

Trust Issued Receipts pursuant to Rule 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") will not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,⁸ if the Commission has approved, pursuant to section 19(b) of the Act,⁹ the SRO's trading rules, procedures and listing requirements for the product class that include the new derivative securities product, and the SRO has a surveillance program for the product class.¹⁰ Nasdaq believes that the Commission's approval of the proposed generic listing requirements for Trust Issued Receipts will allow Nasdaq to trade qualifying products without the need for notice and comment and Commission approval under Section 19(b) of the Act.¹¹ Nasdaq's ability to rely on Rule 19b-4(e) for these products potentially reduces the time frame for bringing these securities to the market and thus enhances investors' opportunities.

The Commission has previously approved requests made by the Amex, the NYSE, and other exchanges to provide generic standards to list and/or trade Trust Issued Receipts.¹² Nasdaq believes that its proposed listing and trading requirements for Trust Issued Receipts are substantially similar to the generic listing and trading requirements of the Amex, the NYSE, and other exchanges.

Nasdaq Rules Applicable to the Trading of Trust Issued Receipts

Nasdaq represents that dealings in Trust Issued Receipts 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 would also apply.¹³ In addition, regular equity trading hours of 9:30 a.m. and 4 p.m. will apply to transactions in Trust Issued Receipts. However, trading rules pertaining to the availability of odd-lot trading in Nasdaq equities will not apply to the trading of Trust Issued Receipts, since they can only be traded in round-lots. NASD's surveillance procedures for Trust Issued Receipts will be similar for those of Portfolio Depository Receipts and Index Fund Shares and will incorporate and rely upon existing NASD surveillance procedures governing equities.

Nasdaq proposes that the trading of Trust Issued Receipts that meet the following criteria at the time they are established will be exempt by Nasdaq from the short sale rule set forth in NASD Rule 3350: (1) The trust holds underlying securities issued by at least 20 companies; (2) each underlying security is actively traded within the meaning of the exception for actively-traded securities set forth in Rule 101(c)(1) of Regulation M; and (3) the initial weighting of the underlying securities issued by each issuer constitutes less than 20% of the total value of the Trust Issued Receipt.¹⁴ The

exemption from Rule 3350 will be eliminated for transactions in a particular Trust Issued Receipt if: (1) Any single security in the Trust Issued Receipt represents more than 51% of the total value of the receipt; (2) a reconstitution event results in a reduction in the number of companies to less than 20; or (3) an underlying security fails to be actively traded within the meaning of the exemption for actively-traded securities set forth in Rule 101(c)(1) of Regulation M. Prior to the occurrence of any of the above events, Nasdaq may consult with the Commission staff to determine the appropriateness of the exemption's continuation. At that time, the Commission, pursuant to Section 19(b)(2),¹⁵ may determine that continuation of the Rule 3350 exemption is appropriate notwithstanding the decrease in the number of or inactivity of one or more securities in the Trust Issued Receipt. Secondary market portfolio or individual sales of the underlying securities which may be made in connection with cancellations of Trust Issued Receipts are not exempt from Rule 3350. This rule will apply (or not apply) to such transactions as to any other portfolio or individual trade.

Prior to the commencement of trading in Trust Issued Receipts, Nasdaq will issue a circular to members highlighting the characteristics of purchases in Trust Issued Receipts including that Trust Issued Receipts 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 Trust Issued Receipts will be halted whenever Nasdaq trading in equity securities generally 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 Trust Issued Receipts 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

¹³ 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.

¹⁴ Nasdaq does not believe that the trading of Trust Issued Receipts that meet these criteria would be susceptible to the practices that Rule 3350 is designed to prevent. A primary purpose of Rule 3350 is to prevent the market price of a stock from being manipulated downward by unrestricted short selling. Nasdaq anticipates that the market value of a Trust Issued Receipt will rise or fall based on the changes in the value of the underlying securities, and that the price of the Trust Issued Receipt would not decline absent a decline in the value of the underlying securities. Thus, the secondary market price of a Trust Issued Receipt should not vary substantially from the current value of the underlying securities. In addition, any temporary disparities in the relative market values between a Trust Issued Receipt and the underlying securities would tend to be corrected immediately by arbitrage activity. Nasdaq notes that the Commission has agreed with this conclusion in the cases of SPDRs, MidCap SPDRs, Country Baskets, DIAMONDS and Select Sector SPDRs, all of which are securities whose prices are reflective of a portfolio of securities held in trust. See letter from Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, to James F. Duffy, Senior Vice President and General Counsel, Amex (January 22, 1993) (regarding SPDRs); letter from Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, to James F. Duffy, Executive Vice President and General Counsel, Amex (April 21, 1995) (regarding MidCap SPDRs); letter from Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, to Michael Simon, Milbank, Tweed, Hadley & McCloy

⁸ 17 CFR 240.19b-4(c)(1).

⁹ 15 U.S.C. 78s(b).

¹⁰ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

¹¹ 15 U.S.C. 78s(b).

¹² Specifically, Nasdaq proposes to provide generic standards to list or trade, pursuant to Rule 19b-4(e), any Trust Issued Receipts that meet the following criteria: (1) Each component security must be registered under section 12 of the Exchange Act; (2) each component security must have a minimum public float of at least \$150 million; (3) each component security must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security; (4) each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period; (5) each component security must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million; and (6) the most heavily weighted component security may not initially represent more than 20% of the overall value of the Trust Issued Receipt.

(March 22, 1996) (regarding Country Baskets); letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, Commission, to James F. Duffy, Amex (January 9, 1998) (regarding DIAMONDS); and letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, Commission, to Stuart M. Strauss, Gordon, Altman, Butowsky, Weitzen, Shalov & Wein (December 14, 1998) (regarding Select Sector SPDRs).

¹⁵ See Amendment No. 1, *supra* note 3.