

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55740; File No. SR-NASDAQ-2007-048]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Trade Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares Pursuant to Unlisted Trading Privileges

May 10, 2007.

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 3, 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 notice and 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 privileged ("UTP"), (1) Claymore MACROshares Oil Up Tradeable Shares (the "Up-MACRO Tradeable Shares") and (2) Claymore MACROshares Oil Down Tradeable Shares (the "Down-MACRO Tradeable Shares") and together with the Up-MACRO Tradeable Shares, the "MACRO Tradeable Shares").

The text of the proposed rule change is available from Nasdaq's Web site at [nasdaq.complinet.com](http://nasdaq.complinet.com), at Nasdaq's principal office, 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 the MACRO Tradeable Shares pursuant to UTP. The MACRO Tradeable Shares are issued by and represent an undivided beneficial interest in (1) the Claymore MACROshares Oil Up Tradeable Trust (the "Up-MACRO Tradeable Trust") and (2) the Claymore MACROshares Oil Down Tradeable Trust (the "Down-MACRO Tradeable Trust"), respectively. The assets of these trusts (collectively, the "MACRO Tradeable Trusts") each consists exclusively of a majority of the Claymore MACROshares Oil Up Holding Shares ("Up-MACRO Holding Shares") issued by the Claymore MACROshares Oil Up Holding Trust ("Up-MACRO Holding Trust") and the Claymore MACROshares Oil Down Holding Shares ("Down-MACRO Holding Shares") issued by the Claymore MACROshares Oil Down Holding Trust ("Down-MACRO Holding Trust").<sup>3</sup> The Commission previously approved the listing and trading of the MACRO Tradeable Shares on the American Stock Exchange ("Amex").<sup>4</sup> As described in greater detail in the Amex Order, the value of the MACROshares Tradeable Shares is dependent upon the settlement price of the light sweet crude oil futures contract traded on the New York Mercantile Exchange ("NYMEX").

Nasdaq deems the MACRO Tradeable Shares to be equity securities, thus rendering trading in the MACRO Tradeable Shares subject to its existing rules governing the trading of equity securities, including Nasdaq Rule 4630, which governs trading of Commodity-Related Securities. The MACRO Tradeable Shares will trade on Nasdaq from 9:30 a.m. until 4:15 p.m. Eastern Time ("ET").

Quotations for and last sale information regarding the MACRO Tradeable Shares are disseminated through the Consolidated Quotation System. During each trading day, Amex, acting as the calculation agent, publishes to the Consolidated Quotation System, at least every 15 seconds during the entire time that the MACRO Tradeable Shares trade on Amex (normally 9:30 a.m. to 4:15 p.m. ET each

trading day), an Indicative Intraday Value ("IIV") representing the estimated underlying value per share of both the Up-MACRO Tradeable Shares and the Down-MACRO Tradeable Shares. Amex also publishes these values on its Web site. To enable this calculation, Amex receives real-time price data from the NYMEX for the light sweet crude oil futures contract that trades on the NYMEX from two major market data vendors, from the opening of trading of the light sweet crude oil futures contract on NYMEX at 10 a.m. to the close of trading of the MACRO Tradeable Shares on Amex at 4:15 p.m. ET. In addition, the closing price of the MACRO Tradeable Shares on Nasdaq will be available through the Exchange's Web site.

Because the NYMEX market for the light sweet crude oil futures contract is closed for portions of the period from 9:30 a.m. to 4:15 p.m. ET, the IIV calculated values are fixed during these closures. From 9:30 a.m. to 4:15 p.m. ET, however, if trading in the NYMEX light sweet crude oil futures contract is occurring on the CME Globex electronic trading platform, those trades would be used to update IIV values.

The administrative agent for the MACRO Tradeable Shares, Claymore Securities, maintains a Web site (<http://www.ClaymoreMacroShares.com>) that is publicly accessible at no charge and contains the following information posted on each NYMEX trading day: the daily price level percentage change of the applicable reference price of crude oil; the daily underlying value of the Up-MACRO Holding Trust and the per-share underlying value of the Up-MACRO Holding Shares and the Up-MACRO Tradeable Shares; and the daily underlying value of the Down-MACRO Holding Trust and the per-share underlying value of the Down-MACRO Holding Shares and the Down-MACRO Tradeable Shares.

Pricing and other information for NYMEX light sweet crude oil futures contracts is available through major market data vendors such as Reuters and Bloomberg. Nasdaq has issued an Information Circular to inform its members of the special characteristics and risks associated with trading the MACRO Tradeable Shares.

Nasdaq would halt trading in the MACRO Tradeable 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 MACRO Tradeable Shares also would be governed by provisions of Nasdaq Rule 4120 relating to temporary interruptions

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

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

<sup>3</sup> The Up-MACRO Holding Shares and Down-MACRO Holding Shares (collectively, the "MACRO Holding Shares") will not be listed or traded on Nasdaq.

<sup>4</sup> See Securities Exchange Act Release No. 54839 (November 29, 2006), 71 FR 70804 (December 6, 2006) (SR-Amex-2006-82) (the "Amex Order").

in the calculation or wide dissemination of the IIV or the value of the applicable NYMEX light sweet crude oil futures contract. Additionally, Nasdaq may cease trading the MACRO Tradeable 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 also would follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq would stop trading the MACRO Tradeable Shares if the listing market delists them.

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the MACRO Tradeable Shares on Nasdaq. Trading of the MACRO Tradeable Shares is currently subject to NASD's surveillance procedures for equity securities in general and ETFs in particular.<sup>5</sup>

Nasdaq is able to obtain information regarding trading in the MACRO Tradeable Shares and NYMEX oil futures contracts through its members in connection with the proprietary or customer trades that such members effect on any relevant market. In addition, Nasdaq is party to an Information Sharing Agreement with NYMEX for the purpose of providing information in connection with trading in or related to oil futures contracts traded on that market.

## 2. Statutory Basis

The Exchange 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 in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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 MACRO Tradeable Shares to be an equity securities, thus rendering trading in the Macro Tradeable Shares subject to Nasdaq's existing rules governing the trading of equity securities.

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

<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.

### *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*

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 an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-048 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-2007-048. 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-2007-048 and should be submitted on or before June 7, 2007.

### 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.<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 MACRO Tradeable Shares.

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 approved the listing and trading of the MACRO Tradeable Shares on Amex and the trading of the MACRO Tradeable Shares on NYSE Arca pursuant to UTP.<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

<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 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 *supra* note 4. See also Securities Exchange Act Release No. 55033 (December 29, 2006) 72 FR 1253 (January 11, 2007) (approving UTP trading of MACRO Tradeable Shares on NYSE Arca).

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

class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the MACRO Tradeable Shares to be equity securities, thus rendering trading in the MACRO Tradeable 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,<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. Quotations for and last sale information regarding the MACRO Tradeable Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. Furthermore, the IIV, updated to reflect changes in currency exchange rates, is calculated by Amex and published via the facilities of the Consolidated Tape Association on a 15-second delayed basis throughout the trading hours for the MACRO Tradeable Shares. In addition, if the listing market halts trading when the IIV is not being calculated or disseminated, the Exchange would halt trading in the MACRO Tradeable Shares.

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

In support of this proposal, the Exchange has represented that its surveillance procedures are adequate to properly monitor Exchange trading of the MACRO Tradeable Shares. This approval order is conditioned on the Exchange's adherence to this representation.

In addition, the Commission recently approved the trading of the MACRO Tradeable Shares on the Exchange pursuant to UTP for a pilot period of three months.<sup>16</sup> In the Pilot Order, the Commission noted that exchanges that trade commodity-related securities generally have in place surveillance arrangements with markets that trade the underlying securities. In its proposal to trade the MACRO Tradeable Shares for a pilot period, the Exchange represented that it was in the process of completing these surveillance

arrangements and expected to do so "in the near future." The Exchange recently provided the Commission with evidence that it has completed these surveillance arrangements.

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 MACRO Tradeable Shares on Amex and the trading of the MACRO Tradeable Shares on NYSE Arca pursuant to UTP are consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or would preclude the continued trading of the MACRO Tradeable Shares on the Exchange pursuant to UTP.

Therefore, accelerating approval of this proposal should benefit investors by continuing the additional competition in the market for the MACRO Tradeable Shares.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-NASDAQ-2007-048), be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**J. Lynn Taylor**,

*Assistant Secretary*.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55745; File No. SR-NASD-2007-030]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Reporting Obligations for Transactions in Foreign Equity Securities

May 11, 2007.

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 April 20, 2007, the National Association of Securities Dealers, Inc. ("NASD") 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 substantially prepared by NASD. NASD has designated the proposed rule change as "constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule" under Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by 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

NASD is proposing to adopt a new paragraph (g) to Rule 6620 to codify a member's trade reporting obligations with respect to transactions in foreign equity securities. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### 6600. OVER-THE-COUNTER EQUITY SECURITIES

\* \* \* \* \*

#### 6620. Transaction Reporting

(a) through (f) No change.

(g) *Transactions in Foreign Equity Securities*

(1) *For purposes of this paragraph, the term "foreign equity security" means any OTC Equity Security that is issued by a corporation or other entity incorporated or organized under the laws of any foreign country.*

(2) *Transactions in foreign equity securities shall be reported to the OTC Reporting Facility unless:*

(A) *The transaction is executed on and reported to a foreign securities exchange; or*

(B) *the transaction is executed over the counter in a foreign country and is reported to the regulator of securities markets for that country.*

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

In its filing with the Commission, NASD 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

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

<sup>16</sup> See Securities Exchange Act Release No. 55386 (March 2, 2007), 72 FR 10801 (March 9, 2007) (SR-NASDAQ-2007-016) (the "Pilot Order").

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<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)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).