

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56952; File No. SR-NASDAQ-2007-097)

December 12, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade the Shares of 45 Funds of the Rydex ETF Trust Based on Numerous Domestic Securities Indexes Pursuant to Unlisted Trading Privileges

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 December 6, 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 the Exchange. This order provides notice of the proposed rule change and approves it on an accelerated basis.

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

Nasdaq proposes to trade, pursuant to unlisted trading privileges (“UTP”), shares (“Shares”) of 45 funds of the Rydex ETF Trust (“Trust”).

The text of the proposed rule change is available from the Exchange’s Web site (<http://nasdaq.complinet.com>), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the places specified in Item III 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

Nasdaq proposes to trade pursuant to UTP the Shares of the 45 new funds of the Trust that are designated as Rydex Leveraged Funds (the “Leveraged Funds”), Rydex Inverse Funds (the “Inverse Funds”), and Rydex Leveraged Inverse Funds (the “Leveraged Inverse Funds”). Each of the Funds has a distinct investment objective. Each Fund attempts, on a daily basis, to achieve its investment objective by corresponding to a specified multiple of the performance, or the inverse performance, of a particular equity securities index (individually referred to as the “Underlying Index” and collectively referred to as the “Underlying Indexes”). The American Stock Exchange LLC (“Amex”) filed a proposal with the Commission to list and trade the Shares, which was approved by the Commission on October 29, 2007 (the “Amex Proposal”).³

The Funds are based on the following benchmark indexes: (1) the S&P 500 Index (the “S&P 500”); (2) the S&P MidCap 400 Index; (3) the S&P Small Cap 600 Index; (4) the Russell 1000 Index; (5) the Russell 2000 Index; (6) the Russell 3000 Index; (7) the S&P 500 Consumer Discretionary Index; (8) the S&P 500 Consumer Staples Index; (9) the S&P 500 Energy Index; (10) the S&P 500 Financials Index; (11) the S&P 500 Healthcare Index; (12) the S&P 500 Industrials Index; (13) the S&P 500 Information Technology Index; (14) the S&P 500 Materials Index; and (15) the S&P 500 Utilities

³ See Securities Exchange Act Release No. 56713 (October 29, 2007), 72 FR 61915 (November 1, 2007) (SR-Amex-2007-74).

Index. Certain Funds seek daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the Underlying Indexes (the “Leveraged Funds”). Such a Fund, if successful in meeting its objective, should gain, on a percentage basis, approximately twice as much as the Fund’s Underlying Index when the prices of the securities in such Index increase on a given day, and should lose approximately twice as much when such prices decline on a given day.

In addition, Nasdaq proposes to trade pursuant to UTP shares of the Funds that seek daily investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (-100%) of the Underlying Indexes (the “Inverse Funds”). If such a Fund is successful in meeting its objective, the net asset value (the “NAV”) of shares of the Fund should increase approximately as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately as much as the respective Index gains when the prices of the securities in the index rise on a given day.

Finally, Nasdaq proposes to trade pursuant to UTP shares of the Funds that seeks daily investment results, before fees and expenses that correspond to twice the inverse (-200%) of the daily performance of the Underlying Indexes (the “Leveraged Inverse Funds”). If such a Fund is successful in meeting its objective, the NAV of shares of the Fund should increase approximately twice as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately twice as much as the respective Underlying Index gains when the prices of the securities in the index rise on a given day.

The Underlying Indexes and the operation of the Funds are described further in the Amex Proposal.

The Trust's Web site (<http://www.rydexinvestments.com>), which is and will be publicly accessible at no charge, will contain the following information for each Fund's Shares: (1) the prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV; (2) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily closing price and the closing NAV, and the magnitude of such premiums and discounts; (3) its prospectus and/or product description; and (4) other quantitative information such as daily trading volume. The prospectus and/or product description for each Fund will inform investors that the Trust's Web site has information about the premiums and discounts at which the Fund's Shares have traded.

According to the Amex Proposal, Amex will disseminate for each Fund on a daily basis by means of Consolidated Tape Association ("CTA") and CQ High Speed Lines information with respect to an Indicative Intra-Day Value ("IIV") (as defined and discussed below), the recent NAV, the number of shares outstanding, the estimated cash amount, and the total cash amount per Creation Unit (as defined in the Amex Proposal). Amex will make available on its Web site daily trading volume, the closing price, the NAV, and the final dividend amounts to be paid for each Fund. Amex represented in the Amex Proposal that it will obtain a representation from the Trust (for each Fund), prior to

listing, that the NAV per share for each Fund will be calculated daily and made available to all market participants at the same time.⁴

According to the Amex Proposal, each Fund's total portfolio composition is disclosed on the Web site of the Trust or another relevant Web site as determined by the Trust and/or Amex. The Trust expects that Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the names and number of shares held of each specific types of financial instruments and characteristics of such instruments, cash equivalents, and the amount of cash held in the portfolio of each Fund. This public Web site disclosure of the portfolio composition of each Fund will coincide with the disclosure by Rydex Investments ("Advisor") of the "IIV File" and the "PCF File" provided to an "Authorized Participant," a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company participant, which has entered into a participant agreement with the distributor, Rydex Distributors, Inc.⁵ The format of the public Web site

⁴ If Amex halts trading in the Shares of the Funds because the NAV is not being disseminated to all market participants at the same time, then Nasdaq would do so as well.

⁵ According to the Amex Proposal, at the end of each business day, the Trust will create a portfolio composition file ("PCF") for each Fund, which it will transmit to NSCC before the open of business the next business day. The information in the PCF will be available to all participants in the NSCC system. Because the NSCC's system for the receipt and dissemination to its participants of the PCF is not currently capable of processing information with respect to financial instruments, the Advisor has developed an "IIV File," which it will use to disclose the Funds' holdings of financial instruments. The IIV File will contain, for each Leveraged Fund (to the extent it holds financial investments) and Inverse and Leveraged Inverse Fund, information sufficient by itself or in connection with the PCF File and other available information for market participants to calculate a Fund's IIV and effectively arbitrage the Fund. The Trust or the Advisor will post the IIV File to a password-protected Web site before the opening of business on

disclosure and the IIV File and PCF File will differ because the public Web site will list all portfolio holdings while the IIV File and PCF File will similarly provide the portfolio holdings but in a format appropriate for Authorized Participants, i.e., the exact components of a Creation Unit.⁶ Accordingly, each investor will have access to the current portfolio composition of each Fund through the Trust's Web site, at <http://www.rydexinvestments.com>, and/or at the Amex's Web site at <http://www.amex.com>.

Beneficial owners of Shares will receive all of the statements, notices, and reports required under the Investment Company Act of 1940⁷ and other applicable laws. They will receive, for example, annual and semiannual fund reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of fund distributions, and Form 1099-DIVs. Some of these documents will be provided to beneficial owners by their brokers, while others will be provided by the Fund through the brokers.

The daily closing index value and the percentage change in the daily closing index value for each Underlying Index is publicly available on various Web sites, e.g., <http://www.bloomberg.com>. Data regarding each Underlying Index is also available from the respective index provider to subscribers. Several independent data vendors also package and disseminate index data in various value-added formats (including vendors displaying both securities and index levels and vendors displaying index levels only).

each business day, and all Authorized Participants and Amex will have access to a password and the Web site containing the IIV File.

⁶ The composition will be used to calculate the NAV later that day.

⁷ 15 U.S.C. 80a.

The value of each Underlying Index is updated intra-day as its individual component securities change in price. These intra-day values of each Underlying Index are disseminated at least every 15 seconds though the trading day by Amex or another organization authorized by the relevant Underlying Index provider.

According to the Amex Proposal, to provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem Shares, Amex will disseminate though the facilities of the CTA: (1) continuously throughout the trading day, the market value of a Share; and (2) at least every 15 seconds throughout the trading day, a calculation of the Indicative Intra-Day Value or “IIV” as calculated by Amex (the “IIV Calculator”). Comparing these two figures helps an investor to determine whether, and to what extent, the Shares may be selling at a premium or a discount to NAV.

The IIV Calculator (Amex) calculates an IIV for each Fund in the manner discussed in the Amex Proposal. The IIV is designed to provide investors with a reference value that can be used in connection with other related market information. The IIV does not necessarily reflect the precise composition of the current portfolio held by each Fund at a particular point in time. Therefore, the IIV on a per-Share basis disseminated during Amex trading hours should not be viewed as a real-time update of the NAV of a particular Fund, which is calculated only once a day. While the IIV that will be disseminated by Amex is expected to be close to the most recently calculated Fund NAV on a per-Share basis, it is possible that the value of the portfolio held by a Fund may diverge from the IIV during any trading day. In such case, the IIV will not precisely reflect the value of the Fund portfolio.

Nasdaq will halt trading in the Shares of the Fund under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the Shares will also be governed by provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of the IIV or the value of the underlying index. Additionally, Nasdaq may cease trading the Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq will stop trading the Shares if the listing market delists them.

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares only from 9:30 a.m. until 4:15 p.m. until the Commission acts on Nasdaq's proposal to generally allow trading in ETFs on Nasdaq during the Pre-Market and Post-Market Sessions, which would permit trading in the Shares from 7:00 a.m. until 8:00 p.m.⁸

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Shares on Nasdaq. Trading of the Shares through Nasdaq facilities is currently subject to FINRA'S surveillance procedures for equity securities in general and ETFs in particular.⁹

⁸ See SR-NASDAQ-2007-098 (filed on December 7, 2007).

⁹ FINRA surveils trading pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA'S performance under this regulatory services agreement.

Nasdaq will be able to obtain information regarding trading in the Shares through its members in connection with the proprietary or customer trades that such members effect on any relevant market. In addition, Nasdaq may obtain trading information via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members or affiliates of the ISG.¹⁰ In addition, Nasdaq also has a general policy prohibiting the distribution of material, non-public information by its employees.

Prior to the commencement of trading, Nasdaq will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV is disseminated; (5) the requirement that Nasdaq members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the registration statement for the Fund. The Information Circular will also discuss any exemptive, no-action and interpretive relief

¹⁰ For a list of the current members and affiliate members of ISG, [see http://www.isgportal.com](http://www.isgportal.com).

granted by the Commission from Section 11(d)(1) of the Act¹¹ and certain rules under the Act, including Rule 10b-10, Rule 14e-5, Rule 10b-17, Rule 11d1-2, Rules 15c1-5 and 15c1-6, and Rules 101 and 102 of Regulation M. The Information Circular will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, Nasdaq believes that the proposed rule change is consistent with the Section 6(b)(5)¹² requirements that an exchange have rules 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 addition, Nasdaq believes that the proposal is consistent with Rule 12f-5 under the Act¹³ because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

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.

¹¹ 15 U.S.C. 78k(d)(1).

¹² 15 U.S.C. 78f(b)(5).

¹³ 17 CFR 240.12f-5.

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

The Exchange neither solicited nor received comments on the proposal.

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-NASDAQ-2007-097 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-2007-097. 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 10:00 a.m. and 3:00 p.m. 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-NASDAQ-2007-097 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

After careful review, 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.¹⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁵ which requires that an exchange have rules designed, among other things, 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. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

¹⁴ In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(5).

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,¹⁶ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.¹⁷ The Commission notes that it previously approved the listing and trading of the Shares on Amex.¹⁸ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,¹⁹ which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,²⁰ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Shares are disseminated through the facilities of the CTA and

¹⁶ 15 U.S.C. 78l(f).

¹⁷ Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

¹⁸ See supra note 3.

¹⁹ 17 CFR 240.12f-5.

²⁰ 15 U.S.C. 78k-1(a)(1)(C)(iii).

the Consolidated Quotation System. In addition, Amex will calculate and disseminate the IIV per Share for each Fund through the facilities of the Consolidated Tape Association at least every 15 seconds throughout the trading hours for the Shares. The value of each Underlying Index will also be updated intra-day on a real-time basis as its individual component securities change in price and will be disseminated at least every 15 seconds throughout the trading hours for the Shares. Finally, the Trust's Web site provides various information for each Fund's Shares.

The Commission also believes that the proposal appears reasonably designed to preclude trading of the Shares when transparency is impaired. Trading in the Shares will be subject to Nasdaq Rule 4120(b), which provides that, if the listing market halts trading when the IIV or value of the underlying index is not being calculated or disseminated, the Exchange also would halt trading.

In support of this proposal, the Exchange has made the following additional representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.
2. Prior to the commencement of trading, the Exchange would inform its members in an Information Bulletin of the special characteristics and risks associated with trading the Shares.
3. The Information Bulletin also would discuss the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

This approval order is based on the Exchange's representations.

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the Federal Register. As noted above, the Commission previously found that the listing and trading of the Shares on Amex is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-NASDAQ-2007-097) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon
Deputy Secretary

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).