

Disclosure and Dissemination of Information

The Commission believes that Nasdaq's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading the HOLDRs. The prospectus will address the special characteristics of a particular HOLDR basket, including a statement regarding its redeemability and method of creation. The Commission notes that all investors in the HOLDRs who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing a HOLDR directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all Nasdaq member firms that purchase the HOLDRs from the trust for resale to customers must deliver a prospectus to such customers.

The Commission also notes that prior to the commencement of trading the HOLDRs, Nasdaq will issue a circular to its members explaining the unique characteristics and risks of this type of security. The circular also will note members' prospectus delivery requirements, and highlight the characteristics of purchases in HOLDRs, including that the HOLDRs are not individually redeemable. The circular also will inform members of Nasdaq policies regarding trading halts in HOLDRs.

As described above, the Commission has previously approved similar Amex and NYSE rules that permit the listing and trading of individual Trust Issued Receipts, including the trading of Trust Issued Receipts over-the-counter. In approving these securities for trading, the Commission considered their structure, their usefulness to investors and the markets, and Nasdaq's rules and surveillance programs that govern their trading.

The Commission notes that the HOLDRs that Nasdaq proposes to trade over-the-counter currently trade on other national securities exchanges. The Commission therefore believes that it is appropriate to approve these HOLDRs for trading over-the-counter on Nasdaq, as their trading should produce the same benefits to Nasdaq and to investors.

Nasdaq has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that Nasdaq's proposal to trade the HOLDRs over-the-counter will provide investors with a convenient and

less expensive way of participating in the securities markets. The Commission believes that the proposed rule change, as amended, could produce added benefits to investors through the increased competition between other market centers trading the product.

Specifically, the Commission believes that by increasing the availability of the HOLDRs as an investment tool, Nasdaq's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day.

As noted above, the Commission has approved the listing and trading of HOLDRs at other exchanges, under rules that are substantially similar to Nasdaq's rules.²⁰ The Commission published those rules in the **Federal Register** for the full notice and comment period. No comments were received on the proposed rules, and the Commission found them consistent with the Act.²¹ The HOLDRs at issue are currently trading on other securities exchanges pursuant to UTP. The Commission does not believe that trading of this product raises novel regulatory issues that were not addressed in the previous filings. Accordingly, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-NASD-2003-33), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Jill M. Peterson,

Assistant Secretary.

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²⁰ See note 7, *supra*.

²¹ *Id.*

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47705; File No. SR-NASD-2003-32]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Listing and Trading Standards for Trust Issued Receipts

April 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 7, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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. On April 17, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and to approve the amended proposed rule change on an accelerated basis.

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

Nasdaq proposes to establish listing standards under NASD Rule 4420(l) for the listing and trading, or trading over-the-counter, of Trust Issued Receipts. Nasdaq also proposes to adopt generic listing standards that permit the listing and trading, or trading over-the-counter, of Trust Issued Receipts pursuant to Rule 19b-4(e) of the Act.⁴ The text of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 16, 2003 ("Amendment No. 1"). Amendment No. 1: (1) Makes clarifications and technical corrections to the proposed rule text and the purpose section of the filing; (2) clarifies that a Trust Issued Receipt is a Nasdaq- or exchange-listed and traded instrument; and (3) clarifies that the Commission may review and determine, pursuant to Section 19(b)(2) of the Act, whether continuation of Nasdaq's short sale exemption under Rule 3350 is appropriate.

⁴ 17 CFR 240.19b-4(e). Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to Rule 19b-4(c)(1) under the Act, if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules,