

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 self-regulatory organization. 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-2008-070, and should be submitted on or before September 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**  
Acting Secretary.

[FR Doc. E8-20516 Filed 9-3-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58440; File No. SR-NASDAQ-2008-071]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Generic Listing Standards for Index Multiple Exchange Traded Fund Shares and Index Inverse Exchange Traded Fund Shares

August 28, 2008.

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 August 20, 2008, 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. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

Nasdaq is filing a proposed rule change to amend Nasdaq Rule 4420(j) to list and trade, or trade pursuant to unlisted trading privileges ("UTP"), shares of a series of Index Multiple Exchange Traded Fund Shares ("Multiple Fund Shares") and Index Inverse Exchange Traded Fund Shares ("Inverse Fund Shares") (collectively, the "Fund Shares"). The text of the proposed rule change is available from Nasdaq's Web site at <http://nasdaq.cchwallstreet.com>, at Nasdaq's principal office, and at the Commission's Public Reference Room.

Proposed new language is italicized; proposed deletions are in brackets.<sup>3</sup>

\* \* \* \* \*

#### 4420. Quantitative Listing Criteria

\* \* \* \* \*

(a)-(i) No Change.  
(j) Index Fund Shares  
(1) No Change  
(A) No Change  
(B)(i) The term "Index Fund Share" includes a security issued by an open-end management investment company that seeks to provide investment results that either exceed the performance of a specified domestic equity, international or global equity, or fixed income index or a combination thereof by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified domestic equity, international or global equity, or fixed income index or a combination thereof by a specified multiple. Such a security is issued in a specified aggregate number in return for a deposit of a specified number of shares of stock, a specified portfolio of fixed income securities or a combination of the above and/or cash as defined in subparagraph (1)(B)(ii) of this rule with a value equal to the next determined net asset value. When aggregated in the same specified minimum number, Index Fund Shares may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock, fixed income securities or a combination thereof and/or cash with a

value equal to the next determined net asset value.

(ii) In order to achieve the investment result that it seeks to provide, such an investment company may hold a combination of financial instruments, including, but not limited to, stock index futures contracts; options on futures contracts; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements and reverse repurchase agreements (the "Financial Instruments"), but only to the extent and in the amounts or percentages as set forth in the registration statement for such Index Fund Shares.

(iii) Any open-end management investment company which issues Index Fund Shares referenced in this subparagraph (1)(B) that seeks to provide investment results, before fees and expenses, in an amount that exceeds -200% of the percentage performance on a given day of a particular domestic equity, international or global equity or fixed income securities index or a combination thereof shall not be approved by the Exchange for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934.

(iv) For the initial and continued listing of a series of Index Fund Shares referenced in the provisions of this subparagraph (1)(B) of this rule, the following requirements must be adhered to:

Daily public Web site disclosure of portfolio holdings that will form the basis for the calculation of the net asset value by the issuer of such series, including, as applicable, the following instruments:

- The identity and number of shares held of each specific equity security;
- The identity and amount held for each specific fixed income security;
- The specific types of Financial Instruments and characteristics of such Financial Instruments; and
- Cash equivalents and the amount of cash held in the portfolio.

If the Exchange becomes aware that the net asset value related to an Index Fund Shares included in the provisions of this subparagraph (1)(B)(ii) of this rule, is not being disseminated to all market participants at the same time or the daily public Web site disclosure of portfolio holdings does not occur, the Exchange shall halt trading in such series of Index Fund Share, as appropriate. The Exchange may resume trading in such Index Fund Shares only when the net asset value is disseminated to all market participants at the same time or the daily public Web site

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

disclosure of portfolio holdings occurs, as appropriate.

(C) [(B)] Reporting Authority. The term “Reporting Authority” in respect of a particular series of Index Fund Shares means Nasdaq, a wholly-owned subsidiary of Nasdaq, or an institution or reporting service designated by Nasdaq or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, and other information relating to the issuance, redemption or trading of Index Fund Shares.

Nothing in this paragraph shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by Nasdaq; the term “Reporting Authority” shall not refer to an institution or reporting service not so designated.

(D) [(C)] US Component Stock. The term “US Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

(E) [(D)] Non-US Component Stock. The term “Non-US Component Stock” shall mean an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

(2)–(10) No Change

(k)–(o) 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, Nasdaq 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 III below, and is set forth in Sections A, B, and C below.

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

#### 1. Purpose

Nasdaq Rule 4420(j) provides standards for listing Index Fund Shares (“IFSs”) on the Exchange. Nasdaq proposes to amend the definition of “Index Fund Share” set forth in proposed Nasdaq Rule 4420(j)(1)(B) to permit the listing and trading, or trading pursuant to UTP, of Fund Shares and to properly reflect the fact that domestic equity, international or global equity, or fixed income securities indexes or a combination thereof may be used as the underlying performance benchmark for Fund Shares. Accordingly, this proposal would enable the Exchange to list and trade Multiple Fund Shares and certain Inverse Fund Shares pursuant to Rule 19b–4(e) of the Act.<sup>4</sup> The Exchange also notes that the Commission has approved the original listing and trading of Fund Shares on the American Stock Exchange LLC (“Amex”).<sup>5</sup>

#### Generic Listing Standards

Nasdaq Rule 4420(j) provides standards for listing IFSs, which are securities issued by an open-end management investment company (open-end mutual fund) based on a portfolio of securities that seeks to provide investment results that correspond generally to the price and yield performance or total return performance of a specified foreign or domestic securities index or fixed income index. Pursuant to Nasdaq Rule 4420(j)(1)(A), IFSs must be issued in a specified aggregate minimum number in return for a deposit of specified securities and/or a cash amount, with a value equal to the next determined net asset value (“NAV”). When aggregated in the same specified minimum number, IFSs must be redeemed by the issuer for the securities and/or cash, with a value equal to the next determined NAV. Consistent with Nasdaq Rule 4420(j)(9)(A)(ii), the NAV is calculated once a day after the close of the regular trading day.

The proposed revisions to Nasdaq Rule 4420(j) would allow the listing and trading of Multiple Fund Shares and Inverse Fund Shares that sought to provide investment results, before fees and expenses, in an amount not exceeding – 200% of the underlying benchmark index pursuant to Rule 19b–

4(e) under the Act,<sup>6</sup> where the other applicable generic listing standards for IFSs are satisfied. In connection with Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds – 200% of the underlying benchmark index, the Exchange’s proposal would continue to require specific Commission approval pursuant to Section 19(b)(2) of the Act.<sup>7</sup> In particular, Nasdaq Rule 4420(j)(1)(B)(iii) would expressly prohibit Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds – 200% of the underlying benchmark index, from being approved by the Exchange for listing and trading pursuant to Rule 19b–4(e) under the Act.<sup>8</sup>

Current Nasdaq Rule 4420(j)(1)(A)(i), in pertinent part, defines the term “Index Fund Share” as based on a specified *foreign or domestic stock index*. In conjunction with the current proposal, the Exchange proposes to amend this definition to include domestic equity, international or global equity, or fixed income securities indexes and combinations thereof as permissible underlying performance benchmarks. The Exchange states that the proposed revision is consistent with Nasdaq Rule 4420(j) reflecting the fact that domestic equity, international or global equity, or fixed income securities indexes or a combination thereof may be used as the underlying performance benchmark for IFSs, including Fund Shares.

The Exchange believes that adopting generic listing and trading standards for Fund Shares based on domestic equity, international or global equity and/or fixed income securities indexes and applying Rule 19b–4(e) should fulfill the intended objective of that Rule by allowing those IFSs that satisfy the proposed standards to commence trading, without the need for individualized Commission approval. The proposed rules have the potential to reduce the time frame for bringing Fund Shares to market, thereby reducing the burdens on issuers and other market participants.<sup>9</sup>

The Commission has approved generic standards providing for the listing and trading of derivative

<sup>6</sup> 17 CFR 240.19b–4(e).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 240.19b–4(e).

<sup>9</sup> The Exchange submits that the failure of a particular Fund Share portfolio to comply with the proposed generic listing and trading standards under Rule 19b–4(e) would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade a particular Fund Share.

<sup>4</sup> 17 CFR 240.19b–4(e).

<sup>5</sup> See Securities Exchange Act Release No. 57660 (April 14, 2008), 73 FR 21391 (April 21, 2008) (SR-Amex–2007–131).

products pursuant to Rule 19b-4(e) based on indexes previously approved by the Commission under Section 19(b)(2) of the Act<sup>10</sup> and also notes that the generic listing standards provide for indexes that have been approved by the Commission in connection with the listing of Portfolio Depository Receipts, Index Fund Shares or Index-Linked Securities. The Exchange believes that the application of that standard to Fund Shares is appropriate because the underlying securities index will have been subject to detailed and specific Commission review in the context of the approval of listing of other derivatives.

The Exchange notes that existing Nasdaq Rule 4420(j)(9)(B) provides continued listing standards for all IFSs. For example, where the value of the underlying index or portfolio of securities on which the IFS is based is no longer calculated or available, or in the event that the IFS chooses to substitute a new index or portfolio for the existing index or portfolio, the Exchange would commence delisting proceedings if the new index or portfolio does not meet the requirements of and listing standards set forth in Nasdaq Rule 4420(j). If an IFS chose to substitute an index that did not meet any of the generic listing standards for listing of IFSs pursuant to Rule 19b-4(e) of the Act,<sup>11</sup> then for continued listing and trading, approval by the Commission of a separate filing pursuant to Section 19(b)(2) of the Act<sup>12</sup> to list and trade that IFS is required. In addition, the Exchange further notes that existing Nasdaq Rule 4420(j)(9)(A)(ii) provides that, prior to approving an IFS for listing, the Exchange will obtain a representation from the issuer that the NAV per share will be calculated daily and made available to all market participants at the same time.

The Exchange proposes to add Nasdaq Rule 4420(j)(1)(B)(iv) to provide for the halt of trading for Fund Shares if the Exchange becomes aware that the open-end investment company fails to properly disseminate the appropriate NAV to market participants at the same time. In addition, the proposed rule would also require a halt to trading if the open-end investment company issuing the Fund Shares failed to provide daily public Web site disclosure of its portfolio holdings. In particular, proposed Nasdaq Rule 4420(j)(1)(B)(iv) provides that the Exchange will halt

trading in a series of Multiple Fund Shares and/or Inverse Fund Shares if the Exchange becomes aware that the open-end investment company issuing the Fund Shares fails to disseminate the appropriate NAV to all market participants at the same time and/or fails to provide daily public Web site disclosure of its portfolio holdings.

The investment objective associated with the Fund Shares must be expected to achieve investment results, before fees and expenses, by a specified multiple (Multiple Fund Shares) or inversely up to -200% (Inverse Fund Shares) of the underlying performance benchmark domestic equity, international or global equity and/or fixed income indexes, as applicable. Fund Shares differ from traditional exchange-traded fund shares in that they do not merely correspond to the performance of a given securities index, but rather attempt to match a multiple or inverse of such underlying index performance.

In order to achieve investment results that provide either a positive multiple or inverse of the benchmark index, Fund Shares may hold a combination of financial instruments, including, but not limited to: Stock index futures contracts; options on futures; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements; and reverse repurchase agreements (the "Financial Instruments"). Normally, 100% of the value of the underlying portfolios for the Inverse Fund Shares will be devoted to Financial Instruments and money market instruments, including U.S. government securities and repurchase agreements (the "Money Market Instruments"). The underlying portfolios for Multiple Fund Shares may consist of a combination of securities, Financial Instruments and Money Market Instruments.

#### Limitation on Leverage

In connection with Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds -200% of the underlying benchmark index, the Exchange's proposal would continue to require specific Commission approval pursuant to Section 19(b)(2) of the Act.<sup>13</sup> In particular, Nasdaq Rule 4420(j)(1)(B)(iii) would expressly prohibit Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds -200% of the underlying benchmark index, from being approved by the Exchange for listing and trading

pursuant to Rule 19b-4(e) under the Act.<sup>14</sup>

In connection with Multiple Fund Shares, Nasdaq Rule 4420(j)(1)(B) does not provide a similar limitation on leverage. Instead, the proposal would permit the underlying registered management investment company or fund to seek to provide investment results, before fees and expenses, that correspond to any multiple, without limitation, of the percentage performance on a given day of a particular domestic equity, international or global equity, or fixed income securities indexes or a combination thereof.

#### Availability of Information About Fund Shares and Underlying Indexes

Proposed Nasdaq Rule 4420(j)(1)(B)(iv) provides that the portfolio composition of a Fund will be disclosed on a public Web site. Web site disclosure of portfolio holdings that will form the basis for the calculation of the NAV by the issuer of a series of Fund Shares will be made daily and will include, as applicable, the identity and number of shares held of each specific equity security, the identity and amount held of each fixed income security, the specific types of Financial Instruments and characteristics of such instruments, cash equivalents and amount of cash held in the portfolio of a fund. This public Web site disclosure of the portfolio composition of a Fund, that will form the basis for the calculation of the NAV, will coincide with the disclosure of the same information to "Authorized Participants."<sup>15</sup> Investors will have access to the current portfolio composition of a Fund through the Fund's Web site and/or at the Exchange's Web site at <http://www.nasdaqomx.com>.

#### Trading Halts

Existing trading halt requirements for IFSs will apply to Fund Shares. Nasdaq will halt trading in Fund Shares under the conditions specified in Nasdaq Rules 4120 and 4121, as well as subject to proposed Nasdaq Rule 4420(j)(1)(B)(iv). The conditions for a halt include a regulatory halt by the listing market. UTP trading in Fund

<sup>14</sup> 17 CFR 240.19b-4(e).

<sup>15</sup> Authorized Participants are the only persons that may place orders to create and redeem Creation Units. Authorized Participants must be registered broker-dealers or other securities market participants, such as banks and other financial institutions that are exempt from registration as broker-dealers to engage in securities transactions, who are participants in DTC. The format of the disclosure of portfolio holdings to Authorized Participants may differ from the format of the public Web site disclosure.

<sup>10</sup> 15 U.S.C. 78s(b)(2). See Securities Exchange Act Release No. 54765 (November 16, 2006), 71 FR 67668 (November 22, 2006) (SR-Nasdaq-2006-009) (Commodity-Linked Securities).

<sup>11</sup> 17 CFR 240.19b-4(e).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

Shares will also be governed by provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of the calculation of the estimated NAV ("Intraday Indicative Value"), which is updated regularly during the trading day, among other values.

If Nasdaq becomes aware that the NAV or the identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio") with respect to a Fund Share is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV or the Disclosed Portfolio is available to all market participants.

In the case of the Financial Instruments held by a Multiple or Inverse Fund, the Exchange represents that a notification procedure will be implemented so that timely notice from the investment adviser of such Multiple or Inverse Fund is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. The Exchange will then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Multiple and/or Inverse Fund Shares.

Additionally, Nasdaq may cease trading Fund Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq will stop trading Fund Shares if the listing market delists them.

### Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular to its members and member organizations providing guidance with regard to member firm compliance responsibilities (including suitability obligations) when effecting transactions in the Fund Shares and highlighting the special risks and characteristics of Funds Shares as well as applicable Exchange rules.

Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Fund Shares in Baskets (and that Fund Shares are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in Fund Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the

requirement that members deliver a prospectus to investors purchasing newly issued Fund Shares prior to or concurrently with the confirmation of a transaction; (5) the risks involved in trading Fund Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; and (6) trading information.

The Exchange notes that investors purchasing Fund Shares directly from a Fund will receive a prospectus. Members purchasing Fund Shares from a Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that Fund Shares are subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Fund Shares of the Funds and that the NAV for the Fund Shares will be calculated after 4 p.m. (Eastern Time) each trading day.

### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including exchange-traded funds) to monitor trading in Fund Shares. The Exchange represents that such procedures are adequate to address any concerns about the trading of Fund Shares on Nasdaq. Trading of Fund Shares through Nasdaq will be subject to FINRA's surveillance procedures for equity securities in general and ETFs in particular.<sup>16</sup> The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliate members of the ISG.<sup>17</sup>

### 2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act<sup>18</sup> in general and Section 6(b)(5) of the Act<sup>19</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with

persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rules will facilitate the listing and trading of Fund Shares and will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in the proposed rules are intended 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 impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form ([www.sec.gov/rules/sro.shtml](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-2008-071 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-NASDAQ-2008-071. 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 ([www.sec.gov/rules/sro.shtml](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

<sup>16</sup> FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA's performance under this regulatory services agreement.

<sup>17</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

<sup>18</sup> 15 U.S.C. 78f.

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

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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2008-071 and should be submitted on or before September 25, 2008.

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

After careful consideration, 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.<sup>20</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>21</sup> which requires that the rules of an exchange be designed, among other things, 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.

Pursuant to Section 19(b) of the Act<sup>22</sup> and Rule 19b-4 thereunder,<sup>23</sup> the listing and trading of a new derivative securities product is a proposed rule change that must be filed with and approved by the Commission. Rule 19b-4(e) under the Act<sup>24</sup> further provides that the listing and trading of a new derivative securities product by an exchange will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) under the Act<sup>25</sup> if the Commission has approved, pursuant to Section 19(b) of the Act, the exchange's trading rules, procedures, and listing

standards for the product class that would include the new derivative securities product, and the exchange has a surveillance program for the product class.

The Commission believes that the Exchange's adoption of listing and trading standards for Index Fund Shares that meet the requirements of Nasdaq Rule 4420(j) should fulfill the intended objective of Rule 19b-4(e) by allowing such Index Fund Shares to commence trading on the Exchange without the need for individualized Commission approval. Accordingly, the proposed rule should allow the Exchange to bring these securities to market without delay, thereby reducing the burdens on issuers and other market participants while promoting competition.

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the trading and listing pursuant to Rule 19b-4(e) of Inverse Fund Shares and Multiple Fund Shares listed pursuant to Rule 19b-4(e) on the Exchange. Among other things, the proposal would require daily public Web site disclosure of a fund's portfolio holdings and dissemination of its NAV to all market participants at the same time, or else the Exchange would be obligated to halt trading in the fund's shares. In addition, Fund Shares listed and/or traded under the proposed "generic" standards would be subject to existing Nasdaq rules that govern the continued listing and trading of Index Fund Shares.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register**. The Commission notes that it has recently approved a similar proposal of another exchange,<sup>26</sup> and Nasdaq's proposal does not raise any novel regulatory issues. Accordingly, the Commission believes that accelerating approval of this proposal is appropriate and will enable the Exchange to amend its rules to reflect the standards for listing and trading Inverse and Multiple Fund Shares, thereby conforming Nasdaq's rules to those of other exchanges without delay.

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change (SR-NASDAQ-2008-071) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-20517 Filed 9-3-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58429; File No. SR-NYSE-2008-71]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 123B (Exchange Automated Order Routing System) To Allow a Member Organization To Provide Other Market Participants With Access to the Exchange on an Agency Basis

August 27, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 18, 2008, New York Stock Exchange LLC ("NYSE" 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 NYSE. NYSE filed the proposed rule change as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it 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

NYSE proposes to amend NYSE Rule 123B to set forth the requirements that would allow a member organization to provide other market participants with access to the Exchange on an agency basis for the entry and execution of orders on the Exchange.<sup>5</sup> The text of the proposed rule change is available at NYSE, the Commission's Public

<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.

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

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

<sup>5</sup> NYSE Rule 54 provides that only members are permitted to "make or accept bids or offers, consummate transactions, or otherwise transact business on the Floor for any security admitted to dealings on the [Exchange].\* \* \*" See also NYSE Rule 2.

<sup>20</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78s(b)(1).

<sup>23</sup> 17 CFR 240.19b-4.

<sup>24</sup> 17 CFR 240.19b-4(e).

<sup>25</sup> 17 CFR 240.19b-4(c)(1).

<sup>26</sup> See Securities Exchange Act Release No. 57660 (April 14, 2008), 73 FR 21391 (April 21, 2008) (SR-Amex-2007-131). The Commission notes that it received no comments on the Amex's proposal.

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