

the proposed rule change is available at the Office of the Secretary, Nasdaq, and at the Commission.

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 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 adopt rules to provide standards that permit the listing and trading, or the trading over-the-counter, of Trust Issued Receipts, including generic listing standards of Trust Issued Receipts pursuant to Rule 19b-4(e) of the Act. Nasdaq proposes to adopt listing and trading standards applicable to Trust Issued Receipts consistent with the criteria used by the American Stock Exchange LLC ("Amex"), the New York Stock Exchange ("NYSE"), and other exchanges to trade Trust Issued Receipts on Nasdaq and/or on an over-the-counter basis. Thus, Nasdaq proposes to adopt standards that permit the listing and trading, or the trading over-the-counter, of Trust Issued Receipts under Section 19(b)(2) of the Act.⁵ In addition, Nasdaq proposes to adopt "generic" listing and trading standards for the listing and trading, or trading on an over-the-counter basis, of Trust Issued Receipts under Rule 19b-4(e) of the Act.⁶

Trust Issued Receipts Generally

Trust Issued Receipts 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-listed 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.

Criteria for Initial and Continued Listing and/or Trading

Nasdaq believes that the listing and trading criteria proposed in its new rule are generally consistent with the listing and trading criteria currently used by, among other exchanges, the Amex and the NYSE.⁷

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 or traded on Nasdaq, Nasdaq will establish a minimum number of receipts that must be outstanding at commencement of Nasdaq trading, and such minimum number will be included in any required submission to the Commission. Nasdaq anticipates requiring a minimum of 150,000 outstanding receipts before trading can commence.

In connection with continued listing and trading, and because the number of holders can be subject to substantial fluctuations depending on market conditions, Nasdaq believes that it would be inappropriate and burdensome on Trust Issued Receipt holders if Nasdaq considers suspending trading in or delisting a series of receipts with the consequent termination of the trust, unless the number of holders remains severely depressed over an extended time period. Therefore, Nasdaq will consider suspending or delisting a trust from trading when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the trust has more than sixty days remaining until termination and there have been fewer than fifty record and/or beneficial holders of the Trust Issued Receipts for the previous thirty or more consecutive trading days;

(b) If the aggregate number of Trust Issued Receipts outstanding is less than 50,000;

(c) If the aggregate market value of Trust Issued Receipts publicly held is less than \$1 million; or

(d) If such other event occurs or condition exists which, in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

Nasdaq will not, however, be required to suspend or delist from trading, based on the above factors, any Trust Issued Receipts for a period of one year after the initial listing of such Trust Issued Receipts for trading on Nasdaq. In addition, if the number of companies represented by the underlying securities drops to less than nine, and each time thereafter the number of companies is reduced, Nasdaq will consult with the Commission to confirm the appropriateness of continued listing or trading of the Trust Issued Receipts.

Trading Trust Issued Receipts Pursuant to Rule 19b-4(e)

To accommodate the efficient listing and trading, or trading on an over-the-counter basis, Nasdaq proposes to adopt generic listing and trading standards for

procedures and listings standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class. See 17 CFR 240.19b-4(e).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 240.19b-4(e).

⁷ See Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999) (approving the 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).