

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

Nasdaq proposes to trade, on an over-the-counter basis, the following HOLDRs: (1) Broadband; (2) B2B Internet; (3) Europe 2001; (4) Internet; (5) Internet Architecture; (6) Internet Infrastructure; (7) Market 2000+; (8) Software; (9) Utilities; and (10) Wireless (each a "HOLDR" and collectively, the "HOLDRs").⁴ The HOLDRs currently are listed and traded on the American Stock Exchange LLC ("Amex") and trade on other national securities exchanges. The following paragraphs contain information applicable to all the HOLDRs generally.⁵

Trust Issued Receipts Generally

HOLDRs, a type of Trust Issued Receipt, are negotiable receipts that are issued by a trust representing securities of issuers that have been deposited and are held on behalf of the holders of the Trust Issued Receipts. Trust Issued Receipts are designed to allow investors to hold securities from a variety of companies throughout a particular industry in a single, Nasdaq-or-exchange-listed⁶ and traded instrument that represents their beneficial ownership in the underlying securities. Holders of Trust Issued Receipts maintain beneficial ownership of each of the underlying securities evidenced by Trust Issued Receipts. Holders may cancel their Trust Issued Receipts at any time to receive the underlying securities.

Beneficial owners of the receipts will have the same rights, privileges and obligations as they would have if they beneficially owned the underlying securities outside of the Trust Issued Receipt program. Holders of the receipts have the right to instruct the trustee to vote the underlying securities evidenced

by the receipts, will receive reports, proxies and other information distributed by the issuers of the underlying securities to their security holders, and will receive dividends and other distributions declared and paid by the issuers of the underlying securities to the trustee.

Trust Issued Receipts are not leveraged instruments, and therefore do not possess any of the attributes of stock index options. Nasdaq believes that the level of risk involved in the purchase and sale of Trust Issued Receipts is almost identical to the risk involved in the purchase or sale of the common stocks represented by the receipt.

Trust Issued Receipts will be issued by a trust created pursuant to a depositary trust agreement. After the initial offering, the trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities with the trust. An investor in Trust Issued Receipts will be permitted to withdraw his or her underlying securities upon delivery to the trustee of one or more round-lots of 100 Trust Issued Receipts and to deposit such securities to receive Trust Issued Receipts.

Nasdaq Rules Applicable to the Trading of HOLDRs

Trust Issued Receipts, including HOLDRs, will be eligible to be traded through the Intermarket Trading System and will therefore be subject to the trade-through provisions of NASD Rule 5262. HOLDRs, as Trust Issued Receipts, are considered "securities," and thus dealings in HOLDRs will be conducted pursuant to Nasdaq and the NASD's existing equity trading rules. Thus, Nasdaq's general dealing and settlement rules will apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable Nasdaq equity rules and procedures will also apply.⁷ In addition, regular equity trading hours of 9:30 a.m. and 4 p.m. will apply to transactions in HOLDRs. However, trading rules pertaining to the availability of odd-lot trading in Nasdaq equities will not apply to the trading of HOLDRs, since HOLDRs will only be traded in round-lots. NASD's surveillance procedures for HOLDRs will be similar for those of Portfolio Depositary Receipts and Index Fund Shares and will incorporate and rely upon existing NASD surveillance procedures governing equities.

⁷ E.g., pursuant to NASD Rule 4613(a)(1)(D), a minimum quotation increment of one penny will apply to transactions of Trust Issued Receipts on Nasdaq.

Furthermore, unless otherwise specified, the trading of HOLDRs generally will be exempt from the short sale rule set forth in NASD Rule 3350.⁸

Prior to the commencement of trading in HOLDRs, Nasdaq will issue a circular to members highlighting the characteristics of purchases in HOLDRs, including that HOLDRs are not individually redeemable. In addition, the circular will inform members of Nasdaq policies about trading halts in such securities. Specifically, the circular will note that trading of HOLDRs will be halted whenever Nasdaq trading in equity securities is halted as a result of activation of market-wide "circuit breakers," which are tied to large decreases in the Dow Jones Industrial Average. Nasdaq may also halt trading in HOLDRs upon consideration of, among other factors: (1) The extent to which trading has ceased in the underlying security(s); (2) whether trading has been halted or suspended in the primary market(s) for any combination of underlying securities accounting for 20% or more of the applicable current index group value; and (3) the presence of other unusual conditions or circumstances deemed to be detrimental to the maintenance of a fair and orderly market. The trading in HOLDRs that has been the subject of a trading halt or suspension, may resume when Nasdaq determines that the conditions which led to the halt or suspension are no longer present or that the interests of a fair and orderly market are served by a resumption of trading.

Disclosure to Customers

Nasdaq will require members to provide all purchasers of newly issued Trust Issued Receipts with a prospectus for that series of HOLDRs.

Trading Issues for Trust Issued Receipts (Including HOLDRs)

A round-lot of any of the above Trust Issued Receipts represents a holder's individual and undivided beneficial ownership interest in the whole number of securities represented by the receipt. The amount of underlying securities for each round-lot of 100 Trust Issued Receipts will be determined at the beginning of the marketing period and will be disclosed in the prospectus to investors. Trust Issued Receipts may be

⁸ Nasdaq has provided criteria that Trust Issued Receipts must satisfy to qualify for and maintain the short sale exemption. For further details, see proposed rule change SR-NASD-2003-32. As of April 11, 2003, the trading of all HOLDRs, except for the B2B Internet HOLDRs and the Internet HOLDRs, were exempt from the short sale rule set forth in NASD Rule 3350. Thus, only short sales of B2B Internet HOLDRs and Internet HOLDRs must occur on an "up bid."

⁴ For further details on the component securities for each HOLDR, see Exhibit 3 to the proposed rule change, *supra* note 3.

⁵ Nasdaq notes that this information is based upon descriptions included in the various Trust Issued Receipt prospectuses and depositary trust agreements, the Amex submissions relating to its Trust Issued Receipts listing proposal, and the Commission's order approving the Amex proposal.

⁶ See Amendment No. 1, *supra* note.