

members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and self-regulatory organization rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that the clarification of Rule 4631 is needed to avoid further confusion surrounding its applicability. Currently, members may be interpreting the Rule inconsistently, thus providing disclosures to parties that were not contemplated as requiring the protections of the Rule. Nasdaq believes that the proposed amendment will ensure that members are aware of their obligations under the rule and thus foster consistent member compliance.

#### *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.

#### *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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

Nasdaq has requested that the Commission waive the 30-day pre-operative period. The Commission

believes that conforming the language of the Rule to Nasdaq's intent in establishing it is consistent with the protection of investors and the public interest. The Rule was designed to ensure that customers receive appropriate disclosures of the risks of trading outside of regular trading hours, not non-member broker-dealers. The Commission hereby grants Nasdaq's request and designates the proposal as operative upon filing.<sup>11</sup>

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 No. SR-NASDAQ-2008-006 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-NASDAQ-2008-006. 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 Nasdaq. 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-2008-006 and should be submitted on or before February 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-1463 Filed 1-28-08; 8:45 am]

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57183; File No. SR-NASDAQ-2008-007]

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay Implementation of Certain Fee Changes**

January 22, 2008.

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 January 17, 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 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 filing with the Commission. The Commission is publishing this notice to

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing period in this case.

<sup>11</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</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).

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 delay the implementation date of certain pricing changes made by SR-NASDAQ-2008-001<sup>5</sup> that were effective upon filing. There is no text to the proposed rule change. Nasdaq will implement this rule change immediately.

### **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

In SR-NASDAQ-2008-001, Nasdaq made a number of changes to its pricing schedule for transaction execution and routing. In that filing, which was effective upon filing, all of the pricing changes were designated to take effect on January 2, 2008. Based on member requests to provide additional time to adjust to one aspect of the pricing change, Nasdaq is delaying implementation of the \$0.0001 reduction in the liquidity provider rebate applicable to quotes/orders that are designated for posting to the Nasdaq book without being displayed to other market participants. Thus, for the month of January, the liquidity provider credit for Nasdaq-listed securities priced at \$1 or more will be \$0.0025 per share executed for members with an average daily volume through the Nasdaq Market Center in all securities during the month of more than 35 million shares of liquidity provided; \$0.0022 per share executed for members with an average daily volume of more than 20 million shares of liquidity provided; and \$0.002 per share executed for other members. The liquidity provider credit for securities listed on the New York

Stock Exchange ("NYSE") priced at \$1 or more per share will be \$0.0027 per share executed for members with an average daily volume through the Nasdaq Market Center in all securities during the month of more than 35 million shares of liquidity provided; \$0.0023 per share executed for members with an average daily volume of more than 20 million shares of liquidity provided; and \$0.002 per share executed for other members. For securities listed on exchanges other than NYSE and Nasdaq, the rebate will be \$0.004 per share executed for all members trading certain designated "Low-Volume Securities." For other securities listed on exchanges other than Nasdaq and NYSE, the rebate will be \$0.0025 per share executed for members with an average daily volume of more than 35 million shares of liquidity provided; \$0.0022 per share executed for members with an average daily volume of more than 20 million shares of liquidity provided; and \$0.002 per share executed for other members. Effective February 1, 2008, the reduction of each of these amounts by \$0.0001 per share executed for quotes/orders that do not display liquidity will be implemented. All other changes made by SR-NASDAQ-2008-001 have been implemented effective January 2, 2008. Because Nasdaq prepares bills for order execution and routing at the end of a month, the delayed implementation will be fully reflected in the bills for January 2008.

##### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. The changes will delay a decrease in liquidity provider rebates during the month of January 2008 for all members that provide liquidity through non-displayed quotes/orders.

#### *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, as amended.

#### *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**

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>8</sup> and Rule 19b-4(f)(1)<sup>9</sup> thereunder, because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. 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-2008-007 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-NASDAQ-2008-007. 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

<sup>5</sup> See Securities Exchange Act Release No. 57147 (January 14, 2008), 73 FR 3788 (January 22, 2008) (SR-NASDAQ-2008-001).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

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 Nasdaq. 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2008-007 and should be submitted on or before February 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57189; File No. SR-NASDAQ-2007-079]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade Units of the United States Heating Oil Fund, LP and the United States Gasoline Fund, LP Pursuant to Unlisted Trading Privileges

January 23, 2008.

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 September 13, 2007, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of 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

Nasdaq proposes to trade units ("Units") of the United States Heating Oil Fund, LP ("USHO") and the United States Gasoline Fund, LP ("USG") (collectively, the "Partnerships") pursuant to unlisted trading privileges ("UTP"). The text of the proposed rule change is available at Nasdaq's principal office, the Commission's Public Reference Room, and <http://www.nasdaq.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, Nasdaq included statements concerning the purpose of, and basis for, 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 Units of USHO and USG under Nasdaq Rule 4630 (Trading in Commodity-Related Securities)<sup>3</sup> pursuant to UTP. The respective Units represent an ownership of a fractional undivided beneficial interest in the net assets of each of USHO and USG.<sup>4</sup> The net assets of each of USHO and USG will consist of investments in futures contracts based on heating oil, gasoline, crude oil, and other petroleum-based fuels and natural gas that are traded on the New York Mercantile Exchange ("NYMEX"), Intercontinental Exchange ("ICE Futures"), or other U.S. and foreign exchanges (collectively, "Futures Contracts"). The Commission has

<sup>3</sup> NASDAQ Rule 4630(c)(1) defines a Commodity-Related Security as a security that is issued by a trust, partnership, commodity pool, or similar entity that invests, directly or through another entity, in any combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, or the value of which is determined by the value of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives.

<sup>4</sup> Each Partnership is a commodity pool that will issue Units that may be purchased and sold on the Exchange.

approved the listing and trading of the Units on the American Stock Exchange LLC ("Amex").<sup>5</sup>

Detailed information regarding the Partnerships; the investment strategies, objectives, and policies of the Partnerships; the petroleum-based fuels market, the structure, management, and regulation of the Partnerships; accountability levels and position limits; the Indicative Partnership Value (as defined herein); the manner in which the Units will be offered and sold; calculation methodologies; and arbitrage can be found in the Amex Proposal and in the respective Registration Statements regarding the offering of the Units filed with the Commission under the Securities Act of 1933.<sup>6</sup>

The daily settlement prices for the NYMEX-traded Futures Contracts are publicly available on the NYMEX Web site at <http://www.nymex.com>. In addition, various market data vendors and news publications publish futures prices and related data, including quotation and last-sale information for the Futures Contracts. NYMEX also provides delayed futures information on current and past trading sessions and market news free of charge on its Web site. The specific contract specifications for the Futures Contracts are available on the NYMEX Web site and the ICE Futures Web site at <http://www.icefutures.com>.

Amex will disseminate through the facilities of the Consolidated Tape Association ("CTA") an updated Indicative Partnership Value ("Indicative Partnership Value"). The Indicative Partnership Value for each Partnership will be disseminated on a per-Unit basis at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. Eastern Time ("ET"). In addition, shortly after 4 p.m. ET on each business day, the Administrator (as defined herein), Amex, and the General Partner, Victoria Bay Asset Management, LLC, will disseminate the Basket Amount<sup>7</sup> for orders placed during that day, together

<sup>5</sup> See Securities Exchange Act Release No. 57188 (January 23, 2008) (SR-Amex-2007-70) (approving Amex's proposal to list and trade the Units of the Partnerships). See also Securities Exchange Act Release No. 57042 (December 26, 2007), 73 FR 514 (January 3, 2008) (SR-Amex-2007-70) (providing notice of Amex's proposal to list and trade the Units of the Partnerships) ("Amex Proposal").

<sup>6</sup> See USHO's Registration Statement on Form S-1 filed on April 19, 2007 (File No. 333-142211) and USG's Registration Statement on Form S-1 filed on April 18, 2007 (File No. 333-142206).

<sup>7</sup> See *infra* note 14.

<sup>10</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.