

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55760; File No. SR-NASDAQ-2007-046)

May 15, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade Three iPath Exchange-Traded Notes Pursuant to Unlisted Trading Privileges

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 May 1, 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 the proposal 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”), index-linked securities (“Securities”) of Barclays Bank PLC (“Barclays”) linked to the performance of certain commodities indexes. The specific Securities to be traded are the iPath Exchange-Traded Notes (“GSCI Securities”) Linked to the Performance of the GSCI Total Return Index (“GSCI Index”); the iPath Exchange-Traded Notes (“AIG Securities”) Linked to the Performance of the Dow Jones – AIG Commodity Index Total Return (“AIG Index”); and the iPath Exchange Traded Notes (“Oil Securities”) Linked to the Performance of the Goldman Sachs Crude Oil Total Return Index (“Oil Index”) (the GSCI Index, the AIG Index, and the Oil Index collectively, “Indexes”). The text of the

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

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

proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and <http://nasdaq.complinet.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 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

Pursuant to Rule 4630, Nasdaq proposes to trade the Securities pursuant to UTP. The Securities are currently trading on Nasdaq on a three-month pilot basis.<sup>3</sup> Approval of this filing would allow the Securities to continue to trade after the expiration of the pilot.

The Securities are medium-term debt securities of Barclays that provide for a cash payment at maturity or upon earlier exchange at the holder's option, based on the performance of the applicable Index. The AIG Index is designed to be a diversified benchmark for commodities as an asset class; the AIG Index is currently composed of the prices of 19 exchange-traded futures contracts on physical commodities, namely aluminum, coffee, copper, corn, cotton, crude oil, gold, heating oil, hogs, live cattle, natural gas, nickel, silver, soybeans, soybean oil, sugar, unleaded gasoline, wheat, and

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<sup>3</sup> See Securities Exchange Act Release No. 55386 (March 2, 2007), 72 FR 10801 (March 9, 2007) (SR-NASDAQ-2007-016).

zinc. The GSCI Index is also designed as a diversified benchmark for physical commodities as an asset class; the composition of the GSCI is modified on a monthly basis by Goldman, Sachs & Co., its sponsor. The Oil Index is a sub-index of the GSCI Index that reflects a portion of the crude oil component of the GSCI Index (currently the WTI Crude Oil future contract traded on the New York Mercantile Exchange (“NYMEX”)). The Commission previously approved the original listing and trading of the Securities by the New York Stock Exchange LLC (“NYSE”).<sup>4</sup>

Nasdaq deems the Securities to be equity securities, thus rendering trading in the Securities subject to its existing rules governing the trading of equity securities, including Nasdaq Rule 4630, which governs the trading of Commodity-Related Securities such as the Securities. The primary trading hours for the Securities on Nasdaq will be 7:00 a.m. to 8:00 p.m. Eastern Time (“ET”).

Quotations for and last-sale information regarding the Securities are disseminated through the Consolidated Quotation System. An “Intraday Indicative Value” (“IIV”) meant to approximate the intrinsic economic value of the Securities is calculated and published via the facilities of the Consolidated Tape Association every 15 seconds from 9:30 a.m. to 4:00 p.m. ET on each day on which the Securities are traded on NYSE. Additionally, Barclays or an affiliate calculates and publishes the closing IIV of the Securities on each trading day at <http://www.ipathetn.com>. The providers of the Indexes disseminate updated Index values approximately every 15 seconds during applicable

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<sup>4</sup> See Securities Exchange Act Release Nos. 53849 (May 22, 2006), 71 FR 30706 (May 30, 2006) (SR-NYSE-2006-20); 53876 (May 25, 2006), 71 FR 32158 (June 2, 2006) (SR-NYSE-2006-16); and 54177 (July 19, 2006), 71 FR 42700 (July 27, 2006) (SR-NYSE-2006-19) (“NYSE Orders”).

portions of the trading day and publish a daily Index value between 4:00 p.m. and 6:00 p.m. ET, in each case through Reuters.

Nasdaq would halt trading in the Securities 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 Securities will also be governed by provisions of Nasdaq Rule 4120 relating to temporary interruptions in the calculation or wide dissemination of the IIV or Indexes. Additionally, Nasdaq may cease trading the Securities 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 would stop trading the Securities if the listing market delists them.

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Securities on Nasdaq. Trading of the Securities through Nasdaq systems is currently subject to NASD's surveillance procedures for equity securities in general and index-linked securities in particular.<sup>5</sup>

Nasdaq is able to obtain information regarding trading in the Securities and the underlying Index components 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. Finally, Nasdaq is party to Information Sharing Agreements with NYMEX, ICE Futures, the London Metal

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<sup>5</sup> NASD surveils trading pursuant to a regulatory services agreement. Nasdaq is responsible for NASD's performance under this regulatory services agreement.

Exchange, and the Kansas Board of Trade relating to the trading of commodity-based instruments on those markets. In connection with trading the Securities on a pilot basis, Nasdaq has informed its members in an Information Circular of the special characteristics and risks associated with trading the Securities.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and 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. In addition, Nasdaq believes that the proposal is consistent with Rule 12f-5 under the Act<sup>8</sup> because it deems the Securities to be equity securities, thus rendering trading in the Securities subject to Nasdaq's existing rules governing the trading of equity securities.

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

Nasdaq 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

Written comments on the proposed rule change were neither solicited nor received.

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

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

<sup>8</sup> 17 CFR 240.12f-5.

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-046 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-2007-046. 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-NASDAQ-2007-046 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

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.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> 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 Securities.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,<sup>11</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>12</sup> The Commission notes that it previously

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<sup>9</sup> 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).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78l(f).

<sup>12</sup> 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

approved the listing and trading of the Securities on NYSE.<sup>13</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>14</sup> 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 Securities to be equity securities, thus rendering trading in the Securities 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,<sup>15</sup> 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.

In support of this proposal, the Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Securities on the Exchange. In addition, the Exchange represents that it is party to Information Sharing Agreements with NYMEX, ICE Futures, the London Metal Exchange, and the Kansas Board of Trade relating to the trading of commodity-based instruments on those markets. This approval order is conditioned on the Exchange's adherence to these representations.

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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.

<sup>13</sup> See NYSE Orders, *supra* note 4.

<sup>14</sup> 17 CFR 240.12f-5.

<sup>15</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

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 previously, the Commission previously found that the listing and trading of the Securities by NYSE is consistent with the Act. In addition, the Commission previously found that the trading of the Securities by Nasdaq pursuant to UTP on a three-month pilot basis was consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit these earlier findings or would preclude the trading of the Securities on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for the Securities. For these reasons, the Commission finds good cause to approve the proposal on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-NASDAQ-2007-046), be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>16</sup> 15 U.S.C. 78s(b)(2).

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