

Alternatively, submit requests through the Internet by addressing electronic mail to slm2@nrc.gov. A copy of draft NUREG-1556, Volume 13, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001.

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language. The NRC requests comments on this licensing guidance NUREG specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed above.

FOR FURTHER INFORMATION, CONTACT: Mrs. Sally L. Merchant, Mail Stop TWFN 9-F-31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-7874; electronic mail address: slm2@nrc.gov.

Electronic Access

Draft NUREG-1556, Vol. 13 is available electronically by visiting NRC's Home Page (<http://www.nrc.gov/NRC/nucmat.html>).

Dated at Rockville, Maryland, this 3rd day of March, 1999.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Acting Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS

[FR Doc. 99-5750 Filed 3-8-99; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, March 18, 1999

Thursday, April 8, 1999

Thursday, April 22, 1999

Thursday, May 6, 1999

Thursday, May 20, 1999

Thursday, June 10, 1999

Thursday, June 24, 1999

The meetings will start at 10:00 a.m. and will be held in Room 5A06A, Office of

Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606-1500.

Dated: March 3, 1999.

John F. Leyden,

Chairman, Federal Prevailing Rate, Advisory Committee.

[FR Doc. 99-5760 Filed 3-8-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41119; File No. SR-Amex-98-34]

Self-Regulatory Organization; American Stock Exchange LLC; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3 and 4 to the Proposed Rule Change Relating to the Listing and Trading of Shares of the Nasdaq-100 Trust

February 26, 1999.

I. Introduction

On September 21, 1998, The American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade under Amex Rules 1000 *et seq.*, Nasdaq-100® Shares, units of beneficial interest in the Nasdaq-100® Trust. The proposed rule change and Amendment Nos. 1 and 2³ were published for comment in the **Federal Register** on December 18, 1998.⁴ On February 5, 1999 and February 24, 1999, the Exchange filed Amendment Nos. 3⁵ and 4,⁶ respectively. No comments were received on the proposal. This order approves the proposed rule filing as amended.⁷

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange filed Amendment No. 1 to the original proposal to clarify the nature and operation of the Nasdaq-100 Trust shares ("Amendment No. 1"). See Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Michael Walinskas, Market Regulation, Commission, dated December 16, 1998. In Amendment No. 2, the Exchange discusses the basis for the mandatory termination date of the Trust ("Amendment No. 2"). See Letter from Mike Cavalier, Associate General Counsel, Legal and Regulatory Policy, Amex, to Hong-anh Tran, Staff Attorney, Market Regulation, Commission, dated December 16, 1998.

⁴ Securities Exchange Act Release No. 40809 (December 18, 1998), 63 FR 71524 (December 28, 1998).

⁵ In Amendment No. 3, the Exchange discusses, among other things, the real-time information that will be available regarding the Nasdaq-100 Trust shares ("Amendment No. 3"). See Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Katherine England, Assistant Director, Market Regulation, Commission, dated February 5, 1999.

⁶ In Amendment No. 4, the Exchange amends the product description; provides the new name of the Trust Shares Sponsor, and discusses the proposed Amex Rule 1006 ("Amendment No. 4") See Letter from James Duffy, Amex, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated February 22, 1999.

⁷ This order is granting approval for Nasdaq-100 Trust shares to be listed and traded on the Amex.

II. Description

On December 11, 1992,⁸ the Commission approves Amex Rules 1000 *et seq.* to accommodate trading on the Exchange of Portfolio Depository ReceiptsSM ("PDRs"), securities which represent interests in a unit investment trust ("Trust") operating on an open-end basis and that hold a portfolio of securities.⁹ Each Trust is intended to provide investors with an instrument that closely tracks the underlying securities portfolio, that trades like a share of common stock, and that pays to PDR holders periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses, as described in the applicable Trust prospectus. The first Trust to be formed in connection with the issuance of PDRs was based on the Standard & Poor's 500 Index ("S&P 500 Index"), known as Standard & Poor's Depository Receipts® ("SPDRs"), which have been trading on the Exchange since January 29, 1993.¹⁰ In 1995, the Commission approved Amex's listing and trading of PDRs based on the Standard & Poor's MidCap 400 Index ("MidCap SPDRs").¹¹ In January 1998, the Commission approved the listing and trading of PDRs based on the Dow Jones Industrial AverageSM ("DIAMONDS")¹²

If at a subsequent date, Trust shares are to be listed and traded on another national securities exchange or a quotation medium operated by a national securities association, such self-regulatory organization ("SRO") must contact the Commission to determine if it must file, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, a proposed rule change for such listing and trading.

⁸ See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) ("SPDRs Order").

⁹ "PDRs" is a service mark of PDR Services LLC, a wholly-owned subsidiary of the Exchange.

¹⁰ See SPDRs Order, *supra* note 8.

¹¹ See Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995) ("MidCap SPDRs Order"). "Standard & Poor's 500," "Standard & Poor's MidCap 400 Index," "Standard & Poor's Depository Receipts,"® "SPDRs,"® "Standard & Poor's MidCap 499 Depository Receipts" and "MidCap SPDRs" are trademarks of The McGraw-Hill Companies, Inc. and are being used by the Exchange and the Sponsor under license among Standard & Poor's, a division of The McGraw-Hill Companies, Inc., the Exchange and the Sponsor. "SPDRs" and "MidCap SPDRs" are not sponsored, endorsed, sold, or promoted by S&P, and S&P makes no representation regarding the advisability of investing in SPDRs or MidCap SPDRs.

¹² See Securities Exchange Act Release No. 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998) ("DIAMONDS Order"). "Dow Jones Industrial Average,"SM "DJIA,"SM "Dow Jones"SM and "DIAMONDS" are each trademarks and service marks of Dow Jones & Company, Inc. ("Dow Jones") and have been licensed for use for certain purposes by the Exchange and the Sponsor. DIAMONDS are not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in such

The Exchange now proposes to list and trade under Rules 1000 *et seq.* Nasdaq-100 Shares (referred to herein as "Trust shares"), units of beneficial interest in the Nasdaq-100 Trust, Series 1, a unit investment trust based on the Nasdaq-100 Index® ("Nasdaq-100 Trust" or "Trust").¹³ The Trust Sponsor, Nasdaq-Amex Investment Product Services, Inc.,¹⁴ which is wholly-owned by The Nasdaq Stock Market, Inc. ("Nasdaq"), will enter into a trust agreement with The Bank of New York as trustee (the "Trustee") in accordance with Section 26 of the Investment Company Act of 1940.¹⁵ A distributor, Alps Mutual Funds, Inc., will act as underwriter of the Nasdaq-100 Trust on an agency basis.¹⁶ All orders to create Trust shares in Creation Unit size aggregations must be placed with the distributor, and it will be the responsibility of the distributor to transmit the orders to the Trustee. The distributor is a registered broker-dealer and a member of the National Association of Securities Dealers, Inc.

The Nasdaq-100 Index^{®17}

The Nasdaq-100 Index® ("Index") constitutes a clearly diversified segment

product. The Sponsor for the SPDR, MidCap SPDR, and DIAMONDS Trust is PDR Services LLC.

¹³ The "Nasdaq-100 Index,"[®] "Nasdaq-100,"[®] "Nasdaq,"[®] and "The Nasdaq Stock Market"[®] are trademarks of Nasdaq and have been licensed for use for certain purposes by Investment Product Services, Inc. pursuant to a License Agreement and Nasdaq. The specific name of the Trust and units of beneficial interest based on the Nasdaq-100 Index are subject to change and any such change will be filed with the Commission as an amendment hereto.

¹⁴ See Amendment No. 4, *supra* note 6.

¹⁵ An Application for Orders pursuant to Section 6(c) of the Investment Company Act of 1940 ("1940 Act") has been filed with respect to the Trust (the "Application"). In the interest of facilitating secondary market transactions in Trust shares, the Application seeks, among other things, an order (1) permitting secondary market transactions in Trust shares at negotiated prices rather than at a current public offering price described in the prospectus and based on current net asset value as required by Section 22(d) of the 1940 Act and Rule 22c-1 thereunder, and (2) permitting the sale of Trust shares to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by Section 4(3) of the Securities Act of 1933 but may be required according to Section 24(d) of the 1940 Act for redeemable securities issued by a unit investment trust. In addition a registration statement on Form S-6, including a preliminary prospectus for the Trust (No. 333-61001), has been filed with the Commission. These exemption, if granted, will permit individual Trust shares to be traded in secondary market transactions similar to a closed end investment company. Both the Application and the registration statement provide additional detail relating to a number of the procedures referenced in SR-Amex-98-34.

¹⁶ See Amendment No. 4, *supra* note 6.

¹⁷ The description of the Nasdaq-100 Index herein as well as discussion of eligibility criteria, annual ranking review, ongoing index administration, and index rebalancing are based on materials prepared by The Nasdaq Stock Market.

of the largest and most actively traded securities listed on the Nasdaq Stock Market. Additionally, the Index has achieved wide acceptance by both investors and market professionals. Specifically, the Index is composed of 100 of the largest and most actively traded non-financial companies listed on the Nasdaq National Market tier of the Nasdaq Stock Market.

The Index was first published in January 1985, and includes companies across a variety of major industry groups. The major industry groups covered in the Index are: computer and office equipment, computer and software/services, telecommunications, retail/wholesale trade, and biotechnology.¹⁸ The five largest companies represented in the Index as of December 14, 1998, are as follows: Microsoft Corporation, Intel Corporation, Cisco Systems Inc., Dell Computer Corporation, and MCI WORLDCOM, Inc. Current information regarding the market value of the Index is available from Nasdaq as well as numerous market information services. The Index is determined, composed, and calculated by Nasdaq without regard to the Trust.

At any moment in time, the value of the Index equals the aggregate value of the then-current Index share weights (described below) of each of the component 100 securities in the Index (the "Index Securities") multiplied by each such security's respective last sale price on the Nasdaq Stock Market, and divided by a scaling factor (the "divisor") which becomes the basis for the reported Index value. The divisor serves the purpose of scaling such aggregate value (otherwise in the hundreds of billions) to a lower order of magnitude which is more desirable for Index reporting purposes.¹⁹

The Index share weights of the component securities of the Index at any time are based upon the total shares outstanding in each of the 100 Index Securities and will be additionally subject (prior to the issuance of Trust shares) to rebalancing to ensure that the relative weighting of the Index Securities continues to meet minimum pre-established requirements for a diversified portfolio (see "Rebalancing of the Index"). Accordingly, each Index Security's influence on the value of the Index is directly proportional to the

¹⁸ See Amendment No. 4, *supra* note 6.

¹⁹ For example, on November 12, 1998, the aggregate value of the then-current Index share weights of each of the Index Securities multiplied by their respective last sale price on the Nasdaq Stock Market was \$1,218,098,456,568, the divisor was 830,593,408, and the reported Index value was 1,466.54.

value of its Index share weight. At any time at which the composition and/or Index share weights are adjusted as described herein, a new divisor will be determined and become effective so as to offset the change in aggregate value of the Index Securities in order to ensure the continuity of the value of the Index in connection with such adjustment.

Index Security Eligibility Criteria and Annual Ranking Review

To be eligible for inclusion in the Index, a security must be traded on the Nasdaq National Market tier of the Nasdaq Stock Market and meet the following criteria:

- The security must be of a non-financial company;
- Only one class of security per issuer is allowed;
- The security may not be issued by an issuer currently in bankruptcy proceedings;
- The security must have average daily trading volume of at least 100,000 shares per day;
- The security must have "seasoned" on the Nasdaq Stock Market or another recognized market (generally, a company is considered to be seasoned by Nasdaq if it has been listed on a market for at least two years; in the case of spin-offs, the operating history of the spin-off will be considered);
- If a security would otherwise qualify to be in the top 25% of the issuers included in the Index by market capitalization, then a one year "seasoning" criteria would apply;²⁰
- If the security is of a foreign issuer, the company must have a worldwide market value of at least \$10 billion, a U.S. market value of at least \$4 billion, and average trading volume on the Nasdaq Stock Market of at least 200,000 shares per day; in addition, foreign securities must be eligible for listed options trading; and
- The issuer of the security may not have entered into a definitive agreement or other arrangement which would result in the security no longer being listed on the Nasdaq Stock Market within the next six months.²¹

The Index Securities are evaluated annually based on market data as of the end of October as follows ("Annual Ranking Review"). Securities listed on the Nasdaq Stock Market which meet the above eligibility criteria are ranked by market value as of the end of October. Index-eligible securities which

are already in the Index and which are in the top 150 eligible securities (based on market value) are retained in the Index provided that such security was ranked in the top 100 eligible securities as of the previous year's annual review. Securities not meeting the criteria are replaced. The replacement securities chosen are those Index-eligible securities not currently in the Index which have the largest market capitalization. The list of annual additions and deletions is publicly announced via a press release in the early part of December. Replacements are made effective after the close of trading on the third Friday in December. Moreover, if at any time during the year an Index Security is no longer traded on the Nasdaq Stock Market, or is otherwise determined by Nasdaq to become ineligible for continued inclusion in the Index, the security will be replaced with the largest market capitalization security not currently in the Index and meeting the Index eligibility criteria listed above.

Ongoing Index Administration

In addition to the Annual Ranking Review, the securities in the Index are monitored every day by Nasdaq with respect to changes in total shares outstanding arising from secondary offerings, stock repurchases, conversions, or other corporate actions. Periodically (typically, several times per quarter), Nasdaq may determine that total shares outstanding have changed in one or more Index Securities as a result of such events and Nasdaq has adopted the following quarterly scheduled weight adjustment procedures with respect to such changes. If the change in total shares outstanding arising from such corporate action is greater than or equal to 5.0%, such change is ordinarily made to the Index on the evening prior to the effective date of the corporate action. Otherwise, if the change in total shares outstanding is less than 5.0%, then all the changes are accumulated and made effective at one time on a quarterly basis after the close of trading on the third Friday in each of March, June, September, and December. In either case, the Index Share weights for such Index Securities are adjusted by the same percentage amount by which the total shares outstanding have changed in the Index Securities. Ordinarily, whenever there is a change in Index share weights or a change in a component security included in the Index, Nasdaq adjusts the divisor to assure that there is no discontinuity in the value of the Index which might

otherwise be caused by any such change.

As noted above, Nasdaq may also during each quarter (ordinarily, several times per quarter) replace one or more component securities in the Index due to mergers, acquisitions, bankruptcies, or due to delistings if an issuer chooses to list its securities on another marketplace, or if the issuers of the component securities fail to meet the eligibility criteria for continued inclusion in the Index.

Rebalancing of the Index

Effective on December 18, 1998, the Index will be calculated under a "modified capitalization weighted" methodology, which is a hybrid between equal weighting and conventional capitalization weighting. This methodology is expected to: (1) retain in general the economic attributes of capitalization weighting; (2) promote portfolio weight diversification (thereby limiting domination of the Index by a few large stocks); (3) reduce Index performance distortion by preserving the capitalization ranking of companies; and (4) reduce market impact on the smallest component securities form necessary weight rebalancings.

Specifically, on a quarterly basis coinciding with Nasdaq's quarterly scheduled weight adjustment procedures (see "Ongoing Index Administration"), the Index Securities are categorized as either "Large Stocks" or "Small Stocks" depending on whether their current percentage weights (after taking into account such scheduled weight adjustments due to stock repurchases, secondary offerings, or other corporate actions) are greater than, or less than or equal to, the average percentage weight in the Index (i.e., as a 100-stock index, the average percentage weight in the Index is 1.0%).

Such quarterly examination will result in an index rebalancing if either one or both of the following two weight distribution requirements are not met: (1) the current weight of the single largest market capitalization stock in the Index must be less than or equal to 24.0% and (2) the "collective weight" of those stocks whose individual current weights are in excess of 4.5%, when added together, must be less than or equal to 48.0%.

If either one or both of these weight distribution requirements are not met upon quarterly review, a weight rebalancing will be performed in accordance with the following plan. First, relating to weight distribution requirement (1) above, if the current weight of the single largest stock in the Index exceeds 24.0%, then the weights

²⁰ See Preliminary Prospectus for Nasdaq-100 Trust, Series 1, at 38 (January 28, 1999).

²¹ See Preliminary Prospectus for Nasdaq-100 Trust, Series 1, at 38 (January 28, 1999).

of all Large Stocks will be scaled down proportionately towards 1.0% by enough for the adjusted weight of the single largest stock to be set to 20.0%. Second, relating to weight distribution requirement (2) above, for those stocks whose individual current weights or adjusted weights in accordance with the preceding step are in excess of 4.5%, if their "collective weight" exceeds 48.0%, then the weights of all Large Stocks will be scaled down proportionately towards 1.0% by just enough for the "collective weight," so adjusted, to be set to 40.0%.²²

The aggregate weight reduction among the Large Stocks resulting from either or both of the above rescalings will then be redistributed to the Small Stocks in the following iterative manner. In the first iteration, the weight of the largest Small Stock will be scaled upwards by a factor which sets it equal to the average index weight of 1.0%. The weights of each of the smaller remaining Small Stocks will be scaled up by the same factor reduced in relation to each stock's relative ranking among the Small Stocks such that the smaller the stock in the ranking, the less the scale-up of its weight. This is intended to reduce the market impact of the weight rebalancing on the smallest component securities in the Index.

In the second iteration, the weight of the second largest Small Stock, already adjusted in the first iteration, will be scaled upwards by a factor which sets it equal to the average index weights of 1.0%. The weights of each of the smaller remaining Small Stocks will be scaled up by this same factor reduced in relation to each stock's relative ranking among the Small Stocks such that, once again, the smaller the stock in the ranking, the less the scale-up of its weight.

Additional iterations will be performed until the accumulated increase in weight among the Small Stocks exactly equals the aggregate weight reduction among the Large Stocks from rebalancing in accordance with weight distribution requirement (1) and/or weight distribution requirement (2) above.

To complete the rebalancing procedure, once the final percent weights of each stock in the Index are set, the Index share weights will be determined anew based upon the last sale prices and aggregate capitalization of the Index at the close of trading on

the Thursday in the week immediately preceding the week of the third Friday in March, June, September, and December. Changes to the Index share weights will be made effective after the close of trading on the third Friday in March, June, September, and December and a corresponding adjustment to the Index divisor will be made to ensure continuity of the Index. Such changes to the Index share weights would result either from (1) adjustments to reflect changes in total shares outstanding in one or more Index Securities made during Nasdaq's quarterly scheduled weight adjustment procedures (see "Ongoing Index Administration"), (2) changes effective in the quarter ending in December in connection with the Annual Ranking Review (see "Index Security Eligibility Criteria and Annual Ranking Review"); or (3) changes based on the rebalancing of the Index in accordance with procedures described above.²³

The Nasdaq-100 Trust

To be eligible to place orders to create Trust shares, as described below, an entity or person must either be a participant in the Continuous Net Settlement ("CNS") system of the National Securities Clearing Corporation ("NSCC") or a Depository Trust company ("DTC") participant. Upon acceptance of an order to create Trust shares, the distributor will instruct the Trustee to initiate the book-entry movement of the appropriate number of Trust shares to the account of the entity placing the order. Trust shares will be registered in book entry only, which records will be kept by DTC.

Payment with respect to creation orders placed through the distributor will be made by (1) the "in-kind" deposit with the Trustee of a specified portfolio of securities that is substantially similar in composition to the component shares of the underlying index or portfolio; and, in addition, (2) an amount equal to the "Income Net of

Expense Amount," plus or minus, as the case may be, the "Balancing Amount." The "Income Net Expense Amount" is an amount equal, on a per Creation Unit basis, to the dividends accumulated in respect of the securities held in the Trust from the most recent ex-dividend date for Trust shares through and including the day on which the creation order is placed, net of accrued expenses and liabilities of the Trust for such period. The "Balancing Amount" serves the function of compensating for any differences between (1) the value of the portfolio of securities deposited with the Trustee in connection with a creation of Trust shares, together with the Income Net of Expense Amount, and (2) the net asset value of the Trust on a per Creation Unit basis. The "Income Net of Expense Amount" and the "Balancing Amount" are collectively referred to as the "Cash Component" in the Trust Application and registration statement, and the deposit of a specified portfolio of securities (as referenced above) and the Cash Component are collectively referred to as a "Portfolio Deposit." On any given day, the Cash Component of the Portfolio Deposit may be payable either by the Trustee on behalf of the Trust to the creator of Trust shares, or by the creator of Trust shares to the Trustee on behalf of the Trust, depending on the respective amounts of the "Income Net of Expense Amount" and the "balancing Amount."

In connection with redemptions of Creation Unit size aggregations of Trust shares, the redeeming party receives a portfolio of securities typically identical in composition and weighting to the securities portion of a Portfolio Deposit as in effect on the date a request for redemption is deemed received by the Trustee, in addition, in certain cases, to a "Cash Redemption Amount" (as defined in the Trust prospectus) which is typically identical to the amount of the "Cash Component," as in effect on such date. The "Cash Redemption Amount" will either be paid to the Trustee on behalf of the Trust by the redeemer or paid to the redeemer by the Trustee on behalf of the Trust, again depending upon the respective amounts of the "Income Net of Expense Amount" and the "Balancing Amount," as described in the Trust prospectus.

The mandatory termination date of the Trust will be the first to occur of (i) a date in 2124²⁴ or (ii) the date 20 years after the death of the last survivor of 15 specified persons named in the Trust Agreement between the Trust Sponsor and the Trustee, the oldest of whom was

²² By applying the weight rebalancing methodology, the Trust is able to meet, among other things, certain diversification tests which enable the Trust to maintain its tax treatment as a "regulated investment company" under Subchapter M of the Internal Revenue Code of 1986, as amended.

²³ Effective on December 21, 1998, Nasdaq will be maintaining two versions of the Nasdaq-100 Index, calculated based on (1) conventional capitalization weighting and (2) modified capitalization weighting. Nasdaq-100 Index options listed for trading on the Chicago Board Options Exchange ("CBOE") prior to December 21, 1998, (whose expiration dates extend as far out as March 1999) will continue to be based on the conventional capitalization weighted version. Nasdaq-100 Index options listed for trading on the CBOE on or after December 21, 1998, will be based on the modified capitalization weighted version. After expiration of March index option contracts on March 20, 1999, the Index version based on the conventional weighting method will no longer be calculated. At all times, the Trust intends to replicate the composition and weighting of the Nasdaq-100 Index based on the modified capitalization weighting method.

²⁴ See Amendment No. 4, *supra* note 6.

born in 1986 and the youngest of whom was born in 1996.²⁵

Issuance

Upon receipt of a Portfolio Deposit in payment for a creation order placed through the distributor as described above, the Trustee will issue a specified number of Trust shares, this aggregate number is referred to as a "Creation Unit." The Exchange anticipates that, with respect to the Nasdaq-100 Trust, a Creation Unit will be made up of 50,000 Trust shares.

Individual Trust shares can then be traded in the secondary market like other equity securities. It is expected that Portfolio Deposits will be made primarily by institutional investors, arbitrageurs and the Exchange specialist. The Trust has been structured to provide for the initial issuance of Trust shares at a per share price which would approximate $\frac{1}{20}$ th of the prevailing value of the Nasdaq-100 Index. As of November 12, 1998, it is estimated that the value of an individual Trust share would be approximately \$74 ($\frac{1}{20}$ th of the prevailing value of the Index on such date).

The Trust Sponsor, Investment Product Services, Inc., intends to make available itself, or by other persons designated to do so by the Sponsor, a list of the names and the required number of shares for each of the securities in the current Portfolio Deposit. The Trust Sponsor also intends to make available through the facilities of the Amex on each business day the Income Net of Expense Amount effective through and including the previous business day per outstanding Trust share. The Sponsor may also choose within its discretion to make available, frequently throughout each business day, a number representing, on a per Trust share basis, the sum of the Income Net of Expense Amount effective through and including the previous business day plus the current value of the securities portion of a Portfolio Deposit as in effect on such day (which value will occasionally include a cash-in-lieu amount to compensate for the omission of a particular Index Security from such Portfolio Deposit). If the Sponsor elects to make such information available, it would be calculated based upon the best

information available to the Sponsor and may be calculated by other persons designated to do so by the Sponsor (e.g., the Amex).²⁶ In addition, the Trustee will make available to NSCC prior to commencement of trading on each business day a list of the names and required number of shares of each of the Index Securities in the current Portfolio Deposit as well as the Income Net of Expense Amount for the previous business day.

Transactions in Trust shares may be effected on the Exchange until 4:15 p.m. New York time each business day. The minimum fractional change for Trust shares shall be $\frac{1}{64}$ of \$1.00.

Redemption

Trust shares in Creation Unit size aggregations generally will be redeemable in kind²⁷ by tendering them to the Trustee. While holders may sell Trust shares in the secondary market at any time, they must accumulate at least 50,000 (or multiples thereof) to redeem through the Trust. Trust shares will remain outstanding until redeemed or until the termination of the Trust. Creation Unit size aggregations of Trust shares generally will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust typically identical in composition and weighting to the securities portion of a Portfolio Deposit in effect on the date request is made for redemption, together, in certain cases, with a "Cash Redemption Amount" as referred to above), including accumulated dividends, less accrued expenses and liabilities of the Trust, through the date of redemption, which will either be paid to the Trustee by the redeemer or paid to the redeemer by the Trustee on behalf of the Trust depending upon the respective amounts of the "Income Net of Expense Amount," and the "Balancing Amount," as described previously. The number of shares of each of the securities transferred to the redeeming holder generally will be the

number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all Trust shares delivered upon redemption.

The Trustee, in its discretion, upon the request of the redeeming investor, may redeem Creation Units in whole or in part by providing the redeemer with a portfolio of securities differing in exact composition and weighting from the Index Securities but not differing in net asset value from the then current net asset value of Trust shares. Such a redemption is likely to be made only if it were to be determined that this composition would be appropriate in order to maintain the portfolio of the Trust in correlation to the composition and weighting of the Index, for instance, in connection with a replacement of one of the Index Securities (e.g., due to a merger, acquisition, or bankruptcy, or in connection with the rebalancing of the Index).

Distributions

Distributions by the Trust will be made quarterly in the event that dividends accumulated in respect of the Trust securities and other income, if any, received by the Trust, exceed Trust fees and expenses accrued during the quarter. Based on historical dividend payment rates of the portfolio of stocks comprising the Index and estimated ordinary operating expenses of the Trust, little or no such distributions are currently anticipated. The regular quarterly Ex-Dividend Date with respect to net dividends, if any, for the Trust will be the third Friday in each of March, June, September, and December, unless such day is not a business day, in which case the Ex-Dividend Date will be the immediately preceding business day. However, there shall be no net dividend distribution in any given quarter, and any net dividend amounts will be rolled into the next quarterly accumulation period, if the aggregate net dividend distribution would be in an amount less than $\frac{5}{100}$ of one percent (0.05%) of the net asset value of the Trust as of the Friday in the week immediately preceding the Ex-Dividend Date, unless the Trustee determines that such net dividend distribution is required to be made in order to maintain the Trust's status as a regulated investment company or to avoid the imposition of income or excise taxes on undistributed income.

²⁶ See Amendment No. 3, *supra* note 5.

²⁷ The Trustee shall have the discretion to deliver the cash equivalent value of an Index security or Index securities, based on the market value of such Index security or securities as of the Evaluation Time on the date such redemption is deemed received by the Trustee, as a part of the Cash Redemption Payment in lieu of delivering the Index security or securities if: (1) the Trustee determines in its discretion that an Index security is likely to be unavailable or available in insufficient quantity for delivery by the Trust upon redemption; or (2) a redeeming investor requests redemption in cash with respect to one or more Index securities, if, for example, the redeemer is restricted by regulation or otherwise from investing or engaging in a transaction in one or more Index securities. See Preliminary Prospectus for Nasdaq-100 Trust, Series 1, at 6 (January 28, 1999).

²⁵ The SEC staff notes that Amex has stated that the basis of the mandatory termination date of the Trust is to comply with the common law rule against perpetuities which provides, in brief, that no estate is valid unless it vests not later than twenty-one years after lives in being at the creation of the estate, and that any future or present estate is void in its creation if it suspends the absolute power of alienation longer than this period. See Amendment No. 2, *supra* note 3.

Beneficial owners as reflected on the records of the Depository and the DTC Participants on the second business day following the ex-dividend date (the "record date") are entitled to receive an amount, if any, representing dividends accumulated through the quarter, net of the fees and expenses of the Trust, accrued daily for the period. For the purposes of such distributions, dividends per Trust share are calculated at least to the nearest $\frac{1}{1000}$ of \$0.01. When net dividend payments are to be made by the Trust, payment will be made on the last business day in the calendar month following each Ex-Dividend Date (the "Dividend Payment Date"). Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then of record with funds received from the Trustee. The Sponsor reserves the right to make the DTC Dividend Reinvestment Service (the "Service") available in the future for use by Trust shareholders through DTC Participants for reinvestment of their periodic cash distributions, if any. In the event the Service is made available, not all DTC Participants may choose to utilize this Service and an interested investor would have to consult his or her broker to ascertain the availability of dividend reinvestment through such broker, as well as applicable procedures.

Criteria for Initial and Continued Listing

Because of the open-end nature of the Trust upon which a series of PDRs is based, the Exchange believes it is necessary to maintain appropriate flexibility in connection with listing a specific Trust. In connection with initial listing, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading. For Trust shares, it is anticipated that a minimum of 150,000 Trust shares (*i.e.*, three Creation Units of 50,000 Trust shares each), will be required to be outstanding when trading begins.

The Trust will be subject to the initial and continued listing criteria of Rule 1002(b). Rule 1002(b) provides that, following twelve months from the formation of a trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of a trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) if the trust has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(b) if the index on which the trust is based is no longer calculated; or
(c) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A trust terminate upon removal from Exchange listing and its PDRs shall be redeemed in accordance with provisions of the trust prospectus. A trust may also terminate under such other conditions as may be set forth in the trust prospectus. For example, the Sponsor, following notice to Trust shareholders, shall have discretion to direct that the Trust be terminated if the value of securities in the Trust is below a specified amount. The Trust may also terminate if the license agreement with Nasdaq terminates.²⁸

*Listing Fee*²⁹

The Trust will not pay a listing fee to the Amex in connection with the listing of Nasdaq-100 Shares on the Amex.

Trading Halts

Prior to commencement of trading in Trust shares, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 918C(b) in exercising its discretion to halt or suspend trading in PDRs, including Trust shares. These factors include, but are not limited to (1) the extent to which trading is not occurring in stocks underlying the Index; and (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.³⁰

In addition, trading in Trust shares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached. The triggering of futures price limits for index futures contracts such as Nasdaq 100 Index futures, will not, in itself, require a halt in Trust shares trading or a delayed opening. However, such an event could be considered by the Exchange along with other factors, such as a halt in Nasdaq-100 or other broad-based index options trading, in deciding to halt trading in

²⁸ With respect to the Trust, the Sponsor has the discretionary right to direct the Trustee to terminate the Trust if at any time after six months following and prior to three years following the inception of the Trust the net asset value falls below \$150,000,000, or if at any time on or after three years following inception of the Trust the net asset value of the Trust is below \$350,000,000 in value, adjusted annually for inflation.

²⁹ See Amendment No. 3, *Supra* note 5.

³⁰ See Amex Rule 918C.

Trust shares or other index-based derivative securities.

*Dissemination of Information by the Exchange*³¹

The Amex, on behalf of the Trust Sponsor, will disseminate every 15 seconds during each business day a number (under symbol QXV) representing, on a per Nasdaq-100 Share basis, the sum of the Income Net of Expense Amount effective through and including the previous business day, plus the current value of the securities portion of a Portfolio Deposit as in effect on the day (the "Value") (which value will occasionally include a cash-in-lieu amount to compensate for the omission of a particular Index security from the Portfolio Deposit). In addition, the Exchange, on behalf of the Trust Sponsor, will disseminate each business day the Income Net of Expense Amount effective through and including the previous business day per outstanding Trust share (symbol: QND).

Terms and Characteristics

Under Amex Rule 1000, Commentary .01, Amex members and member organizations are required to provide to all purchasers of Trust shares a written description of the terms and characteristics of the securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in each series is delivered to the purchaser. The Exchange also requires that the description be included with any sales material on the Trust that is provided to customers or the public. In addition, the Exchange requires that members and member organizations provide customers the prospectus for the Trust upon request.

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform the non-member that execution of an order to purchase Trust shares for the omnibus account will be deemed to constitute agreement by the non-member to make the written description available to its customers on the same terms as are directly applicable to members and member organizations.

Prior to commencement of trading of Trust shares, the Exchange will distribute to Exchange members and member organizations an Information Circular calling attention to characteristics of the Trust and to applicable Exchange rules.

³¹ See Amendment No. 3, *supra* note 5.

Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security³² (other than an option, which is covered by Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities,³³ may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i-v). The Exchange has designated PDRs (Trust shares are PDRs) as eligible for this treatment.³⁴

Other Applicable Rules

Like SPDRs, MidCap SPDRs, and DIAMONDS, trading in Trust shares on the Amex will be subject to the provisions of Amex Rules 1000 *et seq.* and regular Exchange equity trading rules will apply, including Exchange rules relating to priority, parity and precedence and the obligations of specialists. The provisions of Amex Rule 411 (Duty to Know and Approve Customers) apply to customer transactions in PDRs, and would therefore apply to Trust units transactions; no enhanced suitability standards are applicable to such securities.

Adoption of Rule 1006

The Exchange proposes to adopt Amex Rule 1006³⁵ to provide for disclaimers of liability by Nasdaq and the Exchange in connection with the Nasdaq-100 Index and trading of Trust Shares. The Exchange states that this

³² Stop sell orders generally are entered in a stock whose price has increased substantially to protect the investor's profits should the stock price decline. Similarly, stop buy orders generally are entered by investors with short positions to limit losses should the stock price increase. Conversely, stop limit orders give investors the advantage of specifying the limit price: the maximum price an investor will pay in the case of a stop limit order to buy, or the minimum price an investor will accept in the case of a stop limit order to sell.

³³ A stop or stop limit order in a derivative security is elected, *i.e.*, becomes a market or limit order, respectively, when the quoted market for the derivative security reaches the appropriate stop or stop limit price. Once elected, the specialist treats the orders like any other market or limit order, respectively. The specialist must execute the market order at the next best market price, and must execute the limit order at the limit price or hold the order on his limit order book until the limit price is available.

³⁴ See Securities Exchange Act Release No. 39607 (February 2, 1998), 63 FR 6587 (February 9, 1998) (File No. SR-Amex-98-04), regarding the designation of PDRs as eligible for stop and stop limit order election under Amex Rule 154(c). See also Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) (File No. SR-Amex-90-31) regarding election of stop and stop limit orders by quotation for certain derivative equity securities designated by the Exchange as eligible for election.

³⁵ See Amendment No. 4, *supra* note 6.

provision is similar to other Exchange rules relating to disclaimers with respect to PDRs (*i.e.*, Amex Rule 1004 for S&P 500 Index and Amex Rule 1005 for Dow Jones Indexes) as well as index options (*i.e.*, Amex Rule 902C). The Exchange further states that the last two sentences of proposed Amex Rule 1006, which are similar to language included in Amex Rule 902C for index options, clarify that the rule provides a disclaimer of liability to Nasdaq and the Exchange with respect to the Nasdaq-100 Index.

III. Discussion

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, and, in particular, with the requirements of Section 6(b)(5).³⁶ The Commission believes that the Exchange's proposal to list and trade Trust shares will offer investors an efficient way of participating in the securities markets. The Exchange's proposal should help to provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a low cost security replicating the performance of a portfolio of stocks at negotiated prices throughout the business day.³⁷ Specifically, the Commission believes that the trading of Trust shares will provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a low-cost security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day.³⁸ The Commission also believes that PDRs in general, and Trust shares in particular, will benefit investors by allowing them to trade securities based on a portfolio of stocks in secondary market

³⁶ 15 U.S.C. 78f(b)(5).

³⁷ The Commission notes, however, the unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in Trust shares can redeem them in Creation Unit size aggregations only. Nevertheless, Trust shares would have the added benefit of liquidity from the secondary market and Trust share holders, unlike holders of most other open-end funds, would be able to dispose of their shares in a secondary market transaction.

³⁸ Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

transactions.³⁹ Accordingly, as discussed below, the proposed rule change is consistent with the requirements of Section 6(b)(5) that Exchange rules facilitate transactions in securities while continuing to further investor protection and the public interest.⁴⁰

As the Commission noted in previous orders approving other PDR products (SPDRs, MidCap SPDRs, and DIAMONDS) for listing and trading on Amex,⁴¹ the Commission believes that the trading of securities like PDRs in general, and Trust shares in particular, which replicate the performance of a broad portfolio of stocks, could benefit the securities markets by, among other things, helping to ameliorate the volatility occasionally experienced in these markets. The Commission believes that the creation of one or more products where actual portfolios of stocks or instruments representing a portfolio of stocks, such as Trust shares, which trade at a single location in an auction market environment could alter the dynamics of program trading, because the availability of such single transaction portfolio trading could, in effect, restore the execution of program trades to more traditional block trading techniques.⁴²

An individual Trust share has a value approximately equal to one-twentieth of the prevailing value of the Nasdaq-100 Index,⁴³ making it available and useful to individual retail investors desiring to hold a security replicating the performance of a broad portfolio of stocks. Accordingly, the Commission believes that trading of Trust shares will provide retail investors with a cost efficient means to make investment decisions based on the direction of the market as a whole and may provide market participants several advantages over existing methods of effecting program trades involving stocks.

The Commission also believes that PDRs, in general, and Trust shares, in particular, will provide investors with several advantages over standard open-end mutual fund shares that track a broad-based portfolio of stocks such as the Nasdaq-100 Index. In particular,

³⁹ See *supra* note 37.

⁴⁰ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁴¹ See *supra* notes 8, 11, and 12.

⁴² Program trading is defined as Index arbitrage or any trading strategy involving the related purchase or sale of a "basket" or group of fifteen or more stocks having a total market value of \$1 million or more.

⁴³ As of November 12, 1998, it is estimated that the value of an individual Trust share would be approximately \$74.

investors will have the ability to trade Trust shares continuously throughout the business day in secondary market transactions at negotiated prices.⁴⁴ In contrast, pursuant to Investment Company Act Rule 22c-1,⁴⁵ holders and prospective holders of open-end mutual fund shares are limited to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors.⁴⁶ Accordingly, PDRs in general, and Trust shares in particular, will allow investors to (1) respond quickly to changes in the market; (2) trade at a known price; (3) engage in hedging strategies not currently available to retail investors; (2) trade at a known price; (3) engage in hedging strategies not currently available to retail investors; and (4) reduce transaction costs for trading a portfolio of securities.

Although PDRs in general, and Trust shares in particular, are not leveraged instruments, and therefore, do not possess any of the attributes of stock index options, their prices will still be derived and based upon the securities held in their respective Trusts. In essence, Trust shares are equity securities that are priced off a portfolios of stocks based on the Nasdaq-100 Index. Accordingly, the level of risk involved in the purchase or sale of Trust shares (or a PDR in general) is similar to the risk involved in the purchase or sale of traditional common stocks, with the exception that the pricing mechanism for Trust shares (and PDRs in general) is based on a basket of stocks. Based on these factors, the

⁴⁴ Because of potential arbitrage opportunities, the Commission believes that Nasdaq-100 Trust shares will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of a Nasdaq-100 Trust share comparable to its net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Commission believes the Trust will track the underlying Index more closely than an open-end Index fund because the Trust will generally accept only in-kind deposits, and, therefore, will not incur brokerage expenses in assembling its portfolio. In addition, the Trust will generally redeem only in kind, thereby enabling the Trust to invest virtually all of its assets in securities comprising the underlying Index.

⁴⁵ Investment Company Act Rule 22c-1 generally requires that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security, may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of a mutual fund generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission granted the Nasdaq-100 Trust an exemption from this provision in order to allow Trust shares to trade at negotiated prices in the secondary market. See *supra* note 15.

⁴⁶ *Id.*

Commission believes that it is appropriate to regulate Trust shares in a manner similar to other equity securities. Nevertheless, the Commission believes that the nature of Trust shares raise certain product design, disclosure, trading, market impact, and other issues that must be addressed adequately. As discussed in more detail below, the Commission believes Amex adequately addresses these concerns.

(a) The Nasdaq-100 Trust Generally

The Commission believes that the proposed Trust shares are reasonably designed to provide investors with an investment vehicle that substantially reflects in value the index it is based upon, and in turn, the performance of 100 of the largest and most actively traded non-financial companies' equity securities listed on the Nasdaq National Market tier of the Nasdaq Stock Market. The Nasdaq Stock Market is primarily responsible for the assignment of stocks into the Nasdaq-100 Index. The Nasdaq Stock Market also imposes specific criteria in its selection of the Nasdaq-100 Index components. In selecting components for the Nasdaq-100 Index, the Nasdaq Stock Market evaluates, among other things, the market capitalization and trading volume of the components to assure that the stocks within the Index are liquid and highly capitalized.

The aim of the component selection process is to make the Nasdaq-100 Index components highly representative of the over-all economic sector make-up and market capitalization of a given market. At the same time, securities that are illiquid or that have a small capitalization are avoided. The Commission believes that these criteria should serve to ensure that the underlying securities of this Index are well capitalized and actively traded.

(b) Disclosure

The Commission believes that the Exchange's proposal should ensure that investors are adequately apprised of the terms, characteristic, and risks of Trading Trust shares. As noted above, the proposal contains four aspects addressing disclosure concerns. First, pursuant to Amex Rule 1000(a), Commentary .01, Amex members must provide their customers trading Trust shares with a written explanation of any special characteristics and risks attendant to trading PDR securities (such as Trust shares), in a form prepared by Amex. As discussed above, members can obtain Trust shares product descriptions for distribution to customers from Amex. Second,

members and member organizations must include this written product description with any sales material relating to the series of Trust shares that is provided to customers or the public. Third, any other written materials provided by a member or member to customers or the public referencing Trust shares as an investment vehicle must include a statement, in a form specified by Amex, that a circular and prospectus are available from a broker upon request. Fourth, a member or member organization carrying account for a non-member broker-dealer is required to inform the non-member that execution of an order to purchase a series of Trust shares for the omnibus account will be deemed to constitute agreement by the non-member to make the written product description available to its customers on the same terms as member firms are required to comply with. Accordingly, the Commission believes that investors in PDR securities, in general, and Trust shares, in particular, will be provided with adequate disclosure of the unique characteristics of the PDR instruments and other relevant information pertaining to the instruments.

Finally, under Amex's proposal there will be no special account opening of customer suitability rules applicable to the trading of Trust shares.⁴⁷ However, pursuant to Amex Rule 1000(a), Amex equity rules governing account opening and suitability will apply. Specifically, these rules provide that members shall use due diligence to learn the essential facts relative to every customer, order or account opened, and, prior to or promptly after the completion of a transaction for the account, specifically approve the opening of the account.⁴⁸

(c) Trading of Trust Shares

The Commission finds that Amex's proposal contains adequate rules and procedures to govern the trading of Trust shares. Specifically, Trust shares, like other listed PDRs, will be deemed equity securities subject to all Amex rules governing the trading of equity securities, including, among others, rules governing the priority, parity and precedence of orders, market volatility related to trading halt provisions pursuant to Rule 117, and responsibilities of specialists. The Commission also notes that the Amex may consider halting trading in any series of Trust shares under certain other circumstances, including those set

⁴⁷ This reflects the fact that PDRs are equity products and not options products, and, therefore, do not necessitate the imposition of options-like rules.

⁴⁸ See Amex Rule 411.

forth in Amex Rule 918C(b)(4) regarding the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

The Commission is satisfied with the specific listing and delisting criteria for PDRs that are applicable to Trust shares.⁴⁹ These criteria should help to ensure that a minimum level of liquidity will exist for Trust shares and allow for the maintenance of fair and orderly markets. The delisting criteria also allows the Exchange to consider the suspension of trading and the delisting of a Trust share, if an event were to occur that made further dealings in the securities inadvisable.⁵⁰ Thus, the Exchange has flexibility to delist any of the Trust shares upon which a series of PDRs is based if circumstances warrant such action.⁵¹ Accordingly, the Commission believes that the rules governing the trading of PDRs, including Trust shares, provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

(d) Market Impact

The Commission believes Amex has adequately addressed the potential market impact concerns raised by the proposal. First, Amex's proposal permits listing and trading of Trust shares only after review by the Commission. Second, Amex has developed policies regarding trading halts in Trust shares. Specifically, the Exchange would halt trading of Trust shares if the circuit breaker parameters under Amex Rule 117 were reached.⁵² In addition, in deciding whether to halt trading or conduct a delayed opening in PDRs, in general, and Trust shares, in particular, Amex represents that it will be guided by, but not necessarily bound to, relevant stock index option trading rules. These rules would permit Amex, when determining whether to halt trading of Trust shares, to consider, among other things, the extent to which trading is not occurring in stocks

⁴⁹ See Amex Rule 1002(b).

⁵⁰ See Amex Rule 1002(b)(iii).

⁵¹ The Commission believes that any restrictions that change the Trust shares' fundamental characteristics should raise concerns under the delisting criteria. In such a case, the Amex should determine whether continued listing as a Trust share is appropriate.

⁵² In addition, for PDRs tied to an Index, the triggering of futures price limits for index futures contracts such as Nasdaq-100 Index futures, will not, in itself, require a halt in trading of Trust shares or a delayed opening. However, the Exchange could consider such an event, along with other factors, such as a halt in Nasdaq-100 or other broad based index options trading, in deciding whether to halt trading in Trust shares or other index-based derivative securities.

underlying the Index or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.⁵³

The Commission believes that the trading of PDRs in general, and Trust shares in particular, on Amex should not adversely affect U.S. securities markets. As to the trading of Trust shares, the Commission notes that the corpus of the Trust shares is a portfolio of stocks replicating the Nasdaq-100 Index, a broad hybrid based equal/capitalization weighted index, consisting of 100 of the largest and most actively traded non-financial companies' equity securities listed on the Nasdaq national market tier of the Nasdaq Stock Market. In fact, as described above, the Commission believes that the trading of Trust shares may provide substantial benefits to the marketplace and investors, including, among others, enhancing the stability of the markets of individual stocks.⁵⁴ Accordingly, the Commission believes that trading of Trust shares does not contain features that will make them likely to adversely affect the U.S. securities markets.

(e) Dissemination of Information by the Exchange

The Commission believes that the real-time Value the Exchange proposes to disseminate will provide investors with timely and useful information concerning the value of the Nasdaq-100 Trust shares on a per share basis. The Exchange represents that the information will reflect currently-available information concerning the value of the assets comprising the securities portion of a Portfolio Deposit.

⁵³ See Amex Rule 918C(b).

⁵⁴ Even through PDR transactions may serve as substitutes for transactions in the cash market, and possibly make the order flow in individual stocks smaller than would otherwise be the case, the Commission acknowledges that during turbulent market conditions the ability of large institutions to redeem or create PDRs could conceivably have an impact on price levels in the cash market. In particular, if a PDR is redeemed, the resulting long stock position could be sold into the market, thereby depressing stock prices further. The Commission notes, however, that the redemption or creation of PDRs likely will not exacerbate a price movement because PDRs will be subject to the equity margin requirements of 50% and PDRs are non-leveraged instruments. In addition, as noted above, during turbulent market conditions, the Commission believes PDRs, including SPDRs, MidCap SPDRs, DIAMONDS and Trust shares, in particular, will serve as a vehicle to accommodate and "bundle" order flow that otherwise would flow to the cash market, thereby allowing the order flow to be handled more efficiently and effectively. Accordingly, although Trust shares, like any other PDR, could, in certain circumstances, have an impact on the cash market, on balance we believe the product will be beneficial to the marketplace and can actually aid in maintaining orderly markets.

This information will be disseminated every 15 seconds during each business day. In addition, since it is expected that the Value will closely track the value of the Nasdaq-100 Trust shares on a per share basis, the Commission believes that the Value will provide investors with adequate information to determine the intra-day value of the given Nasdaq-100 Trust share. The Commission expects that the Amex will monitor the disseminated Value, and if the Amex were to determine that the Value does not closely track the value of the Nasdaq-100 trust share, it would arrange to disseminate an adequate alternative value.

(f) Surveillance

The Commission also notes that Amex has submitted surveillance procedures for the trading of Trust shares. These procedures incorporate the Trust shares into the existing Amex surveillance procedures to address concerns associated with the listing and trading of such securities.

The Commission also notes that certain concerns are raised when an entity, such as the Nasdaq Stock Market, is involved in the development and maintenance of a stock index, upon which a product such as the Trust shares is based. The Commission notes that the Nasdaq Stock Market has implemented procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the Nasdaq-100 Index to assuage such concerns. The Commission believes that the "Fire Wall" procedures put in place by the Nasdaq Stock Market to survey and segregate the index administration staff and all the other staff members should address concerns raised by the Nasdaq Stock Market's involvement in the management of the Nasdaq-100 Index.

(g) Stop and Stop Limit Orders

As noted above, Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i-v). The Exchange has designated PDRs (Trust shares are PDRs), as eligible for this treatment. The Commission believes that to allow stop and stop limit orders in PDRs to be elected by quotation, a rule typically used in the options context, is appropriate because, as a result of their derivative nature, Trust

shares are in effect equity securities that have a pricing and trading relationship to the underlying securities similar to the relationship between options and their underlying securities.

(h) Accelerated Approval of Amendment Nos. 3 and 4

The Commission finds good cause to approve Amendment Nos. 3 and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 3 strengthens the proposed rule change and may prevent manipulative acts and practices by providing for a method of disseminating the Value of the Nasdaq-100 Trust Shares on a real-time basis.⁵⁵ Given the real-time dissemination of the Value of the Nasdaq-100 Trust Shares, the Commission believes that investors will be able to more closely track the actual value of the Nasdaq-100 Trust on a per share basis.

In Amendment No. 4, the Exchange proposes Rule 1006, a disclaimer of liability provision substantially similar to other disclaimers adopted by the Exchange for PDRs and index options products.⁵⁶ The Commission notes that proposed Amex Rule 1006 concerns issues that previously have been the subject of a full comment period pursuant to Section 19(b) of the Act.⁵⁷ The Commission does not believe that proposed Amex Rule 1006 raises any new regulatory issues. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) and 19(b) of the Act,⁵⁸ to approve Amendment Nos. 3 and 4 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3 and 4, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-98-34 and should be submitted by March 24, 1999.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵⁹ that the proposed rule change (SR-Amex-98-34), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-5718 Filed 3-8-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41107; File No. SR-Amex-99-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Include the TheStreet.com, Inc. in the Disclaimer Provisions of Amex Rule 902C

February 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 4, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") 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 by the Amex. 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

The Exchange seeks to amend Amex Rule 902C to include the TheStreet.com, Inc. in the disclaimer provisions of that Rule. The text of the proposed rule change is available at the Office of the

Secretary, Amex, and at the Commission.

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 Amex 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. The Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 19, 1998, the Amex submitted a proposal to trade options on the Internet Commerce Index (the "Index"). The proposal became effective upon filing pursuant to Section 19(b)(3)(A) of the Act² and Rule 19b-4(c)(3) thereunder³ because the Index met the listing criteria applicable to narrow-based indexes set forth in Exchange Rule 901C, Commentary .02.⁴ Thereafter, on February 4, 1999, the Exchange submitted a proposal pursuant to Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(e)(1) thereunder⁶ changing the name of the Internet Commerce Index to TheStreet.com E-commerce Index.

The Amex now proposes to amend Amex Rule 902C to include TheStreet.com, Inc. in the disclaimer provisions of that Rule. Similar to other financial news vendors, TheStreet.com, Inc. is in the business of preparing and publishing editorial, evaluation and analysis reports, and news services related to the business of financial news and information which are available in the commercial marketplace through various facilities, such as TheStreet.com Web site on the portion of the Internet referred to as the World Wide Web located at the uniform resource locator ("URL") address designated at <http://www.thestreet.com>.

TheStreet.com, Inc. will have no control over the Index value's dissemination. Accordingly, the Exchange believes that it is appropriate

² 15 U.S.C. 78s(b)(3)(A).

³ 17 CFR 240.19b-4(c)(3).

⁴ Securities Exchange Act Release No. 40955 (January 19, 1999), 64 FR 3727 (January 25, 1999).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(e)(1).

⁵⁵ See description section.

⁵⁶ See Amex Rules 1004, 1005, and 902C. To the extent that proposed Amex Rule 1006 differs from Amex Rules 1004 and 1005, the Commission encourages the Exchange to amend Amex Rules 1004 and 1005 to make them consistent with Amex Rule 1006.

⁵⁷ 15 U.S.C. 78s(b).

⁵⁸ 15 U.S.C. 78f(b) and 78s(b).

⁵⁹ 15 U.S.C. 78s(b)(2).

⁶⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).