

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2007-011 and should be submitted on or before March 4, 2008.

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 15A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²² that the proposed rule change (File No. SR-FINRA-2007-011), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57269; File No. SR-NASDAQ-2008-008]

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 Eight Funds of the ProShares Trust Based on Four International Equity Indexes Pursuant to Unlisted Trading Privileges and To Amend Certain Generic Listing Standards

February 5, 2008.

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 January 24, 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 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 eight funds of the ProShares Trust (“Trust”). Nasdaq also proposes to amend the generic listing standards contained in Nasdaq Rule 4420(m)(4).

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 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 eight new Funds of the Trust that are designated as Short Funds (“Short Funds”) and UltraShort Funds (“UltraShort Funds”), as described more fully below.³ The Commission has approved the original listing and trading of the Shares on the American Stock Exchange, LLC

(“Amex”).⁴ Each Fund will attempt, on a daily basis, to achieve its distinct investment objective by corresponding to a specified multiple of the inverse performance of a particular equity securities index (each, an “Underlying Index” or “Index”) as briefly described below.

Short Funds. Each Short Fund seeks daily investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (-100%) of the Underlying Index. If a Short Fund is successful in meeting its objective, the net asset value (“NAV”) ⁵ of the corresponding Shares 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 prices in the Index rise on a given day. The Short Funds include: (1) Short MSCI Emerging Markets ProShares, (2) Short MSCI Japan ProShares, (3) Short MSCI EAFE ProShares, and (4) Short FTSE/Xinhua China 25 ProShares.

UltraShort Funds. An UltraShort Fund seeks daily investment results, before fees and expenses, that correspond to twice the inverse or opposite of the daily performance (-200%) of the Underlying Index. If an UltraShort Fund is successful in meeting its objective, the NAV of the corresponding Shares 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 such prices rise on a given day. The UltraShort Funds include: (1) UltraShort MSCI Emerging Markets ProShares, (2) UltraShort MSCI Japan ProShares, (3) UltraShort MSCI EAFE ProShares, and (4) UltraShort FTSE/Xinhua China 25 ProShares.

No Fund will invest directly in the component securities of the relevant Underlying Index; instead, each Fund will create short exposure to the corresponding Index. Each Fund will establish positions in Financial Instruments (as defined below) that

⁴ See Securities Exchange Act Release No. 56592 (October 1, 2007) (SR-Amex-2007-60) (“Amex Order”). See also Securities Exchange Act Release No. 56223 (August 8, 2007), 72 FR 45837 (August 15, 2007) (SR-Amex-2007-60) (“Amex Notice”).

⁵ NAV per Share of each Fund is computed by dividing the value of the Fund's net assets (*i.e.*, the value of its total assets less total liabilities) by its total number of Shares outstanding. Expenses and fees are accrued daily and taken into account for purposes of determining NAV.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission has previously approved trading certain Ultra Funds, Short Funds, and UltraShort Funds of the ProShares Trust on the Exchange pursuant to UTP. See Securities Exchange Act Release No. 55353 (February 26, 2007), 72 FR 9802 (March 5, 2007) (SR-NASDAQ-2007-011).

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).

provide, on a daily basis, the inverse or opposite of, or twice the inverse or opposite of, the performance of the relevant Underlying Index. Normally 100% of the value of the portfolio of each Fund will be devoted to such Financial Instruments and certain money market instruments. The Financial Instruments to be held by any of the Funds may include stock index futures contracts; options on futures contracts; options on securities and indices; equity caps, collars, and floors; swap agreements; forward contracts; repurchase agreements; and reverse repurchase agreements ("Financial Instruments"). Money market instruments include certain U.S. government securities and repurchase agreements.

Availability of Information About the Shares and the Underlying Indexes

The Trust's Web site, 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"), recent NAV, shares outstanding, estimated cash amount, and total cash amount per Creation Unit. Amex will make available on its Web site the 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.⁶

Each Fund's total portfolio composition will be disclosed on the Trust's Web site (<http://www.proshares.com>) or another relevant Web site as determined by the Trust and/or Amex. According to the Amex Proposal, the Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the 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 disclosure of the portfolio composition of each Fund will coincide with the disclosure by ProShare Advisors, LLC ("Advisor") of the "IIV File" and the "PCF."⁷ Therefore, the portfolio information (including accrued expenses and dividends) to be provided on the public Web site will be the same as the information in the IIV File and PCF (when applicable) provided to authorized participants. The format of the public Web site disclosure and the IIV File and PCF (when applicable) will differ because the public Web site will list all portfolio holdings while the IIV and PCF (when applicable) will similarly provide the portfolio holdings but in a format appropriate for authorized participants, *i.e.*, the exact components of a Creation Unit.⁸ Each investor will have access to the current portfolio composition of each Fund through the Trust's Web site, at <http://www.proshares.com>, and/or at the Amex's Web site at <http://www.amex.com>.

Beneficial owners of Shares ("Beneficial Owners") will receive all of the statements, notices, and reports

⁶ 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 the Exchange would do so as well.

⁷ According to the Amex Proposal, the Trust will create a portfolio composition file ("PCF") for each Fund, which it will transmit to the National Securities Clearing Corporation ("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 Fund, information sufficient by itself or in connection with the PCF 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 each business day, and all authorized participants and Amex will have access to a password and the Web site containing the IIV File.

⁸ The composition will be used to calculate the NAV later that day.

required under the 1940 Act and other applicable laws. They will receive, for example, annual and semi-annual 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 will be publicly available on various Web sites, *e.g.*, <http://www.bloomberg.com>. Data regarding each Underlying Index are 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). The value of each Underlying Index would be updated intra-day as its individual component securities change in price. These intra-day values of each Underlying Index will be disseminated at least every 60 seconds from 9:30 a.m. to 4:15 p.m. Eastern Time ("ET") by Amex or another organization authorized by the relevant Underlying Index provider.⁹

According to the Amex Proposal, in order to provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem Shares, Amex will disseminate through the facilities of the CTA: (1) Continuously from 9:30 a.m. to 4:15 p.m. ET, the market value of a Share; and (2) at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET, the 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 will calculate 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 from 9:30 a.m. to 4:15 p.m. ET should not be viewed as a real-time update of the NAV of a particular Fund, which is

⁹ During certain periods, the relevant Underlying Index value may be not updated or static.

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.

Trading Halts

Nasdaq will halt trading in the 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 the Shares of a Fund will also be governed by provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of the Indicative Fund Value or the value of the Underlying Index. Additionally, Nasdaq may cease trading the Shares of a Fund 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 of a Fund 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 a.m. until 8 p.m. ET.

Surveillance

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 will be subject to FINRA's surveillance procedures for equity securities in general and ETFs in particular.¹⁰ The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members or affiliates of the ISG.¹¹

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 (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 IFV 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; and (5) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. The Exchange notes that investors purchasing Shares directly from a Fund (by delivery of the corresponding Cash Deposit Amount) 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.

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 p.m. ET each trading day. The Circular will disclose that information about the Shares of each Fund and the corresponding Index will be publicly available on the Funds' Web site.

Nasdaq Rule 4420(m)

Currently, the respective generic listing standards for such securities state, among other requirements, that the payment at maturity may or may not provide for a multiple of the positive performance of the applicable underlying Reference Asset, and in no event may payment at maturity be based on a multiple of the negative performance of the applicable underlying Reference Asset. Nasdaq seeks to amend the generic listing standards with respect to the listing and trading of an issue so that in no event

may a loss or negative payment at maturity be accelerated by a multiple that exceeds twice the performance of an underlying index, indexes, or Reference Asset.¹² Nasdaq believes that the current restriction is unnecessarily limiting, given the changes in the market for these securities and the demand for differing structures. In addition, the Exchange notes that the Commission has already approved certain ETFs seeking to provide: (1) Investment results that correspond to or exceed twice (200%) the direct performance of a specified stock index, or (2) investment results that correspond to twice (–200%) the inverse or opposite of the index's performance and that such ETFs are currently listed and traded on Amex.¹³

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)¹⁴ 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 Act¹⁵ 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.

¹² See, Securities Exchange Act Release No. 57150 (January 15, 2008), 73 FR 3765 (January 22, 2008) (SR–Amex–2007–130) (approving certain modifications to the initial listing standards for index-linked securities, commodity-linked securities, and currency-linked securities).

¹³ See, e.g., Securities Exchange Act Release Nos. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR–Amex–2004–62) (approving the listing and trading of shares of the xtraShares Trust); 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR–Amex–2006–41) (approving the listing and trading of shares of the ProShares Trust); 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR–Amex–2006–101) (approving the listing and trading of shares of the ProShares Trust based on various sector indexes); 56592 (October 1, 2007), 72 FR 57364 (October 9, 2007) (SR–Amex–2007–60) (approving the listing and trading of shares of the ProShares Trust based on various international equity indexes); and 56713 (October 29, 2007), 72 FR 61915 (November 1, 2007) (SR–Amex–2007–74) (approving the listing and trading of shares of funds of the Rydex ETF Trust).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 17 CFR 240.12f–5.

¹⁰ FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA's performance under this regulatory services agreement.

¹¹ For a list of the current members and affiliate members of ISG, see www.isgportal.com.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange 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-2008-008 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-2008-008. 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 a.m. and 3 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-2008-008 and should be submitted on or before March 4, 2008.

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.¹⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁷ 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.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,¹⁸ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.¹⁹ The Commission notes that it previously approved the listing and trading of the Shares on Amex.²⁰ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,²¹ 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,²² 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 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 about each Fund and its Shares.

The Commission also believes that the proposal appears reasonably designed to preclude trading of the Shares if transparency is impaired or there is unfair dissemination of the NAV. 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. Nasdaq will halt trading in the Shares of a Fund if it learns that the listing market halts trading because the NAV is not being disseminated to all market participants at the same time.

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

¹⁶ 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).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78l(f).

¹⁹ 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.

²⁰ See *supra* note 4.

²¹ 17 CFR 240.12f-5.

²² 15 U.S.C. 78k-1(a)(1)(C)(iii).

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 also believes that the Exchange's proposal to amend Nasdaq Rule 4420(m) is consistent with the Act. The Commission notes that the proposed modifications to Nasdaq Rule 4420(m) are substantially identical to a proposal from NYSE Arca, Inc. ("NYSE Arca") that the Commission approved and found consistent with the Act,²³ and is approving this aspect of Nasdaq's proposal on the same basis.

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. In addition, the Commission notes that the proposed amendments to Nasdaq Rule 4420(m) are substantially identical to a proposed rule change submitted by NYSE Arca, which was previously approved by the Commission after an opportunity for notice and comment. The Commission presently is not aware of any regulatory issue that should cause it to revisit these findings 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,²⁴ that the proposed rule change (SR-NASDAQ-2008-008) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57274; File No. SR-NASDAQ-2008-009]

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

February 5, 2008.

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 February 1, 2008, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared substantially by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by Nasdaq under section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 proposes to modify pricing for Nasdaq members using the Nasdaq Market Center. Nasdaq implemented this proposed rule change on February 1, 2008. The text of the proposed rule change is available at <http://www.nasdaq.complinet.com>, the principal offices of the Exchange, and 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, 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 IV below. Nasdaq 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 is introducing changes to its order execution pricing schedule to lower fees for certain members that execute high volumes of transactions through the Nasdaq Market Center but that do not qualify for current favorable pricing because they provide lower volumes of liquidity. Specifically, any member that accesses an average of 55 million or more shares of liquidity through the Nasdaq Market Center in a month would pay a reduced fee for accessing that liquidity unless the member already qualifies for a more favorable pricing level. For shares of New York Stock Exchange ("NYSE") listed companies, the fee will be \$0.00285 per share executed in the Nasdaq Market Center,⁵ and for securities listed on Nasdaq and other exchanges, the reduced fee will be \$0.00265 per share executed in the Nasdaq Market Center.⁶ Members qualifying for the reduced execution charge would continue to pay fees for routing to other exchanges at their current levels, which are identical to the current fees for accessing liquidity.

Second, Nasdaq is simplifying its pricing schedule by eliminating a reduced fee for orders that are designated for routing directly to the American Stock Exchange ("Amex") without attempting to execute in the Nasdaq Market Center prior to routing. As a result, for securities listed on exchanges other than NYSE, the fee is now \$0.0035 per share for all orders

⁵ The fee represents a reduction from the current execution fees of \$0.0029 per share paid by members with an average daily volume of (i) more than 20 million shares of liquidity provided and (ii) more than 35 million shares of liquidity accessed and/or routed; and \$0.003 per share executed for members with lower volumes. Members with an average daily volume of (i) more than 35 million shares of liquidity provided and (ii) more than 55 million shares of liquidity accessed and/or routed; or with an average daily volume of (i) more than 25 million shares of liquidity provided, and (ii) more than 65 million shares of liquidity accessed and/or routed, will continue to pay a lower rate of \$0.0028 per share executed.

⁶ The fee represents a reduction from the current execution fees of \$0.0028 per share paid by members with an average daily volume of (i) more than 20 million shares of liquidity provided and (ii) more than 35 million shares of liquidity accessed and/or routed; and \$0.003 per share executed for members with lower volumes. Members with an average daily volume of (i) more than 35 million shares of liquidity provided and (ii) more than 55 million shares of liquidity accessed and/or routed; or with an average daily volume of (i) more than 25 million shares of liquidity provided, and (ii) more than 65 million shares of liquidity accessed and/or routed, will continue to pay a lower rate of \$0.0026 per share executed.

²³ See Securities Exchange Act Release No. 57149 (January 15, 2008) 73 FR 3790 (January 22, 2008) (SR-NYSEARCA-2007-122).

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).