

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56985; File No. SR-NASDAQ-2007-098)

December 18, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Trading of Certain Securities Outside of the Regular Market Session

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 December 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 the Exchange. This order provides notice of 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: (1) amend NASDAQ Rules 4420(i), 4420(j), and 4630 to permit the trading of Portfolio Depository Receipts, Index Fund Shares, and Commodity-Related Securities (collectively, “ETFs”), respectively, during NASDAQ’s Pre- and Post-Market Sessions;<sup>3</sup> (2) add new NASDAQ Rule 4631, which would require certain disclosures to be made by members to their non-member customers prior to accepting orders for trading as a result of the proposed extended trading hours for ETFs; (3) allow certain ETFs currently approved for

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

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

<sup>3</sup> NASDAQ defines the Pre-Market Session as the trading session that begins at 7:00 a.m. and continues until 9:30 a.m. The Post-Market Session means the trading session that begins at 4:00 p.m. or 4:15 p.m. and continues until 8:00 p.m. The Regular Market Session means the trading session from 9:30 a.m. until 4:00 p.m. or 4:15 p.m. See NASDAQ Rule 4120(b)(4).

trading on the Exchange pursuant to unlisted trading privileges (“UTP”) to trade during NASDAQ’s Pre- and Post-Market Sessions; and (4) make certain technical, clarifying changes to NASDAQ Rules 4420(i) and 4420(j) relating to the dissemination of the underlying index value with respect to Non-US Component Stocks<sup>4</sup> included in the index. The text of the proposed rule change is available at the Exchange’s principal office, 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

NASDAQ states that its members currently trade a wide variety of ETFs on the Exchange pursuant to UTP in accordance with NASDAQ Rules 4420(i), 4420(j), and 4630 and has confined member trading in such ETFs to only the Exchange’s Regular Market Session. This trading restriction is premised on the unavailability of an updated current index value and/or

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<sup>4</sup> Non-US Component Stocks are equity securities that: (1) are not registered under Sections 12(a) or 12(g) of the Act (15 U.S.C. 78l(a) and 15 U.S. 78l(g)); (2) are issued by an entity that is not organized, domiciled, or incorporated in the United States; and (3) are issued by an entity that is an operating company (including Real Estate Investment Trusts and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives). See NASDAQ Rules 4420(i)(1)(D) and 4420(j)(1)(D).

Intraday Indicative Value<sup>5</sup> during the Pre- and Post-Market Sessions. Under the proposal, NASDAQ seeks to permit trading in ETFs during the Pre-Market and Post-Market Sessions, provided that its members provide non-members certain pre-trade disclosures prior to accepting non-member orders in such ETFs. Accordingly, the Exchange proposes to amend NASDAQ Rules 4420(i), 4420(j), and 4630 to allow members to trade ETFs during all three Market Sessions and limit the hours during which the dissemination of applicable current index values and updated Intraday Indicative Values<sup>6</sup> are required. Because the applicable current index values and updated Intraday Indicative Values may not be available during the Pre- and Post-Market Sessions, the Exchange will require such updated values to be disseminated only during the Regular Market Session and the last computed index value and Intraday Indicative Value to be disseminated when such values do not change. Specifically with respect to NASDAQ Rule 4630, NASDAQ proposes to clarify that all securities approved pursuant to this rule are eligible for trading during all Exchange Market Sessions, provided that its members provide non-member customers certain disclosures prior to accepting non-member customer orders for execution in the Pre-Market and Post-Market Sessions.

NASDAQ proposes to add new Rule 4631, which would require Exchange members to disclose to non-member customers the risks associated with trading in the Pre-Market and Post-Market Sessions, including the lack of dissemination of the applicable updated index value and the Intraday Indicative Value for ETFs during such sessions. In particular, new NASDAQ Rule 4631 will require members to disclose that, because the Intraday Indicative Value is not

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<sup>5</sup> The Intraday Indicative Value is also sometimes referred to as the Indicative Optimized Portfolio Value, the Indicative Fund Value, the Indicative Trust Value, and the Indicative Partnership Value, depending on the type of ETF being traded and the terminology used.

<sup>6</sup> See NASDAQ Rules 4420(i)(3)(C) and 4420(j)(3)(C) (describing the Intraday Indicative Value and its dissemination requirements).

calculated or widely disseminated during the Pre-Market and Post-Market Sessions, an investor who is unable to calculate an implied value for an ETF in those sessions may be at a disadvantage to market professionals. The Exchange believes that requiring members to disclose this risk to non-member customers will facilitate informed participation in extended-hours trading. NASDAQ notes that NYSE Arca, Inc. has amended its rules to similarly allow for extended hours trading in ETFs, as long as similar mandatory disclosures are made by its members prior to accepting non-member customer orders.<sup>7</sup>

The Exchange also proposes to make certain technical changes to NASDAQ Rules 4420(i) and 4420(j) to make clear that, with respect to Non-US Component Stocks that are included in an underlying combination index, the impact on such combination index must be disseminated at least every 60 seconds during the Regular Market Session. This proposed change to NASDAQ Rules 4420(i) and 4420(j) corresponds to the dissemination requirements for indexes based on Non-US Component Stocks.

In addition to amending NASDAQ Rules 4420(i), 4420(j), 4630 and adding new NASDAQ Rule 4631, the Exchange proposes to permit the trading of ETFs, previously approved by the Commission, during the Pre-Market and Post-Market Sessions, subject to the mandatory disclosure requirements proposed in new NASDAQ Rule 4631. Specifically, the Exchange proposes that the following ETFs be eligible for trading during the Pre-Market and Post-Market

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<sup>7</sup> See Securities Exchange Act Release Nos. 56625 (October 5, 2007), 72 FR 58144 (October 12, 2007) (SR-NYSEArca-2007-73) (approving certain changes to the generic listing standards for certain ETFs); 56270 (August 15, 2007), 72 FR 47109 (August 22, 2007) (SR-NYSEArca-2007-74) (requiring disclosure by members of additional risks associated with trading ETFs during all trading sessions); and 56627 (October 5, 2007), 72 FR 58145 (October 12, 2007) (SR-NYSEArca-2007-75) (approving extended trading hours for certain ETFs).

Sessions upon approval of the proposed amendments to NASDAQ Rules 4420(i), 4420(j), 4630, and new NASDAQ Rule 4631:

- iShares GSCI Commodity-Indexed Trust;<sup>8</sup>
- the PowerShares DB Energy Fund; the PowerShares DB Oil Fund; the PowerShares DB Precious Metals Fund; the PowerShares DB Gold Fund; the PowerShares DB Silver Fund; the PowerShares DB Base Metals Fund; and the PowerShares DB Agriculture Fund;<sup>9</sup>
- United States Natural Gas Fund;<sup>10</sup>
- PowerShares DB Commodity Index Tracking Fund;<sup>11</sup>
- PowerShares DB G10 Currency Harvest Fund;<sup>12</sup>
- Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares;<sup>13</sup>
- iPath Exchange-Traded Notes Linked to the Performance of the GSCI Total Return Index; iPath Exchange-Traded Notes Linked to the Performance of the Dow Jones – AIG Commodity Index Total Return; and iPath Exchange Traded Notes Linked to the Performance of the Goldman Sachs Crude Oil Total Return

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<sup>8</sup> See Securities Exchange Act Release No. 55861 (June 5, 2007), 72 FR 32153 (June 11, 2007) (SR-NASDAQ-2007-054).

<sup>9</sup> See Securities Exchange Act Release No. 55862 (June 5, 2007), 72 FR 32380 (June 12, 2007) (SR-NASDAQ-2007-053).

<sup>10</sup> See Securities Exchange Act Release No. 55781 (May 17, 2007), 72 FR 29191 (May 24, 2007) (SR-NASDAQ-2007-052).

<sup>11</sup> See Securities Exchange Act Release No. 55767 (May 15, 2007), 72 FR 28733 (May 22, 2007) (SR-NASDAQ-2007-051).

<sup>12</sup> See Securities Exchange Act Release No. 55739 (May 10, 2007), 72 FR 27885 (May 17, 2007) (SR-NASDAQ-2007-049).

<sup>13</sup> See Securities Exchange Act Release No. 55740 (May 10, 2007), 72 FR 27889 (May 17, 2007) (SR-NASDAQ-2007-048).

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- United States Oil Fund, LP;<sup>15</sup>
- PowerShares DB US Dollar Index Bullish Fund and PowerShares DB US Dollar Index Bearish Fund;<sup>16</sup>
- iShares Silver Trust;<sup>17</sup>
- iShares COMEX Gold Trust;<sup>18</sup>
- Four Ultra Funds listed and traded on the American Stock Exchange LLC (“Amex”) pursuant to Commission order on May 10, 2006: (1) Ultra S&P 500; (2) Ultra Nasdaq-100; (3) Ultra Dow 30; and (4) Ultra S&P Mid-Cap 400; and 27 Ultra Funds listed and traded on Amex pursuant to Commission order on January 17, 2007: (1) Ultra Russell 2000; (2) Ultra S&P SmallCap 600; (3) Ultra S&P500/Citigroup Value; (4) Ultra S&P500/Citigroup Growth; (5) Ultra S&P MidCap 400/Citigroup Value; (6) Ultra S&P MidCap 400/Citigroup Growth; (7) Ultra S&P SmallCap 600/Citigroup Value; (8) Ultra S&P SmallCap600/Citigroup Growth; (9) Ultra Basic Materials; (10) Ultra Consumer Goods; (11) Ultra Consumer Services; (12) Ultra Financials; (13) Ultra Health Care; (14) Ultra Industrials; (15) Ultra Oil & Gas; (16) Ultra Real Estate; (17) Ultra

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<sup>14</sup> See Securities Exchange Act Release No. 55760 (May 15, 2007), 72 FR 28736 (May 22, 2007) (SR-NASDAQ-2007-046).

<sup>15</sup> See Securities Exchange Act Release No. 55761 (May 15, 2007), 72 FR 28739 (May 22, 2007) (SR-NASDAQ-2007-045).

<sup>16</sup> See Securities Exchange Act Release No. 55489 (March 19, 2007), 72 FR 13843 (March 23, 2007) (SR-NASDAQ-2007-023).

<sup>17</sup> See Securities Exchange Act Release No. 55385 (March 2, 2007), 72 FR 10797 (March 9, 2007) (SR-NASDAQ-2007-018).

<sup>18</sup> See Securities Exchange Act Release No. 55380 (March 1, 2007), 72 FR 10280 (March 7, 2007) (SR-NASDAQ-2007-014).

Semiconductors; (18) Ultra Technology; (19) Ultra Utilities; (20) Ultra Russell Midcap Index; (21) Ultra Russell Midcap Growth Index; (22) Ultra Russell Midcap Value Index; (23) Ultra Russell 1000 Index; (24) Ultra Russell 1000 Growth Index; (25) Ultra Russell 1000 Value Index; (26) Ultra Russell 2000 Growth Index; and (27) Ultra Russell 2000 Value Index;<sup>19</sup>

- Four Short Funds listed and traded on Amex pursuant to Commission order on May 10, 2006: (1) Short S&P 500; (2) Short Nasdaq-100; (3) Short Dow 30; and (4) Short S&P Mid-Cap 400; and 27 Short Funds listed and traded on Amex pursuant to Commission order on January 17, 2007: (1) Short Russell 2000; (2) Short S&P SmallCap 600; (3) Short S&P500/Citigroup Value; (4) Short S&P500/Citigroup Growth; (5) Short S&P MidCap 400/Citigroup Value; (6) Short S&P MidCap 400/Citigroup Growth; (7) Short S&P SmallCap 600/Citigroup Value; (8) Short S&P SmallCap 600/Citigroup Growth; (9) Short Basic Materials; (10) Short Consumer Goods; (11) Short Consumer Services; (12) Short Financials; (13) Short Health Care; (14) Short Industrials; (15) Short Oil & Gas; (16) Short Real Estate; (17) Short Semiconductors; (18) Short Technology; (19) Short Utilities; (20) Short Russell Midcap Index; (21) Short Russell Midcap Growth Index; (22) Short Russell Midcap Value Index; (23) Short Russell 1000 Index; (24) Short Russell 1000 Growth Index; (25) Short Russell 1000 Value Index; (26) Short Russell 2000 Growth Index; and (27) Short Russell 2000 Value Index;<sup>20</sup>

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<sup>19</sup> See Securities Exchange Act Release No. 55353 (February 26, 2007), 72 FR 9802 (March 5, 2007) (SR-NASDAQ-2007-011).

<sup>20</sup> See id.

- Four UltraShort Funds listed and traded on Amex pursuant to Commission order on June 23, 2006: (1) UltraShort S&P 500; (2) UltraShort Nasdaq-100; (3) UltraShort Dow 30; and (4) UltraShort S&P Mid-Cap 400; and 27 UltraShort funds listed and traded on Amex pursuant to Commission order on January 17, 2007: (1) UltraShort Russell 2000; (2) UltraShort S&P SmallCap 600; (3) UltraShort S&P500/Citigroup Value; (4) UltraShort S&P500/Citigroup Growth; (5) UltraShort S&P MidCap 400/Citigroup Value; (6) UltraShort S&P MidCap 400/Citigroup Growth; (7) UltraShort S&P SmallCap 600/Citigroup Value; (8) UltraShort S&P SmallCap 600/Citigroup Growth; (9) UltraShort Basic Materials; (10) UltraShort Consumer Goods; (11) UltraShort Consumer Services; (12) UltraShort Financials; (13) UltraShort Health Care; (14) UltraShort Industrials; (15) UltraShort Oil & Gas; (16) UltraShort Real Estate; (17) UltraShort Semiconductors; (18) UltraShort Technology; (19) UltraShort Utilities; (20) UltraShort Russell Midcap Index; (21) UltraShort Russell Midcap Growth Index; (22) UltraShort Russell Midcap Value Index; (23) UltraShort Russell 1000 Index; (24) UltraShort Russell 1000 Growth Index; (25) UltraShort Russell 1000 Value Index; (26) UltraShort Russell 2000 Growth Index; and (27) UltraShort Russell 2000 Value Index;<sup>21</sup>
- iShares Lehman TIPS Bond Fund; iShares Lehman Aggregate Bond Fund; iShares iBoxx \$ Investment Grade Corporate Bond Fund; iShares Lehman 20+ Year Treasury Bond Fund; iShares 7-10 Year Treasury Bond Fund; iShares Lehman 1-3 Year Treasury Bond Fund; iShares Lehman Short Treasury Bond

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See id.

Fund; iShares Lehman 3-7 Year Treasury Bond Fund; iShares Lehman 10-20 Year Treasury Bond Fund; iShares Lehman 1-3 Year Credit Bond Fund; iShares Lehman Intermediate Credit Bond Fund; iShares Lehman Credit Bond Fund; iShares Lehman Intermediate Government/Credit Bond Fund; and iShares Lehman Government/Credit Bond Fund;<sup>22</sup> and

- CurrencyShares<sup>TM</sup> Australian Dollar Trust that issues Australian Dollar Shares; CurrencyShares<sup>TM</sup> British Pound Sterling Trust that issues British Pound Sterling Shares; CurrencyShares<sup>TM</sup> Canadian Dollar Trust that issues Canadian Dollar Shares; CurrencyShares<sup>TM</sup> Euro Trust that issues Euro Shares; CurrencyShares<sup>TM</sup> Japanese Yen Trust that issues Japanese Yen Shares; CurrencyShares<sup>TM</sup> Mexican Peso Trust that issues Mexican Peso Shares; CurrencyShares<sup>TM</sup> Swedish Krona Trust that issues Swedish Krona Shares; and CurrencyShares<sup>TM</sup> Swiss Franc Trust that issues Swiss Franc Shares.<sup>23</sup>

In support of this proposed rule change, the Exchange states that the representations in the Commission approval orders for the foregoing ETFs continue to apply and would be applicable to trading during all three trading sessions on NASDAQ. Specifically, the Exchange makes the following representations:

1. The Exchange has appropriate rules to facilitate transactions in shares of the above ETFs during all trading sessions. The Exchange deems such shares to be

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<sup>22</sup> See Securities Exchange Act Release No. 55300 (February 15, 2007), 72 FR 8227 (February 23, 2007) (SR-NASDAQ-2007-002).

<sup>23</sup> See Securities Exchange Act Release No. 55344 (February 23, 2007), 72 FR 9799 (March 5, 2007) (SR-NASDAQ-2006-057).

equity securities, thus rendering trading in such shares subject to NASDAQ's existing rules governing the trading of equity securities.

2. NASDAQ's surveillance procedures are adequate to properly monitor trading of shares of the above ETFs in all trading sessions.<sup>24</sup>
3. NASDAQ has distributed an Information Circular to members prior to the commencement of trading of the shares of the above ETFs on the Exchange that explains the terms, characteristics, and risks of trading such shares.
4. NASDAQ will require members with a customer who purchases newly-issued shares of the above ETFs in any trading session on the Exchange to provide that customer with a product description, if available, or a prospectus, and has noted this delivery requirement in the Information Circular.
5. When NASDAQ is the UTP trading market, NASDAQ will cease trading in the shares of ETFs during all trading sessions if (a) the listing market stops trading such shares, or (b) the listing market delists such shares. Additionally, NASDAQ may cease trading the shares if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on NASDAQ inadvisable. UTP trading in the shares of ETFs is also governed by the trading halt provisions of NASDAQ Rules 4120 and 4121.
6. When NASDAQ is the listing market, NASDAQ may consider all relevant factors in exercising its discretion to halt or suspend trading in the shares of an ETF.

Trading may be halted because of market conditions or for reasons that, in the

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<sup>24</sup> NASDAQ states that it may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members or affiliate members of ISG. In addition, as referenced in the applicable Commission approval orders, NASDAQ has in place information sharing agreements with the relevant exchange(s).

view of the Exchange, make trading in the shares inadvisable. Factors for consideration may include (a) the extent to which trading is not occurring in the securities or other instruments underlying an ETF, or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the shares of listed ETFs are subject to trading halts caused by extraordinary market volatility pursuant to NASDAQ's "circuit breaker" rule (NASDAQ Rule 4121) or by the halt or suspension of trading of the underlying securities or other instruments underlying an ETF. If the Intraday Indicative Value or the index value applicable to a series of shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

7. The Intraday Indicative Value and/or index value (or value of the underlying asset or instrument, if not an index) will continue to be disseminated during all three trading sessions, as reflected in the relevant proposed rule changes filed by the Exchange and approved by the Commission.

NASDAQ intends to distribute to its members and make available on its Web site at [www.nasdaqtrader.com](http://www.nasdaqtrader.com) a Regulatory Alert titled "Exchange-Traded Funds – Extended Trading Hours" that discloses, among other things: (1) that the current underlying index value and Intraday Indicative Value may not be updated during the Pre-Market and Post-Market Sessions;

(2) that commodity and currency spot prices are available during the Regular Market Session, and commodity and currency futures prices generally will not be available during the Pre-Market and Post-Market Sessions;<sup>25</sup> (3) that lower liquidity in the Pre-Market and Post-Market Sessions may impact pricing; (4) that higher volatility in the Pre-Market and Post-Market Sessions may impact pricing; (5) that wider spreads may occur in the Pre-Market and Post-Market Sessions; (6) the circumstances that trigger trading halts; (7) required customer disclosures;<sup>26</sup> and (8) suitability requirements.

The Exchange believes that, with this additional disclosure, it is appropriate to permit trading during all three of NASDAQ's trading sessions, notwithstanding the absence of a disseminated updated index value or Intraday Indicative Value during all or part of NASDAQ's trading hours. In addition, NASDAQ notes that, if the official index value does not change during some or all of the period when trading is occurring on the Exchange (for example, because of time zone differences or holidays in countries where the index component stocks trade), then the last calculated official index value must remain available throughout NASDAQ trading hours. Similarly, if the Intraday Indicative Value does not change during any portion of NASDAQ trading hours, then the last official calculated Intraday Indicative Value must remain available throughout NASDAQ trading hours.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

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<sup>25</sup> Nasdaq states that, in certain cases, the futures or options markets for a particular commodity may be closed during part of the Regular Market Session, and the Intraday Indicative Value would be static for that particular future or options price, but widely disseminated. In addition, the prices of certain futures contracts in commodities (e.g., gold) and currencies are available on a 24-hour basis.

<sup>26</sup> See proposed NASDAQ Rule 4631.

the Act,<sup>27</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>28</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; 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.

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

The Exchange 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 on the proposed rule change were neither solicited nor received.

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-098 on the subject line.

Paper Comments:

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<sup>27</sup> 15 U.S.C. 78f(b).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

- 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-2007-098. 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-2007-098 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

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

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.<sup>29</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>30</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; 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 the proposal reasonably balances the removal of impediments to a free and open market with the protection of investors and the public interest, two principles set forth in Section 6(b)(5) of the Act. Trading during extended hours carries more risks than during regular business hours. With ETFs in particular, customers who trade when a fund's Intraday Indicative Value is not calculated and publicly disseminated may be at a disadvantage to professional traders who have their own means of calculating a reliable estimate of the fund's net asset value or "NAV." The Exchange has represented that it will distribute to its members a Regulatory Alert that discusses this particular risk and other risks of trading ETFs outside of the Regular Market Session. In view of these additional disclosures, the Commission believes it is reasonable and consistent with the Act for the Exchange to extend the trading hours of the ETFs in the manner described in this proposal.

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the Federal Register. The Commission notes that it has previously approved similar proposals made by another national

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<sup>29</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>30</sup> 15 U.S.C. 78f(b)(5).

securities exchange.<sup>31</sup> Those proposals were subject to full notice-and-comment periods before Commission action, and no comments were received. The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or should preclude the extension of trading hours of the ETFs on the Exchange. Therefore, the Commission believes that accelerating approval of this proposal is reasonable.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>32</sup> that the proposed rule change (SR-NASDAQ-2007-098) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>31</sup> See Securities Exchange Act Release Nos. 56625 (October 5, 2007), 72 FR 58144 (October 12, 2007) (SR-NYSEArca-2007-73) (approving certain changes made to the generic listing standards for certain ETFs) and 56627 (October 5, 2007), 72 FR 58145 (October 12, 2007) (SR-NYSEArca-2007-75) (approving extended trading hours for certain ETFs).

<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> 17 CFR 200.30-3(a)(12).