

proposal should advance the public interest by providing 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. Accordingly, the Commission finds that Nasdaq's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.²¹

As noted in the Amex approval order, the Commission believes that Trust Issued Receipts will provide investors with an alternative to trading a broad range of securities on an individual basis, and will 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. Trust Issued Receipts will allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investors owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transaction costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the Trust Issued Receipts.

Although Trust Issued Receipts are not leveraged instruments, and therefore do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective trusts. Accordingly, the level of risk involved in the purchase or sale of trust issued receipts is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for Trust Issued Receipts is based on a basket of securities.²²

²¹ In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²² The Commission has concerns about continued trading of the Trust Issued Receipts whether listed or traded over-the-counter, if the number of underlying securities falls to reflect a cross section of the selected industry. Accordingly, the NASD has represented that it would consult the Commission concerning continued trading, once the trust has fewer than nine underlying securities, and for each subsequent loss of a security thereafter.

Trading of Trust Issued Receipts— Listing and Trading Over-the-Counter

The Commission finds that the Nasdaq's proposal contains adequate rules and procedures to govern the trading of Trust Issued Receipts, whether by listing or trading over-the-counter. Trust Issued Receipts are equity securities that will be subject to the full panoply of Nasdaq rules governing the trading of equity securities on Nasdaq, including, among others, rules governing the priority, parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit order.²³

In particular, the Commission notes that the trading of Trust Issued Receipts that meet the criteria mentioned above will be preliminarily exempt from the short sale rule set forth in NASD Rule 3350. Nasdaq has also represented that if certain circumstances occur, the exemption from Rule 3350 will be eliminated. At that time, the Commission, pursuant to section 19(b)(2),²⁴ 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.

In addition, Nasdaq has developed specific listing and delisting criteria for Trust Issued Receipts that will help to ensure that a minimum level of liquidity will exist for Trust Issued Receipts to allow for the maintenance of fair and orderly markets. The delisting criteria also allows Nasdaq to consider the suspension of trading and the delisting of a Trust Issued Receipt if an event occurred that made further dealings in such securities inadvisable. This will give Nasdaq flexibility to delist Trust Issued Receipts if circumstances warrant such action. Nasdaq's proposal also provides procedures to halt trading in Trust Issued Receipts in certain enumerated circumstances.

Moreover, in approving this proposal, the Commission notes Nasdaq's belief that Trust Issued Receipts will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. Nasdaq also represents that the potential for arbitrage should keep the market price of a Trust Issued Receipts comparable to the overall value of the underlying securities.

²³ Trading rules pertaining to the availability of odd-lot trading do not apply because Trust Issued Receipts only can be traded in round-lots.

²⁴ See Amendment No. 1, *supra* note 3.

The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in Trust Issued Receipts.

Finally, Nasdaq will apply NASD's surveillance procedures for Trust Issued Receipts that will be similar to the procedures used for investment company units and will incorporate and rely upon existing NASD surveillance procedures governing equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading Trust Issued Receipts, including any concerns associated with purchasing and redeeming round-lots of 100 receipts. Accordingly, the Commission believes that the rules governing the trading of Trust Issued Receipts provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

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 risk of trading Trust Issued Receipts. The prospectus will address the special characteristics of a particular Trust Issued Receipt basket, including a statement regarding its redeemability and method of creation. The Commission notes that all investors in Trust Issued Receipts who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing a Trust Issued Receipt directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all NASD members who purchase Trust Issued Receipts from the trust for resale to customers must deliver a prospectus to such customers.

The Commission also notes that upon the initial listing of any Trust Issued Receipts, Nasdaq will issue a circular to members explaining the unique characteristics and risks of this type of security. The circular will note members' prospectus delivery requirements, and highlight the characteristics of purchases in Trust Issued Receipts. The circular also will inform members of policies regarding trading halts in Trust Issued Receipts.