

not accrue to exchanges.⁶ The NYSE has indicated that because there are currently no fees for reporting trades to the NASD/NYSE TRF, the NYSE will fund regulatory costs associated with the NASD/NYSE TRF from NYSE general revenues.

FINRA is proposing that the effective date of the proposed rule change shall be retroactive to April 18, 2007, the date on which the NASD/NYSE TRF commenced operation.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁷ in general, and with section 15A(b)(5) of the Act,⁸ in particular, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change is a reasonable and equitable credit structure in that it will be applied uniformly among members that participate in the NASD/NYSE TRF and that the NYSE has indicated that all regulatory costs owed by the NYSE as the Business Member related to the NASD/NYSE TRF will be funded by NYSE general revenues.

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

FINRA 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 were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File No. SR-NASD-2007-031 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NASD-2007-031. 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 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-NASD-

2007-031 and should be submitted on or before December 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56759; File No. SR-NASDAQ-2007-069]

Self-Regulatory Organization; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Amend Its Rule Governing the Relation of a Nasdaq Market Maker's Quotations to the Prevailing Market

November 7, 2007.

On August 1, 2007, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to eliminate a requirement governing the relation of Nasdaq market makers' quotations to the prevailing market. On September 19, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on October 5, 2007.³ The Commission received no comments regarding the proposal, and is thereby approving the proposed rule change as modified by Amendment No. 1.

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.⁴ In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,⁵ which requires that the rules of an exchange be 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 securities

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56586 (October 1, 2007), 72 FR 57085.

⁴ 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).

⁵ 15 U.S.C. 78f(b)(5).

⁶ See letter dated April 27, 2006 from Mr. John A. Thain, Chief Executive Officer, NYSE Group, to Chairman Cox, SEC. In that letter, the NYSE also stated that "Since dealer-internalized trades do not contribute directly to price discovery, the ideal resolution would be to remove such trades from the revenue sharing formula."

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(5).

system, and, in general, to protect investors and the public interest.

Nasdaq proposes to amend Rule 4613(c) to eliminate the requirement that a Nasdaq market maker's quotations be "reasonably related to the prevailing market." The requirement was adopted in 1987, at which time Nasdaq was part of the National Association of Securities Dealers, Inc. and operated an over-the-counter market with competing dealers. Nasdaq states that the requirement is no longer meaningful, given the regulatory changes, as well as the changes Nasdaq has made to the way its market operates in the last 20 years. However, for each security in which they are registered, market makers would continue to be required to be willing to buy and sell the security for their own account on a continuous basis and at all times maintain a two-sided, attributable quotation that is displayed in the Nasdaq Quotation Montage. The Commission believes that the proposal is reasonable in that it mirrors the market maker definition set forth in section 3(a)(38) of the Act⁶ and is consistent with market maker obligations contained in rules of other national securities exchanges.⁷ Furthermore, the Commission notes that Nasdaq has represented that it will carefully monitor the performance of market makers to determine if the proposal has any impact on the extent to which market makers quote at or near the inside market.⁸

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NASDAQ-2007-069), as modified by Amendment No. 1, be, and it hereby is, approved.

⁶ 15 U.S.C. 78c(a)(38).

⁷ See, e.g., NYSE Arca Rule 7.23.

⁸ In addition, the Commission notes that this rule change does not affect the market maker exception from the "locate" requirement of Regulation SHO under the Act. Rule 203(b)(2)(iii) of Regulation SHO provides an exception from the "locate" requirement for short sales executed by market makers, as defined in section 3(a)(38) of the Act, *but only in connection with bona-fide market making activities*.

To qualify for Regulation SHO's "locate" exception, a broker-dealer must be both a market maker in the specific security and engaged in bona fide market making at the time of the short sale for which the broker-dealer is claiming the exception. Thus, a broker-dealer's general status as a market maker or its status as a market maker in the security being sold short does not qualify it for the exception. Further, Regulation SHO's "locate" requirement applies on a transaction-by-transaction basis and, therefore, a market maker must determine whether it is engaged in bona fide market making for each short sale transaction. See Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004).

⁹ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56763; File No. SR-NYSEArca-2007-81]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Trade Shares of Funds of the Rydex ETF Trust Pursuant to Unlisted Trading Privileges

November 7, 2007.

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 August 2, 2007, NYSE Arca, Inc. (the "Exchange"), through its wholly-owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the 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, through NYSE Arca Equities, proposes to trade shares ("Shares") of 45 funds of the Rydex ETF Trust ("Trust") based on numerous domestic indexes pursuant to unlisted trading privileges ("UTP"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.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

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Under NYSE Arca Equities Rule 5.2(j)(3), which permits the trading of Shares either by listing or pursuant to UTP,³ the Exchange proposes to trade pursuant to UTP shares of 45 funds of the Trust that are designated as Rydex Leveraged Funds (the "Leveraged Funds"), Rydex Inverse Funds (the "Inverse Funds"), and Rydex Leveraged Inverse Funds (the "Leveraged Inverse Funds" and together with the Leveraged Funds and Inverse Funds, the "Funds"). The Commission has approved the listing and trading of the Shares on the American Stock Exchange LLC ("Amex").⁴ Each of the Funds will have a distinct investment objective by attempting, on a daily basis, to correspond to a specified multiple of the performance, or the inverse performance, of a particular equity securities index as described in the Amex Notice. A detailed discussion of the investment objective of each of the Funds; the portfolio management methodology for each of the Funds, including specific information about the portfolio composition for each Fund (e.g., the "IIV File" and portfolio composition file or "PCF"); the investment techniques for each of the Funds; the creation and redemption of baskets of Shares for each of the Funds; and the calculation methodology of the

³ In October 1999, the Commission approved NYSE Arca Equities Rule 5.2(j)(3), which sets forth the rules related to listing and trading criteria for "Investment Company Units". See Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-1998-29). In July 2001, the Commission also approved the Exchange's generic listing standards for listing and trading, or the trading pursuant to UTP, of Investment Company Units under NYSE Arca Equities Rule 5.2(j)(3). See Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716-01 (July 19, 2001) (SR-PCX-2001-14). The definition of an Investment Company Unit is set forth in NYSE Arca Equities Rule 5.1(b)(15), which provides that an Investment Company Unit is a security representing an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity.

⁴ See Securities Exchange Act Release No. 56713 (October 29, 2007) (SR-Amex-2007-74) (granting approval to list and trade the Shares on Amex) ("Amex Approval Order"); Securities Exchange Act Release No. 56218 (August 7, 2007), 72 FR 45469 (August 14, 2007) (SR-Amex-2007-74) (providing notice of Amex's proposal to list and trade the Shares ("Amex Notice")).