

Transactions from the TRACE reporting requirements.<sup>6</sup> FINRA believes that Derivative-Related Transactions should be exempt from TRACE reporting requirements because the information regarding price (and yield) being reported to FINRA and disseminated to the public does not reflect a currently negotiated transaction price. Further, FINRA believes that reporting and dissemination of certain Derivative-Related Transactions does not foster price discovery and may contribute to investor confusion, which FINRA believes is consistent with previously recognized rationale for exempting certain transactions from trade reporting and dissemination. FINRA noted in its proposal that, historically, purchases and sales of equity securities that occurred as a result of the exercise of an over-the-counter option were subject to a similar exemption and were not required to be reported to FINRA.<sup>7</sup>

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.<sup>8</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>9</sup> which requires, among other things, that FINRA rules be 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. FINRA's proposal will relieve its members of the administrative burdens of reporting transactions in TRACE-eligible securities resulting from Derivative-Related Transactions. The Commission agrees with FINRA that requiring members to report such transactions does little to enhance market transparency, because the price of the TRACE-eligible security in this case has been previously negotiated and does not reflect the present market value. The Commission notes that it previously has approved similar proposals that exclude

from trade reporting obligations "transactions effected upon the exercise of an option or any other right to acquire securities at a preestablished consideration unrelated to the current market."<sup>10</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-FINRA-2007-007), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-56708; File No. SR-NASDAQ-2007-078]**

### Self-Regulatory Organizations; The NASDAQ Stock Market, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Nasdaq's Outbound Routing Broker

October 26, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 7, 2007, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. On October 19, 2007, Nasdaq submitted Amendment No. 1 to the proposed rule change. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>10</sup> See Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13396, n.5 (April 16, 1992) (SR-NASD-91-50).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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

Nasdaq proposes to codify the functions of its wholly-owned routing broker-dealer Nasdaq Execution Services, LLC ("NES"). The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and <http://www.nasdaq.com>.

### 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 IV 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

In July 2006, the Commission approved the integration of Nasdaq's three execution systems—the Nasdaq Market Center, the Brut ECN, and the INET ECN—into a single execution system with routing functionality commonly known as the Nasdaq Single Book ("Single Book").<sup>5</sup> In coordination with Nasdaq's transition to a registered national securities exchange, Single Book commenced full operation for Nasdaq-listed securities on October 30, 2006, and for other exchange-listed securities on February 12, 2007. Since that time, NES has operated solely and exclusively as the routing broker for the Exchange, and the method for the Exchange to obtain access to better prices displayed in other market centers and, more recently, as required under Regulation NMS. NES is a facility of Nasdaq and operates no trade matching or execution system. Nasdaq states that NES has no customers or users other than the Nasdaq exchange itself. Nasdaq states that this filing merely seeks the adoption of a rule formally codifying this existing and ongoing relationship, and does not alter in any way the current operation of either the Exchange

<sup>5</sup> See Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR-NASDAQ-2006-001).

<sup>6</sup> The TRACE reporting requirement does not exist in connection with any cash-settled derivative, even if the derivative relates to one or several securities that are TRACE-eligible securities.

<sup>7</sup> But see Securities Exchange Act Release No. 53977 (June 12, 2006), 71 FR 34976 (June 16, 2006) (requiring members to report equity trades resulting from the exercise of a physically settled option for purposes of fee calculation, but not for transparency purposes).

<sup>8</sup> In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

or the NES facility, nor interactions between them.

The proposed rule change would establish rules to describe NES's current operations, including that: (1) NES shall route all orders to other market centers as directed by Nasdaq; (2) NES will not engage in any business other than as a outbound router for Nasdaq unless such other business activities are approved by the Commission; (3) NES will operate as a facility, as defined in Section 3(a)(2) of the Act, of Nasdaq; (4) the designated examining authority of NES will be a self-regulatory organization unaffiliated with Nasdaq or any of its affiliates in accordance with Rule 17d-1 of the Act; (5) NES shall be subject to exchange non-discrimination requirements and Nasdaq shall be responsible for filing proposed rule changes related to the operation of, and fees for services provided by NES with the Commission; (6) NES books, records, premises, officers, agents, directors and employees shall be deemed to be Nasdaq books, records, premises, officers, agents, directors and employees of Nasdaq for purposes of, and subject to oversight pursuant to, the Act and shall be subject at all times to inspection and copying by the Commission; and (7) NES use is optional for Nasdaq's market participants.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

Nasdaq 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>10</sup> However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will immediately codify Nasdaq's relationship with its outbound routing broker.<sup>12</sup> For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>13</sup>

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.<sup>14</sup>

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has satisfied the five-day pre-filing notice requirement.

<sup>11</sup> *Id.*

<sup>12</sup> The Commission notes that Nasdaq's proposal is substantially similar to Rule 2.11 of the National Stock Exchange, Inc. and Rule 17(b) of the New York Stock Exchange LLC.

<sup>13</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on October 19, 2007, the date on which the Exchange submitted Amendment No. 1.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-078 on the subject line.

### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2007-078. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2007-078 and should be submitted on or before November 23, 2007.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56696; File No. SR-NYSEArca-2007-110]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Certain Modifications to the Initial Listing and Trading Standards for Equity Index-Linked Securities

October 24, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 18, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I) to permit the listing and trading of Equity Index-Linked Securities<sup>3</sup> where the underlying index consists, in whole or in part, of (1) securities of closed-end management investment companies ("Closed-End Fund Securities") or (2) investment company units ("ETF Securities"), which, in each case, are registered under the Investment Company Act of 1940 (the "1940 Act") and listed on a national securities exchange. In addition, the Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I) to provide for a

limited exception, subject to certain proposed conditions, to one of the initial listing standards related to the eligibility of component securities comprising the index underlying Equity Index-Linked Securities. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 IV below. The Exchange 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

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I) to permit the listing and trading of Equity Index-Linked Securities where the underlying index consists in whole or in part of Closed-End Fund Securities or ETF Securities, which, in each case, are registered under the 1940 Act and are listed on national securities exchange. NYSE Arca Equities Rule 5.2(j)(6)(B)(I) currently permits the Exchange to list and trade, pursuant to Rule 19b-4(e) under the Act,<sup>4</sup> Equity Index-Linked Securities if, among other requirements, all component securities included in the underlying index are either: (1) Securities (other than foreign country securities and American Depositary Receipts ("ADRs")) that are (a) issued by a reporting company under the Act that is listed on a national securities exchange and (b) an "NMS stock," as defined in Rule 600 of Regulation NMS;<sup>5</sup> or (2) foreign country

securities or ADRs, subject to certain limitations. The Exchange proposes to amend Rule 5.2(j)(6)(B)(I) to include Closed-End Fund Securities and ETF Securities that are NMS stocks listed on national securities exchanges as components, in whole or in part, in any index underlying an issuance of Equity Index-Linked Securities. The Exchange believes that trading in exchange-listed Closed-End Fund Securities and ETF Securities is subject to the same level of regulation as exchange-listed equity securities. In addition, Closed-End Fund Securities and ETF Securities trade on the same exchange platforms as equity securities registered under the Act and are subject to the same exchange trading rules as equity securities. As such, the Exchange believes that it is appropriate to permit their inclusion as components of indexes underlying Equity Index-Linked Securities.

The Exchange also proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v) to incorporate a limited exception to the requirement that 90% of the index's numerical value and at least 80% of the total number of component securities underlying an Equity Reference Asset must meet the then current criteria for standardized options trading set forth in NYSE Arca Rule 5.3. The Exchange proposes that an underlying index would not be subject to such requirement if (1) no underlying component security represents more than 10% of the dollar weight of such index and (ii) such index has a minimum of 20 component securities.

All of the options exchanges apply the same criteria to securities underlying exchange-traded options.<sup>6</sup> These criteria relate primarily to the distribution and trading volume of the securities underlying an option<sup>7</sup> and, as such, the Exchange believes that such criteria are duplicative of the minimum market capitalization and trading volume requirements for securities underlying Equity Index-Linked Securities set forth in NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(i) and (ii), respectively. The Exchange notes that the current requirement of NYSE Arca

<sup>6</sup> See, e.g., Rule 1009 of the Philadelphia Stock Exchange, Inc.; Rule 5.3 of the Chicago Board Options Exchange, Incorporated; Rule 5.3 of NYSE Arca; and Rule 502 of the International Securities Exchange, LLC.

<sup>7</sup> The rules generally require a minimum of 7,000,000 publicly-held shares, 2,000 holders, a trading volume of at least 2,400,000 shares in the preceding 12 months, and a market price per share of the underlying security of at least \$3.00 per share for securities that are "covered securities," as defined in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)), and a market price per share of the underlying security of at least \$7.50 for securities that are not "covered securities."

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> NYSE Arca Equities Rule 5.2(j)(6) defines Equity Index-Linked Securities as securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities, also referred to as the "Equity Reference Asset." See NYSE Arca Equities Rule 5.2(j)(6).

<sup>4</sup> See 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 paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for such product class.

<sup>5</sup> See 17 CFR 242.600(b)(47).