

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 Trust Issued Receipts, unless the consideration is additional underlying securities (i.e., the acquiring company's securities are already included in the Trust Issued Receipt 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 their primary exchange or market and are not listed for trading on another national securities exchange or through Nasdaq within five business days from the date the underlying securities are delisted.¹⁶

If the trustee removes an 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 Trust Issued Receipts

The trust will issue and cancel, and an investor may obtain, hold, trade or surrender, receipts only in a round-lot of 100 Trust Issued Receipts and round-lot multiples. While investors will be able to acquire, hold, transfer and surrender a round-lot of 100 Trust Issued Receipts, 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.

A holder may obtain Trust Issued Receipts by either purchasing them on Nasdaq or an exchange by delivering to the trust during its normal business hours the requisite securities evidencing a round-lot of Trust Issued Receipts. The trustee will charge an issuance fee of up to \$10.00 per 100 Trust Issued Receipts. If a holder wants to cancel Trust Issued Receipts 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 Trust Issued Receipts. 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 the Trust

The trust shall terminate upon the earlier of: (i) The removal of the receipts from listing on Nasdaq or a national securities exchange if they are not listed for trading on Nasdaq or a national securities exchange 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 Trust Issued Receipts 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.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,¹⁷ in general and with section 15A(b)(6) of the Act,¹⁸ in particular, in that the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, Trust Issued Receipts provide investors with an alternative to trading a broad range of securities on an individual basis, and give investors the ability to trade Trust Issued Receipts representing a portfolio of securities continuously throughout the business day in secondary market transactions at negotiated prices.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-32 and should be submitted by May 19, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 15A(b)(6) of the Act,¹⁹ and the rules and regulations thereunder applicable to a national securities association.²⁰ Specifically, the Commission finds, as it did with the Amex and other exchanges, that the proposal establishes listing standards for Trust Issued Receipts that will provide investors with a convenient and less expensive way of participating in the securities markets. Nasdaq's

¹⁹ 15 U.S.C. 78o-3(6).

²⁰ The Commission findings in this approval order are prospective only from the date of this order. Prior to Nasdaq's trading of Trust Issued Receipts, the Commission staff notified Nasdaq staff that these listing and trading rules and short sale rule change contained herein were necessary. The Commission is concerned that Nasdaq failed to seek Commission approval of such proposed rules and rule changes until well after Nasdaq began trading Trust Issued Receipts, despite prior notification by Commission staff to do so. The Commission expects Nasdaq to surveil the trading of these products for compliance with applicable rules, including NASD Rule 3350.

¹⁶ This provision is designed for the purpose of permitting an underlying security to move its listing between a national securities exchange or Nasdaq without requiring the automatic distribution of the underlying security to beneficial owners of the receipts. Should underlying securities be moved to a market other than a national securities exchange or Nasdaq, (e.g., the OTC Bulletin Board) such securities will be automatically distributed to the beneficial owners of the receipts.

¹⁷ 15 U.S.C. 78o-3.

¹⁸ 15 U.S.C. 78o-3(6).