that stock issuances comply with the Nasdaq rules and, in particular, Nasdaq's shareholder approval requirements. As such, the Commission believes that the proposed rule change is consistent with the protection of investors and the public interest. The Commission also notes that the proposed rule language and the instructions to the LAS Notification Form urge issuers to file the form as soon as practicable, even if all of the relevant terms of the transaction or required documentation are not yet available. The Commission would hope that issuers would provide the required LAS Notification Form to Nasdaq as soon as possible to ensure timely compliance with any shareholder approval that may be required.

The Commission also believes that the modification to the timing requirement for companies making an inducement grant is appropriate for this narrow category of stock issuances. The Commission notes that Nasdaq has represented that, as a practical matter, it often is not possible for companies to provide advance notice of inducement grants, because such grants are often made at the time the employment offer is accepted. Accordingly, modifying the timing requirement to require companies to provide notice to Nasdaq no later than the earlier of: five calendar days after entering into the agreement to issue the securities; or the date of the public announcement of the award,¹² should make it more feasible for companies to timely meet the notification requirement. At the same time, the Commission believes that the modified timing requirement is consistent with the protection of investors and the public interest because such inducement grants are permitted without shareholder approval pursuant to Nasdaq Rule 4350(i)(1)(A)(iv). Therefore, unlike other stock issuances under Nasdaq's shareholder approval rules, Nasdaq does not need to make a compliance determination as to whether shareholder approval is required prior to the issuance. The Commission notes, however, that Nasdaq still would need to make a determination that the inducement grant meets the requirements of the exception provided in Nasdaq Rule 4350(i)(1)(A)(iv).¹³ As

such, the Commission believes that the modified timing requirement for inducement grants is appropriate and balances the timing needs of issuers relying on the inducement grant exception with Nasdaq's compliance responsibility to ensure that the issuer is appropriately relying on the inducement grant exception, and has met the Rule 4350(i)(1)(A)(iv) requirements for doing so.

Finally, the Commission believes that the additional proposed changes provide clarity and transparency to the operation of the notification requirements. In particular, the proposed changes clarify that notifications must be made on the LAS Notification Form and that Nasdaq encourages companies to file the form as soon as practicable even if all of the relevant terms are not yet known. The Commission also notes that it reviewed Nasdaq's revised LAS Notification Form and believes that the instructions on the form appropriately reflect the corresponding proposed rule changes. Further, the proposed changes clarify the consequences of failing to timely file the form by expressly stating that in such instances, Nasdaq may issue a Staff Determination that is either a public reprimand letter or a delisting determination. In this regard, the Commission notes that it expects Nasdaq to carefully monitor compliance with the notification requirements and to take appropriate action as necessary. In particular, because of the importance of shareholder approval, the Commission expects that in cases where failure to timely file the notification form is coupled with a failure to meet the shareholder approval requirements, Nasdaq will take action that is suitable for violations of such rules.

The Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the Exchange modified the proposed notice requirement for companies issuing inducement grants to new employees. In the original filing,

issuances to a person not previously an employee or director of the company, or following a bona fide period of non-employment, as an inducement material to the individual's entering into employment with the company, provided such issuances are approved by either the issuer's independent compensation committee or a majority of the issuer's independent directors. Promptly following an issuance of any employment inducement grant in reliance on this exception, a company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

Nasdaq proposed that notice of such an inducement grant would be required no later than five calendar days after entering into the agreement to issue securities. In Amendment No. 1, Nasdaq proposed to modify this notification requirement so that notice of an inducement grant must be provided no later than the earlier of: (1) Five calendar days after entering into the agreement to issue securities; or (2) the date of the public announcement of the award required by Rule 4350(i)(1)(A)(iv). The Commission believes that the changes in Amendment No. 1 ensure that Nasdaq receives appropriate notice about an inducement grant no later than the date that the public is notified about such issuance pursuant to Rule 4350(i)(1)(A). As such, the Commission believes that Amendment No. 1 raises no new or novel regulatory issues and is consistent with the protection of investors and the public interest. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹⁴ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

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 modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2008-017 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NASDAQ-2008-017. 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

¹² See Nasdaq Rule 4350(i)(1)(A)(iv), which requires that, promptly following the issuance of any employment inducement grant made in reliance on the exception in such rule, a company must disclose in a press release the material terms of the grant.

¹³ Specifically, Rule 4350(i)(1)(A)(iv) provides that shareholder approval is not required for

¹⁴ 15 U.S.C. 78s(b)(2).

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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2008-017 and should be submitted on or before July 2, 2008.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NASDAQ-2008-017), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57921; File No. SR-NYSEArca-2008-46]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Shares of the NETS ISEQ 20 Index Fund (Ireland)

June 4, 2008.

I. Introduction

On May 8, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade the shares ("Shares") of the NETS ISEQ 20 Index Fund (Ireland) ("Fund") issued by the NETS Trust ("Trust"). The proposed rule change was published for comment in the **Federal Register** on May 15, 2008 for a 15-day comment period.³ The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units ("ICUs").⁴ The Fund is an "index fund" that seeks to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of publicly-traded securities in the aggregate in the Irish market, as represented by the ISEQ 20[®] ("Index"). The primary market for securities in the Index is the Irish Stock Exchange.

The Exchange represents that the Index for the Fund does not meet all of the "generic" listing requirements of Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of ICUs based on international or global indexes.⁵ Specifically, the Index meets all such requirements except for those set forth in Commentary .01(a)(B)(3).⁶ The Exchange represents

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57805 (May 8, 2008), 73 FR 28178.

⁴ ICUs are securities that represent interests in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). See NYSE Arca Equities Rule 5.2(j)(3).

⁵ NYSE Arca Equities may approve a series of ICUs based on equity security components for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Act, if such series of ICUs satisfies the "generic" listing requirements that are set forth under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) and have been approved by the Commission. See Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3); 17 CFR 240.19b-4(e).

⁶ The Exchange states that the Index satisfies the first requirement under Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) that the most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio. However, the Index fails to meet the second requirement of Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) that the five most heavily weighted component stocks shall not exceed 60% of the weight of the Index. The Exchange states that, as of April 18, 2008, the five most heavily weighted component stocks represented 68.7% of the Index weight.

that: (1) Except for the requirement under Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) relating to the five most heavily weighted component stocks, the Shares of the Fund currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs will apply to the Shares; and (3) the Trust is required to comply with Rule 10A-3 under the Act⁷ for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and Information Bulletin to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs.⁸

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act⁹ and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹¹ which requires, among other things, that the Exchange's rules be designed 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 proposed rule change should not significantly affect the protection of investors or the public interest or

⁷ See 17 CFR 240.10A-3.

⁸ See, e.g., Securities Exchange Act Release Nos. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86) (approving generic listing standards for ICUs based on international or global indexes); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (approving generic listing standards for ICUs and Portfolio Depository Receipts); and 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29) (approving rules for the listing and trading of ICUs).

⁹ 15 U.S.C. 78f.

¹⁰ In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).