

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58489; File No. SR-NASDAQ-2008-073)

September 8, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Trade Shares of 12 Funds of the WisdomTree Trust 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 August 29, 2008, 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 prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq is filing a proposed rule change to trade, pursuant to unlisted trading privileges (“UTP”), shares (“Shares”) of 12 funds (each a “Fund”) of the WisdomTree Trust (“Trust”) under Nasdaq Rule 4420(o) (Managed Fund Shares). The text of the proposed rule change is available from Nasdaq’s Web site at <http://nasdaq.cchwallstreet.com>, at Nasdaq’s principal office, and at the Commission’s Public Reference Room.

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

<sup>4</sup> 17 C.F.R. 240.19b-4(f)(6).

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq had 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 the Funds on a UTP basis under Nasdaq Rule 4420(o), which governs the trading of “Managed Fund Shares” on the Exchange. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on December 15, 2005. The Trust is registered with the Commission as an investment company.<sup>5</sup> The Commission recently approved the listing and trading of these same Funds by NYSE Arca, Inc. on its exchange.<sup>6</sup>

Description of the Shares and the Funds

WisdomTree Asset Management, Inc. (“WisdomTree Asset Management”) is the investment adviser to each Fund.<sup>7</sup> WisdomTree Asset Management is not affiliated with any broker-dealer. Mellon Capital Management serves as the sub-adviser for the Current Income

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<sup>5</sup> See Post-Effective Amendment No. 14 to Registration Statement on Form N-1A for the Trust (File Nos. 333-132380 and 811-21864) (“Registration Statement”). The descriptions of the Funds and the Shares contained herein are based on information in the Registration Statement.

<sup>6</sup> See Securities Exchange Act Release No. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (order approving SR-NYSEArca-2008-31).

<sup>7</sup> WisdomTree Investments, Inc. (“WisdomTree Investments”) is the parent company of WisdomTree Asset Management.

Fund. The Dreyfus Corporation serves as the subadviser to each International Currency Income Fund. The Bank of New York is the administrator, custodian, and transfer agent for each Fund. ALPS Distributors, Inc. serves as the distributor for the Funds.

#### The Current Income Fund

The Current Income Fund seeks to earn current income while preserving capital and maintaining liquidity by investing primarily in very short term, high-quality money market securities denominated in U.S. dollars. Eligible investments include commercial paper, time deposits and certificates of deposits, asset-backed securities, government bills, government notes, corporate notes, and repurchase agreements. The Current Income Fund intends to maintain an average portfolio maturity of 90 days or less and will not purchase any money market security with a remaining maturity of more than 397 calendar days.

#### The International Currency Income Funds

Each of the Australian Dollar Fund, British Pound Sterling Fund, Canadian Dollar Fund, Euro Fund, and Japanese Yen Fund: (i) seeks to earn current income reflective of money market rates available to foreign investors in the specified country or region, and (ii) seeks to maintain liquidity and preserve capital measured in the currency of the specified country or region. Each of these Funds intends to invest primarily in very short term, investment grade money market securities denominated in the non-U.S. currency specified in its name. Eligible investments include short-term securities issued by non- U.S. governments, agencies or instrumentalities, bank debt obligations and time deposits, bankers' acceptances, commercial paper, short-term corporate debt obligations, mortgage backed securities, and asset-backed securities.

Each of the Brazilian Real Fund, Chinese Yuan Fund, Indian Rupee Fund, New Zealand Dollar Fund, South African Rand Fund, and South Korean Won Fund seeks: (i) to earn current

income reflective of money market rates available to foreign investors in the specified country; and (ii) to provide exposure to changes in the value of the designated non-U.S. currency relative to the U.S. Dollar. Each of these Funds intends to achieve exposure to the non-U.S. market designated by its name using the following strategy. Each of the Funds will invest primarily in short term U.S. money market securities. In addition, each such Fund will invest a smaller portion of its assets in forward currency contracts and swaps designed to provide exposure to exchange rates and/or money market instruments available to foreign investors in the non-U.S. market designated in the Fund's name. The combination of U.S. money market securities with forward currency contracts and currency swaps is designed to create a position economically similar to a money market instrument denominated in a non-U.S. currency. A forward currency contract is an agreement to buy or sell a specific currency at a future date at a price set at the time of the contract. A currency swap is an agreement between two parties to exchange one currency for another at a future rate.<sup>8</sup>

Each International Currency Income Fund generally will maintain a weighted average portfolio maturity of 90 days or less and will not purchase any money market instrument with a remaining maturity of more than 397 calendar days.

None of the Funds will invest in non-U.S. equity securities.

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<sup>8</sup> Each of these Funds may pursue its objectives through direct investments in money market instruments issued by entities in the applicable non-U.S. country and denominated in the applicable non-U.S. currency when WisdomTree Asset Management believes it is in the best interest of the Fund to do so. The decision to secure exposure directly or indirectly will be a function of, among other things, market accessibility, credit exposure, and tax ramifications for foreign investors. If any of these Funds pursues direct investment, eligible investments will include short-term securities issued by the applicable foreign government and its agencies or instrumentalities, bank debt obligations and time deposits, bankers' acceptances, commercial paper, short-term corporate debt obligations, mortgage backed securities, and asset-backed securities.

## The Shares

Each Fund issues and redeems Shares on a continuous basis at net asset value (“NAV”)<sup>9</sup> only in large blocks of shares, typically 50,000 shares or more (“Creation Units”), in transactions with authorized participants. Each International Currency Income Fund may issue and redeem Creation Units in exchange for a designated basket of non-U.S. currency and an amount of U.S. cash, a basket of non-U.S. money market instruments and a designated amount of cash, or simply a designated amount of cash. In addition, creations and redemptions of the Current Income Fund, the Brazilian Real Fund, Chinese Yuan Fund, Indian Rupee Fund, New Zealand Dollar Fund, South African Rand Fund, and South Korean Won Fund are usually in exchange for a basket of U.S. money market instruments and/or a designated amount of cash. Once created, Shares of the Funds trade on the secondary market in amounts less than a Creation Unit. For more information regarding the Shares and the Funds, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes, see the Registration Statement.

## Availability of Information

The Funds’ Web site ([www.wisdomtree.com](http://www.wisdomtree.com)), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for each Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for each Fund: (1) the prior business day’s reported NAV, mid-point of the

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<sup>9</sup> The NAV of each Fund’s shares generally is calculated once daily Monday through Friday as of the close of regular trading (the “NAV Calculation Time”). NAV per share is calculated by dividing a Fund’s net assets by the number of Shares outstanding. For more information regarding the valuation of Fund investments in calculating a Fund’s NAV, see the Registration Statement.

bid/ask spread at the time of calculation of such NAV (the “Bid/Ask Price”);<sup>10</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day before commencement of the Regular Market Session on the Exchange,<sup>11</sup> the Funds will disclose on their Web site the identities and quantities of the securities and other assets that will form the basis for the calculation of NAV for each Fund at the end of the business day (“Disclosed Portfolio”).<sup>12</sup> The Web site and information will be publicly available at no charge.

Investors interested in a particular Fund can also obtain the Trust’s Statement of Additional Information (“SAI”), each Fund’s Shareholder Reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust’s SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission’s Web site (<http://www.sec.gov>).

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<sup>10</sup> The Bid/Ask Price of a Fund is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of such Fund’s NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

<sup>11</sup> See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 7 a.m. to 9:30 a.m.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m.).

<sup>12</sup> Under accounting procedures followed by the Funds, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in the NAV on such business day. Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Information regarding market price and volume is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The NAV of each Fund will normally be determined as of the close of the Regular Market Session on Nasdaq (ordinarily 4 p.m. Eastern Time or "ET") on each business day. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotations and last-sale information for the Shares will be available through the facilities of the Consolidated Tape Association ("CTA"). In addition, the Intraday Indicative Value<sup>13</sup> will be disseminated at least every 15 seconds during the Regular Market Session through the facilities of the CTA.

#### Initial and Continued Listing

The Shares will be subject to Rule 4420(o), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that for initial and/or continued listing, the Shares must be in compliance with Rule 10A-3 under the Act.<sup>14</sup>

#### Trading Halts

Nasdaq will halt trading in Shares 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 Shares will also be governed by provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of the Intraday Indicative Value, among other values.

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<sup>13</sup> The Intraday Indicative Value is also sometimes referred to as the "Portfolio Indicative Value" with respect to these securities and is based on the current value of the components of the Disclosed Portfolio.

<sup>14</sup> See 17 CFR 240.10A-3.

If Nasdaq becomes aware that the NAV or the Disclosed Portfolio with respect to a Share is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants

Additionally, Nasdaq may cease trading 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 Shares if the listing market delists them.

#### Trading Rules

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 7:00 a.m. until 8:00 p.m.<sup>15</sup> The minimum trading increment for Shares on Nasdaq will be \$0.01.

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including exchange-traded funds) to monitor trading in the Shares and the Exchange represents that these procedures are adequate to address any concerns about the trading of the Shares on Nasdaq. Trading of the Shares through Nasdaq will be subject to FINRA's surveillance procedures for equity securities in general and exchange-traded funds in

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<sup>15</sup> See Nasdaq Rule 4420.

particular.<sup>16</sup> The Exchange may obtain information via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members or affiliate members of the ISG.<sup>17</sup>

#### Information Circular

Prior to the commencement of trading, the Exchange 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 baskets of shares (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) how information regarding the Intraday Indicative Value is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Fund value will not be calculated or publicly disseminated; and (6) trading information.

The Exchange notes that investors purchasing Shares directly from a Fund will receive a prospectus. Members purchasing Shares from a Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Information Circular will also reference that the CFTC has regulatory jurisdiction over the trading of futures contracts.

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<sup>16</sup> FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA’s performance under this regulatory services agreement.

<sup>17</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

The Information Circular will also disclose the trading hours of the Shares of the Funds and that the NAV for the Shares will be calculated after 4:00 p.m. (ET) each trading day. The Circular will disclose that information about the Shares of each Fund and the corresponding Indexes will be publicly available on the Funds' Web site.

## 2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act<sup>18</sup> in general and Section 6(b)(5) of the Act<sup>19</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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Nasdaq believes that its rules and procedures governing the trading of the Shares pursuant to UTP are also consistent with the goals Section 6(b)(5) and the protection of investors.

In addition, Nasdaq believes that the proposal is consistent with Rule 12f-5 under the Act<sup>20</sup> because it deems each Share to be an equity security, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.<sup>21</sup>

### 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.

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<sup>18</sup> 15 U.S.C. 78f.

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> 17 CFR 240.12f-5.

<sup>21</sup> See email from Jonathon F. Cayne, Assistant General Counsel, Nasdaq to Mitra Mehr, Special Counsel, Division of Trading and Markets, Commission on September 8, 2008, clarifying text.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>22</sup> and Rule 19b-4(f)(6) thereunder.<sup>23</sup>

Nasdaq has asked the Commission to waive the 30-day operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest because such waiver should benefit investors by creating, without undue delay, additional competition in the market for the Shares. The Commission has previously approved the listing and trading of the Shares on another exchange<sup>24</sup> and finds that the proposed rule change does not present any novel or significant regulatory issues. Therefore, the Commission designates the proposed rule change as operative upon filing.<sup>25</sup>

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<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 C.F.R. 240.19b-4(f)(6). The Commission notes that Nasdaq has satisfied the five day pre-filing notice requirement.

<sup>24</sup> See supra note 6.

<sup>25</sup> For purposes only of waiving the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);  
or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2008-073 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-NASDAQ-2008-073. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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-2008-073 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

Florence E. Harmon  
Acting Secretary

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<sup>26</sup> 17 CFR 200.30-3(a)(12).