

acquired, held or transferred only in round-lot amounts (or round-lot multiples) of 100 receipts. In order to ensure that transactions in Trust Issued Receipts are effected only in such amounts, no member may enter through the facilities of Nasdaq, for the account of a customer or for its own account, a quote or order for Trust Issued Receipts other than for a round-lot or round-lot multiple.

Nasdaq believes that HOLDERS will not trade at a material discount or premium to the assets held by the issuing trust, because the arbitrage process should promote correlative pricing between the HOLDERS and the underlying securities. If the price of a HOLDER deviates enough from the portfolio of underlying securities to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy the HOLDER at a discount, immediately cancel them in exchange for the underlying securities and sell the shares in the cash market at a profit, or sell the HOLDER short at a premium and buy the securities represented by the receipts to deposit in exchange for the HOLDER to deliver against the short position. In both instances, the arbitrageur locks in a profit and the markets move back into line.

Maintenance of the HOLDERS Portfolio

Except when a reconstitution event occurs, as described below, the securities represented by a HOLDER will not change. According to the prospectus of Trust Issued Receipts, under no circumstances will a new company be added to the group of issuers of the underlying securities, and weightings of component securities will not be adjusted after they are initially set.⁹

Reconstitution Events of HOLDERS

Trust agreements will provide for, and prospectuses for HOLDERS will describe, the automatic distribution of specified underlying securities in the trust's portfolio to the beneficial owners of HOLDERS in the circumstances referred to in such trust agreements and prospectuses as "reconstitution events." The reconstitution events occur under the following circumstances:

(1) If the underlying securities of a company evidenced by a HOLDER no longer has a class of common stock registered under section 12 of the Act,

then those securities will no longer be considered underlying securities and the trustee will distribute the securities of that company to the owners of HOLDERS;

(2) If the Commission finds that a company with underlying securities evidenced by the HOLDERS is a company that should be registered as an investment company under the Investment Company Act of 1940, and the trustee has actual knowledge of the Commission's finding, then the trustee will distribute the securities of that company to the owners of the HOLDERS;

(3) If the underlying securities of a company evidenced by a HOLDER are no longer outstanding as a result of a merger, consolidation or other corporate combination the trustee will distribute the consideration paid by and received from the acquiring company to the beneficial owners of HOLDERS, unless the consideration is additional underlying securities (*i.e.*, the acquiring company's securities are already included in the HOLDER as underlying securities), in which case such additional securities will be deposited into the trust; and

(4) If an underlying issuer's underlying securities are delisted from trading on a primary national securities exchange or Nasdaq market and are not listed for trading on another national securities exchange or Nasdaq within five business days from the date the underlying securities are delisted.

If the trustee removes a underlying security from the trust due to the occurrence of one of the reconstitution events described above, the trustee, in accordance with the depositary trust agreement, will deliver the underlying security to the investor as promptly as practicable after the date that the trustee has knowledge of the occurrence of a reconstitution event.

Issuance and Cancellation of HOLDERS

The trust will issue and cancel, and an investor may obtain, hold, trade or surrender, HOLDERS only in a round-lot of 100 or in round-lot multiples. While investors will be able to acquire, hold, transfer and surrender a round-lot of 100 HOLDERS, the bid and asked prices will be quoted on a per receipt basis. The trust will issue additional receipts on a continuous basis when an investor deposits the required securities with the trust.

An investor may obtain HOLDERS by either purchasing them on a national securities exchange or Nasdaq, or by delivering to the trust during its normal business hours the requisite securities evidencing a round-lot of HOLDERS. The trustee will charge an issuance fee of up

to \$10.00 per 100 HOLDERS. If a holder wants to cancel HOLDERS and withdraw the underlying securities, the holder may do so by surrendering the receipts to the trust during normal business hours. The trustee will charge a cancellation fee of up to \$10.00 per 100 HOLDERS. Lower charges may be assigned for bulk issuances and cancellations. The holder will receive the underlying securities no later than the business day after the trustee receives the request.

Termination of HOLDERS

The trust shall terminate upon the earlier of: (i) The removal of the HOLDERS from listing on a national securities exchange or Nasdaq if they are not listed for trading on another national securities exchange or Nasdaq within five business days from the date the receipts are delisted; (ii) the trustee resigns and no successor trustee is appointed within sixty days from the date the trustee provides notice to the initial depositor of its intent to resign; (iii) 75 percent of beneficial owners of outstanding HOLDERS (other than Merrill Lynch, Pierce, Fenner & Smith Incorporated) vote to dissolve and liquidate the trust; or (iv) December 31, 2039. If a termination event occurs, the trustee will distribute the underlying securities to the beneficial owners as promptly as practicable after the termination event.

Criteria for Initial and Continued Listing

Except as otherwise noted in Exhibit 1, Nasdaq believes that the HOLDERS satisfy Nasdaq's continued listing and trading criteria as set forth in NASD Rule 4420(l), which is generally consistent with the continued listing and trading criteria currently used by the Amex, the New York Stock Exchange ("NYSE"),¹⁰ and the regional exchanges.

Because of the continuous issuance and cancellation of Trust Issued Receipts, Nasdaq believes that it is necessary to maintain appropriate flexibility in connection with listing and trading a specific trust. If Trust Issued Receipts are to be listed on Nasdaq under Rule 4420(l), Nasdaq will establish a minimum number of receipts that must be outstanding at commencement of Nasdaq trading, and such minimum number will be included

⁹ Nasdaq represents that the number of each security represented in a receipt may change due to certain corporate events such as stock splits or reverse stock splits on underlying securities, and the relative weightings among the underlying securities may change based on the current market price of the underlying securities. See NASD Rule 4420(l)(4).

¹⁰ See Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999) (approving listing and trading of Trust Issued Receipts and Internet HOLDERS on the Amex); Securities Exchange Act Release No. 45718 (April 9, 2002), 67 FR 18965 (April 17, 2002) (approving the listing and trading of Trust Issued Receipts on the NYSE).