the bad actor may enter higher, non-marketable bids (offers) in one market center in order to induce market participants to lift an offer (hit a bid) which he has posted in the same or different market center.[4]

Additionally, the Exchange believes that the proposed changes to the rule would appropriately establish that improper price manipulation could occur, in certain circumstances, when a single execution occurs (or a single order is entered) at a price higher than (or lower than) the current market. A single trade that is executed at a significantly higher or lower price at the end of the trading day, for example, could be used to establish a price which does not reflect the true state of the market in that security, to the benefit of a participant firm.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular, in that it 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 by expanding the price manipulation rule to address additional instances of improper behavior.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

The Exchange did not solicit or receive any written comments with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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.* Please include File Number SR–CHX–2007–08 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CHX–2007–08. 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. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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–CHX–2007–08 and should be submitted on or before May 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–7492 Filed 4–19–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55635; File No. SR–ISE–2007–16]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Options Based on Commodity Pool ETFs

April 16, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on February 21, 2007, the International Securities Exchange, LLC (''ISE'' 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 the Exchange. On March 26, 2007, ISE filed Amendment No. 1 to the proposed rule change.[3] This order provides notice of the proposed rule change as modified by Amendment No. 1 and approves the proposed rule change on an accelerated basis.

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

The Exchange proposes to amend certain rules to permit the listing and trading of options on equity interests issued by trust issued receipts (''TIRs''), partnership units (''Partnership Units''),[4] and other entities (referred collectively herein as ''Commodity Pool

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[4] Other order-based manipulative activity might occur with the upcoming implementation of the new market data revenue allocation formula under Regulation NMS—which, in general, requires that market data revenue be allocated based upon both quoting and trading activity in each market. The entry of orders (which are designed not be executed) could be used to create a false, misleading, or artificial appearance of quoting activity in a particular security within a particular market.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces and supersedes the original filing in its entirety.

[4] As set forth in ISE Rule 2127, a ''Partnership Unit'' means a security (a) that is issued by a partnership that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities and/or securities; and (b) that is issued and redeemed daily in specified aggregate amounts at net asset value.

ETFs'') that hold or invest in commodity futures products.[5]

The text of the proposed rule change is available at the ISE, the Commission's Public Reference Room, and *http://www.iseoptions.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 ISE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The ISE 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 proposed rule change is to enable the listing and trading on the Exchange of options on interests in Commodity Pool ETFs that trade directly or indirectly commodity futures products. As a result, Commodity Pool ETFs are subject to the Commodity Exchange Act (the ''CEA'') due to their status as a commodity pool,[6] and therefore, regulated by the Commodity Futures Trading Commission (''CFTC'').[7] Commodity Pool ETFs may hold or trade in one or more types of investments that may include any combination of securities, commodity futures contracts, options on commodity futures contracts, swaps, and forward contracts.

Currently, ISE Rule 502(h) provides securities deemed appropriate for options trading shall include shares or other securities (''Fund Shares'') that (i) Represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that are traded on a national securities exchange or through the facilities of a national securities association and are defined as an ''NMS stock'' under Rule 600 of Regulation NMS, and that hold portfolios of securities comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities) or (ii) represent interests in a trust that holds a specified non-U.S. currency deposited with the trust when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the trust (''Funds'').

The Exchange proposes to amend its Rule 502(h) to expand the type of options to include the listing and trading of options based on shares of Commodity Pool ETFs (the ''Shares'') that may hold or invest directly or indirectly in commodity futures products, including but not limited to, commodity futures contracts, options on commodity futures contracts, swaps, and forward contracts. As part of this revision, the Exchange proposes to add paragraph (h)(6) to ISE Rule 502(h) requiring that, for Commodity Pool ETFs, a comprehensive surveillance sharing agreement be in place with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in such commodity futures contracts and/or options on commodity futures contracts on the specified commodities or non-U.S. currency, which are utilized by the national securities exchange where the underlying Commodity Pool ETFs are listed and traded.

As set forth in proposed ISE Rule 502(h), Commodity Pool ETFs must be traded on a national securities exchange or through the facilities of a national securities association and must be an ''NMS stock'' as defined under Rule 600 of Regulation NMS. In addition, shares of Commodity Pool ETFs must meet either: (i) The criteria and guidelines under ISE Rule 502(b); or (ii) be available for creation or redemption each business day in cash or in kind from the commodity pool, trust or similar entity at a price related to net asset value. In addition, the commodity pool, trust or other similar entity shall provide that shares may be created even though some or all of the securities needed to be deposited have not been received by the commodity pool, trust or other similar entity, provided the authorized creation participant has undertaken to deliver the shares as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the commodity pool, trust or other similar entity which underlies the option as described in the prospectus.

Under the applicable continued listing criteria in ISE Rule 503(h), the Fund Shares approved for options trading will not be deemed to meet the requirements for continued approval, and the Exchange will not open for trading any additional series of options contracts of the class covering such Fund Shares in any of the following circumstances: (i) Following the initial twelve-month period beginning upon the commencement of trading of the Fund Shares, there are fewer than 50 record and/or beneficial holders of the Fund Shares for 30 or more consecutive trading days; (ii) the value of the index, non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities, or portfolio of securities on which the Fund Shares are based is no longer calculated or available; or (iii) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable. Additionally, the Fund Shares shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Fund Shares, if the Fund Shares are halted from trading on their primary market or if the Fund Shares are delisted in accordance with the terms of ISE Rule 503 or the value of the index or portfolio on which the Fund Shares are based is no longer calculated or available.

The Exchange is also proposing to amend ISE Rule 408 to require members to establish, maintain and enforce written policies and procedures to prevent the misuse of material nonpublic information it might have or receive in a related security, option or derivative or in the applicable related commodity, commodity futures or options on commodity futures or any other related commodity derivatives. The Exchange is further proposing to amend ISE Rule 1400 to ensure that the Primary Market Maker handling the Fund Shares provide the Exchange with

[5] The proposal parallels one submitted by the American Stock Exchange LLC (''Amex'') and recently approved by the Commission. *See* Securities Exchange Act Release No. 55547 (March 28, 2007), 72 FR 16388 (April 4, 2007) (SR–Amex–2006–110).

[6] A ''commodity pool'' is defined in CFTC Regulation 4.10(d)(1) as any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests. CFTC regulations further provide that a ''commodity interest'' means a commodity futures contract and any contract, agreement or transaction subject to Commission regulation under Section 4c or 19 of the Act. *See* CFTC Regulation 4.10(a).

[7] The manager or operator of a ''commodity pool'' is required to register, unless applicable exclusions apply, as a commodity pool operator (CPO) and commodity trading advisor (CTA) with the CFTC and become a member of the National Futures Association (''NFA'').

all necessary information relating to their trading in the applicable physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity. The Exchange is also proposing to amend Rule 807 to prohibit a Primary Market Maker engaging in physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity from trading in an account which has not been reported to the Exchange.

The Exchange represents that it has an adequate surveillance program in place for options based on Commodity Pool ETFs. The Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG and has entered into numerous comprehensive surveillance sharing agreements with various commodity futures exchanges worldwide. Prior to listing and trading options on Commodity Pool ETFs, the Exchange represents that it will either have the ability to obtain specific trading information via ISG or through a comprehensive surveillance sharing agreement with the exchange or exchanges where the particular commodity futures and/or options on commodity futures are traded.

The addition of Commodity Pool ETF options will not have any effect on the rules pertaining to position and exercise limits [8] or margin.[9]

This proposal is necessary to enable the Exchange to list and trade options on an expanding range of Commodity Pool ETFs currently approved for trading. The Exchange notes that The DB Commodity Index Tracking Fund (the ''DBC Fund''), the United States Oil Fund, L.P. (the ''Oil Fund'') and the PowerShares DB G10 Currency Harvest Fund (the ''DBV Fund'') are listed and traded on the Amex.[10] The DBC Fund is a Commodity TIR and tracks the performance of the Deutsche Bank Liquid Commodity Index™—Excess Return while the Oil Fund is a Partnership Unit and tracks the spot price of West Texas Intermediate light, sweet crude oil delivered to Cushing, Oklahoma.

The DBC Fund is a ''feeder fund'' that invests substantially all of its assets in the DB Commodity Index Tracking Master Fund, and the Master Fund in turn maintains a portfolio of exchange-traded futures on aluminum, gold, corn, wheat, heating oil and light, sweet crude oil. The Index is derived from the prices of those futures contracts. The Master Fund's portfolio is managed on an ongoing basis by DB Commodity Services LLC, a registered CPO and CTA, so that the value of the portfolio closely tracks the value of the Index over time.

The DBV Fund is a ''feeder fund'' that invests substantially all of its assets in the PowerShares DB G10 Currency Harvest Master Fund, and the Master Fund in turn maintains a portfolio of exchange-traded futures on foreign currencies that comprise the G–10 countries. The Index is derived from the prices of those futures contracts. The Master Fund's portfolio is managed on an ongoing basis by DB Commodity Services LLC, a registered CPO and CTA, so that the value of the portfolio closely tracks the value of the Index over time.

Unlike the DBC and DBV Funds, the Oil Fund does not invest through a master-feeder structure but rather trades directly in futures on crude and heating oil, natural gas, gasoline and other petroleum-based fuels, options on such futures contracts, forward contracts on oil and other over-the-counter derivatives based on the price of oil, other petroleum-based fuels, the futures contracts described above, and the indexes based on any of the foregoing. The Oil Fund's portfolio is managed by Victoria Bay Asset Management LLC with the aim of tracking the West Texas Intermediate light, sweet crude oil futures contract listed and traded on the New York Mercantile Exchange (''NYMEX'').

The ISE believes that it is reasonable to expect other types of Commodity Pool ETFs to be introduced for trading in the near future. The proposed amendment to the Exchange's listing criteria for options on Commodity TIRs and Partnership Units is necessary to ensure that the Exchange will be able to list options on Commodity Pool ETFs that have been recently launched as well as any other similar Commodity Pool ETFs that may be listed and traded in the future.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5),[12] of the Act in particular, in that it would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose 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

The Exchange states that no written comments were solicited or received with respect to the proposed rule change.

III. 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*. Please include File Number SR–ISE–2007–16 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–ISE–2007–16. 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

[8] *See* ISE Rules 412 and 414.

[9] *See* ISE Rule 1202.

[10] *See* Securities Exchange Act Release Nos. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (approving the listing and trading of the DB Commodity Index Tracking Fund); 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (approving the listing and trading of Units of the United States Oil Fund, L.P.); and 54450 (September 14, 2006), 71 FR 51245 (September 21, 2006) (approving the listing and trading of the PowerShares DB G10 Currency Harvest Fund).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

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 the filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2007–16 and should be submitted on or before May 11, 2007.

IV. Commission Findings and Accelerated Approval

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [13] and, in particular, the requirements of Section 6 of the Act.[14] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

Surveillance

The Commission notes that Exchange has represented that it has an adequate surveillance program in place for options based on Commodity Pool ETFs. The Exchange may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG and has entered into numerous comprehensive surveillance sharing agreements with various commodity futures exchanges worldwide. Prior to listing and trading options on Commodity Pool ETFs, the Exchange represented that it will either have the ability to obtain specific trading information via ISG or through a comprehensive surveillance sharing agreement with the exchange or exchanges where the particular commodity futures and/or options on commodity futures are traded. In addition, the Exchange represented that the addition of Commodity Pool ETF options will not have any effect on the rules pertaining to position and exercise limits [16] or margin.[17]

Listing and Trading of Options on Commodity Pool ETFs

The Commission notes that, pursuant to the proposed rule change, a Commodity Pool ETF will be subject to the provisions of ISE Rules 502 and 503, as applicable. These provisions include requirements regarding initial and continued listing standards, the creation/redemption process for Commodity Pool ETFs, and trading halts. All Commodity Pool ETFs must be traded through a national securities exchange or through the facilities of a national securities association, and must be "NMS stock" as defined under Rule 600 of Regulation NMS. [18]

The Commission believes that this proposal is necessary to enable the Exchange to list and trade options on an expanding range of Commodity Pool ETFs currently approved for trading and that it is reasonable to expect other types of Commodity Pool ETFs to be introduced for trading in the future. This proposal would help ensure that the Exchange will be able to list options on Commodity Pool ETFs that have been recently launched as well as any other similar Commodity Pool ETFs that may be listed and traded in the future [19] thereby offering investors greater option choices.

Acceleration

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[20] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposal is consistent with the Exchange's listing and trading standards in ISE Rules 502 and 503, and the Commission has recently approved a similar proposal, after publishing it for comment and receiving no comments.[21] Therefore, the Commission does not believe that the proposed rule change, as amended, raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from the flexibility afforded by trading these products as soon as possible.

Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[22] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–ISE–2007–16), as modified by Amendment No. 1, be, and is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–7489 Filed 4–19–07; 8:45 am]

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[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5).

[16] *See* ISE Rules 412 and 414.

[17] *See* ISE Rule 1202.

[18] 17 CFR 242.600(b)(47).

[19] 17 CFR 240.19b–4(e).

[20] 15 U.S.C. 78s(b)(2).

[21] *See* Securities Exchange Act Release No. 55547 (March 28, 2007), 72 FR 16388 (April 4, 2007) (SR–Amex–2006–110).

[22] 15 U.S.C. 78s(b)(5).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55634; File No. SR–NASDAQ–2007–036]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for Nasdaq Members Using the Nasdaq Market Center

April 16, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 30, 2007, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. Pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective immediately upon filing.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).