Exchange, Inc. (n/k/a NYSE Arca, Inc.), and Philadelphia Stock Exchange, Inc. The proposed amendment would add ISE as a participant to the Joint-SRO Plan.

Section III(b) of the Joint-SRO Plan provides that a national securities exchange or national securities association may become a party to the Plan by: (i) Executing a copy of the Plan, as then in effect (with the only changes being the addition of the new participant's name in Section II(a) of the Plan and the new participant's single-digit code in Section VI(a)(1) of the Plan) and (ii) submitting such executed plan to the Commission for approval. ISE submitted a signed copy of the Joint-SRO Plan to the Commission in accordance with the procedures set forth in the Plan regarding new participants.

The Commission finds that the amendment to the Joint-SRO Plan is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment is consistent with the requirements of Section 11A of the Act,[5] and Rule 608 of Regulation NMS.[6] The Plan established appropriate procedures for market centers to follow in making their monthly reports required pursuant to Rule 605 of Regulation NMS available to the public in a uniform, readily accessible, and usable electronic format. The amendment to include ISE as a participant in the Joint-SRO Plan should contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system by facilitating the uniform public disclosure of order execution information by all market centers. The Commission believes that it is necessary and appropriate in the public interest, for the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to allow ISE to become a participant in the Joint-SRO Plan. The Commission finds, therefore, that approving the amendment to the Joint-SRO Plan is appropriate and consistent with Section 11A of the Act.[7]

III. Conclusion

It is therefore ordered, pursuant to Section 11A(a)(3)(B) of the Act[8] and Rule 608 of Regulation NMS,[9] that the amendment to the Joint-SRO Plan to add ISE as a participant is approved and ISE is authorized to act jointly with the other participants to the Joint-SRO Plan in planning, developing, operating, or regulating the Plan as a means of facilitating a national market system.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2093 Filed 2–7–07; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78k–1.

[6] 17 CFR 242.608.

[7] 15 U.S.C. 78k–1.

[8] 15 U.S.C. 78k–1(a)(3)(B).

[9] 17 CFR 242.608.

[10] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of CyberKey Solutions, Inc.; Order of Suspension of Trading

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CyberKey Solutions, Inc. (''CyberKey'') because of questions regarding the accuracy of assertions made by CyberKey, and others, in press releases and other public statements to investors, concerning among other things: (1) Contracts with the Department of Homeland Security and/or other government agencies, (2) revenues received pursuant to those contracts, and (3) accounts receivable generated by those contracts.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST February 5, 2007 through 11:59 p.m. EST, on February 16, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 07–552 Filed 2–5–07; 11:18 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55202; File No. SR–NASDAQ–2006–040]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 3 to the Proposed Rule Change, and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 2 and 3 To Modify Certain Fees for Listing on The NASDAQ Stock Market and To Make Available Certain Products and Services

January 30, 2007.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 2, 2006, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to modify certain fees for listing on The Nasdaq Stock Market and to make available certain products and services. On October 30, 2006, Nasdaq filed Amendment No. 1.[3] Nasdaq filed Amendment No. 2 on October 31, 2006. The Commission published notice of the proposed rule change, as amended, in the **Federal Register** on November 21, 2006.[4] The Commission received 131 comment letters.[5] On January 16, 2007,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 was improperly filed, and has no impact on this proposed rule change.

[4] *See* Securities Exchange Act Release No. 54752 (November 14, 2006), 71 FR 67410.

[5] Five comment letters were submitted before publication of the notice in the **Federal Register**. *See* October 13, 2006 letter from David B. Armon, Chief Operating Officer (''COO''), PR Newswire, to Arnold Golub, Associate General Counsel (''AGC''), Nasdaq, and October 25, 2006 letter from Jon Olson, Chief Financial Officer (''CFO''), Xilinx, Inc. to Arnold Golub, AGC, Nasdaq. These two letters were included as exhibits to Amendment No. 2. *See also* November 3, 2006 letter from David B. Armon, COO, PR Newswire, to Arnold Golub, AGC, Nasdaq; November 3, 2006 letter from James R. Doty, Baker Botts LLP to Edward S. Knight, Executive Vice President (''EVP''), Nasdaq; November 15, 2006 letter from Michael Nowlan, Chief Executive Officer (''CEO''), Market Wire to Christopher Cox, Chairman, SEC.

The Commission received 117 letters after the publication of the notice but before Nasdaq filed Amendment No. 3: November 22, 2006 letter from Mark Borman, Vice President (''VP'')—Investor Relations (''IR''), ADC; November 22, 2006 letter from David Humphrey, Director of IR, Arkansas Best Corporation; November 22, 2006 letter from Paul Richins, VP of IR, Utah Medical Products, Inc.; November 22, 2006 letter from Ralph Walther, Controller, Brooklyn Federal Bancorp, Inc.; November 24, 2006 letter from Frank Cinatl, VP,

Continued

Abatix Corp.; November 24, 2006 letter from Scott C. Harvard, President/CEO, Shore Financial Corporation; November 25, 2006 letter from Leslie Green, Green Communications Consulting, LLC; November 26, 2006 letter from Robert Shuster, CFO, Independent Bank Corporation; November 27, 2006 letter from Thomas J. Linneman, CEO, Cheviot Financial Corp.; November 27, 2006 letter from Bill Newbould, VP, Corporation Communications, Endo Pharmaceuticals, Inc.; November 27, 2006 letter from Robert Falconi; November 27, 2006 letter from Pamela Murphy, VP IR and Corporate Communications, Incyte Corporation; November 27, 2006 letter from Kevin R. Rhodes, CFO, Edgewater Technology, Inc.; November 27, 2006 letter from Wesley A. Harris, Senior Director—Corporate and Investor Communications, International Speedway Corporation; November 27, 2006 letter from Vicki L. La Mar; November 27, 2006 letter from David W. Dunlap, CFO, Socket Communications, Inc.; November 27, 2006 letter from Ken Maples, CFO, Hiland Partners, LP & Hiland Holdings GP, LP; November 27, 2006 letter from Don T. Seaquist; November 27, 2006 letter from Mitchell A. Derenzo, EVP and CFO, American River Bankshares; November 27, 2006 letter from Nadine Padilla, VP, IR, Biosite Incorporated; November 28, 2006 letter from Jim Bauer, VP-IR, ARRIS Group, Inc.; November 28, 2006 letter from Deirdre Skolfield; November 28, 2006 letter from Bill Perry, Director, Public & IR, SumTotal Systems; November 28, 2006 letter from Don Jennings, President, Kentucky First Federal Bancorp; undated letter from Paul Jennings, President and CEO, Innospec Inc.; November 29, 2006 letter from Darin Sahler, Global Public Relations Manager, FARO Technologies; November 29, 2006 letter from William C. Monigle, President, Bill Monigle Associates; November 29, 2006 letter from Robert C. Weiner, VP, IR, PSS World Medical, Inc.; November 29, 2006 letter from Donovan Chin; November 29, 2006 letter from Donald F. Kuratko, The Jack M. Gill Chair of Entrepreneurship, The Kelley School of Business, Indiana University, Bloomington; November 29, 2006 letter from E.E. Wang; November 29, 2006 letter from David Chidester, CFO, Overstock.com; November 29, 2006 letter from Michael W. Dosland, President and CEO, First Federal Bankshares, Inc.; November 30, 2006 letter from Ronald Remick, SVP and CFO, K-Tron International, Inc.; November 30, 2006 letter from Robert J. Caso, CFO, Cellegy Pharmaceuticals; November 30, 2006 letter from Bill Richardson, Governor of New Mexico; December 1, 2006 letter from Shannon Burns, CFA, Gander Mountain Company; December 1, 2006 letter from Ken Maples, CFO, Hiland Partners, LP; December 4, 2006 letter from Melvin J. Thompson; December 4, 2006 letter from Steven D. Carr, Managing Director, Dresner Corporate Services; December 4, 2006 letter from Geoffrey M. Boyd, CFO, Eschelon Telecom, Inc.; December 4, 2006 letter from Ann M. Storberg, VP—IR, American Physicians Capital, Inc.; December 6, 2006 letter from Michael Frank, Director of IR, EDGAR Online, Inc.; December 6, 2006 letter from David G. Wallace, IR Officer, Bancshares of Florida, Inc.; December 7, 2006 letter from Andrew J. Simmons, CFO, Stealthgas, Inc.; December 7, 2006 letter from J.O. Michael; December 6, 2006 letter from Betsy Atkins; December 7, 2006 letter from Diane Helland, Director, IR and Corporate Communications, Quality Distribution; December 7, 2006 letter from Earle A. MacKenzie, EVP, Shenandoah Telecommunication Company; December 7, 2006 letter from Bradley Gittings; December 7, 2006 letter from Michael Walsh, Principal, IR Associates; December 7, 2006 letter from Scott Poirier, NewStar Financial, Inc.; December 7, 2006 letter from Rich Jeffers, Director, IR, NetBank, Inc.; December 7, 2006 letter from Christine Cassiano, Director, Corporate Communications and IR, Abraxis BioScience, Inc.; December 8, 2006 letter from Terry D. Frandsen, CFO, Escalade, Inc.; December 8, 2006 letter from Bruce N. Beckloff, VP of IR, ARM Holdings; December 7, 2006 letter from Mark E. Reese, SVP and CFO, EMC Insurance Group Inc.; December 8, 2006 letter from Scott Leslie, President, One Good Call; December 8, 2006 letter from John Scott; December 8, 2006 letter from Scott Huber; December 8, 2006 letter from James Scott; December 8, 2006 letter from Constantine Konstans, Professor and Director of the Institute for Excellence in Corporate Governance, School of Management, University of Texas at Dallas; December 8, 2006 letter from Charlotte F. Shropshire, Business Development Ashton Partners; December 8, 2006 letter from Bill Turcotte; December 8, 2006 letter from David H. Chun, CEO, Equilar, Inc.; December 8, 2006 letter from Marlon S. Evans, Non-Profit Executive Director; December 9, 2006 letter from Willa M. McManmon, Director, IR, Trimble; December 10, 2006 letter from Venkatraman Balakrishnan, CFO, Infosys Technologies Limited; December 10, 2006 letter from Brad Burke, Managing Director, Rice Alliance for Technology and Entrepreneurship; December 10, 2006 letter from Judith A. Lindsay, Retired IRO; December 11, 2006 letter from Freddie Liu, CFO, ASE Test Limited; December 11, 2006 letter from Jos [*sic*] Ignacio Del Barrio; December 11, 2006 letter from Joy Basu, CFO, Rediff.com India Limited; December 11, 2006 letter from Jacqueline Borer, Borer Financial Communications, LLC; December 11, 2006 letter from Steve D. Albright, VP and CFO, Reliv International, Inc.; December 11, 2006 letter from Roland Sackers, CFO, QIAGEN N.V.; December 11, 2006 letter from Mary Ryan; December 11, 2006 letter from Mari-Anne Pisarri, Pickard and Djinis LLP, on behalf of Thomson Financial LLC; December 11, 2006 letter from Ann M. Jones, IR Consultant; December 11, 2006 letter from Mariann Caprino; December 11, 2006 letter from Donovan Chin; December 11, 2006 letter from Gale Blackburn, Corporate VP of IR, AmCOMP Incorporated; December 11, 2006 letter from Christopher S. Keenan, Director, IR, Cytokinetics; December 11, 2006 letter from Lillian Vassilatos, IR, Eclipsys Corporation; December 11, 2006 letter from Tammy Thayer, President, Center for Advanced Studies in Business, UW-Madison; December 11, 2006 letter from Sarah Norton, IR; December 11, 2006 letter from Matthew J. Pfeffer, CPA, CFO and SVP, Finance and Administration; December 11, 2006 letter from Athan Demakos; December 11, 2006 letter from John L. Hunter; December 11, 2006 letter from Suresh K. Bhaskaran; December 11, 2006 letter from Marc R. Paul and Margaret R. Blake, Baker & McKenzie LLP, on behalf of PR Newswire; December 11, 2006 letter from F. Scott Dueser, President and CEO, First Financial Bankshares; December 11, 2006 letter from Robert L. Stolebarger, Roger Myers, and Richard M. Mooney, Holme Roberts & Owen LLP, and James R. Doty and Brad Bennett, Baker Botts LLP, on behalf of Business Wire; December 12, 2006 letter from Tom G. Howitt, CFO, Genetic Technologies Limited; December 12, 2006 letter from Simon C. Adams; December 12, 2006 letter from Ramasubramanian Venkatasubramanian, Company Secretary, Sify Limited; December 12, 2006 letter from Eric P. Merrigan, CPA, Member, CPA Australia; December 12, 2006 letter from Efstathios D. Gourdomichalis, CFO, Freeseas; December 12, 2006 letter from Paul McBarron; December 12, 2006 letter from Julian Thomson, IR Manager, Acergy S.A.; December 12, 2006 letter from John W. Sinders, Jr., Director—Transportation, Oil Service and Emerging Markets, Jefferies & Company, Inc.; December 12, 2006 letter from Dominic Jones, Principal, IRWebReport.com; December 12, 2006 letter from Fran Butera, CFA, WPP, Director of IR; December 12, 2006 letter from Michael P. Black, Associate of the Charted Institute of Management Accountants; December 12, 2006 letter from Patrick J. Healy, CPA, MBA, CEO, Issuer Advisory Group; December 12, 2006 letter from Len Cereghino, The Cereghino Group; December 12, 2006 letter from Louis Ploth, Jr., VP and CFO, Repros Therapeutics Inc.; December 12, 2006 letter from Jonathan E. Drayna, VP, IR, Associated Banc-Corp; December 12, 2006 letter from Michael N. Sohn and Donna E. Patterson, Arnold & Porter LLP, on behalf of Nasdaq; December 12, 2006 letter from Andrew A. Sauter, VP, Finance—Avigen, Inc.; December 12, 2006 letter from Richard Sommer; December 12, 2006 letter from Lisa Ann Sanders; December 13, 2006 letter from David Chidester, CFO, Overstock.com; December 13, 2006 letter from Jose Ignacio Del Barrio, EVP Business Development and Head of IR—TELVENT GIT; December 13, 2006 letter from David K. Waldman on behalf of Perma-Fix Environmental Services; December 15, 2006 letter from Adam Yan, eFuture Information Tech Inc.; undated letter from Douglas Ian Shaw, SVP and Corporate Secretary, Suffolk County National Bank, Suffolk Bancorp. The Commission also received nine letters after Nasdaq filed Amendment No. 3. *See* footnote 5 *infra*. January 23, 2007 letter from Marc R. Paul and Margaret R. Blake, Baker & McKenzie LLP, on behalf of PR Newswire; January 23, 2007 letter from Frank J. Cinatl, CFO, Abatix Corp.; January 24, 2007 letter from Kelly A. Richards, Marketing Director, Inforte; January 23, 2007 letter from Garry D. Kline; January 23, 2007 letter from Douglas Ian Shaw, SVP and Corporate Secretary, Suffolk Bancorp; January 23, 2007 letter from Steve Loomis, CardioDynamics—the ICG Company; January 25, 2007 letter from Steve Loomis, asking to recall January 23, 2007 letter; January 25, 2007 letter from Robert L. Stolebarger, Roger Myers, Holme Roberts & Owen LLP and James R. Doty, Brad Bennett, Baker Botts LLP; January 29, 2007 letter from Marc R. Paul and Margaret R. Blake, Baker & McKenzie LLP.

Nasdaq filed a response to comments,[6] and also filed Amendment No. 3 to the proposed rule change, asking the Commission to grant accelerated approval of the proposed rule change, as amended. The Commission hereby issues notice of the filing of Amendment No. 3 and simultaneously grants accelerated approval to the proposed rule change as modified by Amendment Nos. 2 and 3.

II. Description of the Proposed Rule Change

With the initial proposed rule change and Amendment No. 2, Nasdaq proposed the following:

- To modify the entry fees payable by issuers listing on the Nasdaq Capital Market (''Capital Market'') (assessed on the date of entry and calculated based on total shares outstanding) by increasing the minimum entry fee from $25,000 for listing up to five million shares of securities with a maximum of $50,000 for listing over 15 million shares, to $50,000 for an issuer listing up to 15 million shares with a maximum of $75,000 for an issuer listing over 15 million shares;
- To modify the fees for listing additional shares by domestic companies listed on the Nasdaq Global Market (''Global Market'') or the Capital Market by increasing the minimum quarterly fee from $2,500 or $0.01 per

[6] *See* January 16, 2007 letter to Nancy M. Morris, Secretary, SEC, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq (''Nasdaq Response'').

additional shares (whichever is higher) up to an annual maximum of $45,000 per issuer, to $5,000 with the maximum fee increasing to $65,000 per year (the rule would continue to provide that no fee be charged for issuances of up to 49,999 additional shares per quarter);

- To introduce an LAS fee of $5,000 for non-U.S. companies that list additional shares or additional shares underlying American Depositary Receipts (''ADRs'') in a given fiscal year (historically, Nasdaq did not charge these companies an LAS fee), calculating the fee annually based on the change in the issuer's total shares outstanding as reported on its annual reports filed with the SEC (excluding issuances of up to 49,999 additional shares per year);
- To increase annual fees on the Global Market from a minimum of $24,500 and a maximum of $75,000, to a minimum of $30,000 and a maximum of $95,000;
- To increase annual fees on the Capital Market from a minimum of $17,500 and a maximum of $21,000 to a $27,500 flat fee for any amount of shares outstanding (annual fees for ADRs listed on the Capital Market and ADRs and Closed End Funds on the Global Market would remain unchanged);
- To increase the non-refundable fee for a written interpretation from Nasdaq as to how Nasdaq's rules apply to a specific action or transaction that an issuer is considering from $2,000 to $5,000; additionally, Nasdaq proposes to increase the fee from $10,000 to $15,000 when the issuer seeks this same service on an expedited basis;
- To adopt new Interpretive Material to clarify that, in the case where a Nasdaq-listed company is acquired by a non-Nasdaq company and the surviving entity of the merger lists on the Global Market or the Capital Market, the company would receive a pro-rated waiver of the annual fee for the period of time following the merger;
- To waive the entry fee if a non-listed company acquires a company listed on another market, and, in connection with the acquisition, the surviving entity lists on Nasdaq;
- To eliminate the entry fee for most companies transferring between the Capital Market and the Global Market. The Global Market entry fee would not be applicable to a transfer from the Capital Market to the Global Market, except if a company that qualified for the Global Market chose to initially list after January 1, 2007 on the Capital Market instead. In that limited case, when the company seeks to transfer, Nasdaq proposes to charge the company the difference between the Global Market Fee in effect at the time of the transfer and the Capital Market fee previously paid.
- To make available products and services intended to assist companies with their disclosure and regulatory obligations, shareholder communications, and other corporate objectives.

With Amendment No. 3, Nasdaq withdrew from the proposal its initial offer of products and services. Specifically, Nasdaq has determined not to rely on the previously offered service that converts companies' annual reports and proxy materials into dynamic, online documents for use by current and potential shareholders, four audio webcasts, four press releases, four Form 8–K (or 6–K) filings, and customized reports to help analyze issuers' risk of exposure to securities litigation, as a basis for the proposed fee increases.

III. Summary of Comments

A large number of comment letters focused on Nasdaq's offer of a bundle of products and services described above. While there were 65 letters in favor of the proposal and the bundle of services,[7] most of the remainder of the letters objected to the proposal, citing issues that included alleged illegal tying arrangements and other antitrust violations, and potential conflicts of interest.[8] Because Nasdaq filed Amendment No. 3 to remove the bundle of services from the proposed rule change, these issues are now moot, and therefore are not discussed in this Summary of Comments.

The Commission notes that a number of commenters objected to the proposed rule change on the basis that the fees Nasdaq was proposing were too high,[9] regardless of the bundle of services. The Commission believes those same commenters would continue to express their disapproval of Nasdaq's proposed fee structure after Nasdaq filed Amendment No. 3, for the fees remain at the initially-proposed level, despite the removal of the bundle of services from the proposed rule change.[10] Therefore, the Commission weighed those comments as opposed to the filing in deciding to approve the proposed rule change.

IV. Nasdaq's Response to Comments

Nasdaq believes the proposed annual listing fees are reasonable *per se* because the proposed fees ''are generally below those of other markets.''[11] Given that fact, Nasdaq believes the proposed fee increase meets the reasonableness standard of Section 6(b)(4) of the Act.[12]

As noted previously in this approval order, Nasdaq modified the proposed rule change to remove its previously planned offering of (i) The service that converts annual reports and proxy materials into online documents; (ii) four audio webcasts; (iii) four press releases; (iv) four Form 8–K (or 6–K) filings; and (v) the customized report to

[7] Many of the commenters expressing support of the proposed bundle of services cited increased competition as a positive outcome of the proposed rule change. *See, e.g.*, November 28, 2006 letter from Deirdre Skolfield (''I am certainly willing to pay a bit more for an even wider breath [*sic*] of services delivered to my desktop. Competition is heating up in the capital markets and NASDAQ offers timely, accessible information to keep Officers and Directors of public companies on top of things''); December 7, 2006 letter from Bradley Gittings (''I believe increased competition is good for the market place. * * * I also believe that offering these services will enhance competition among the providers of those services.''); December 6, 2006 letter from Betsy Atkins (''This proposal creates increased competition, better pricing and enhanced service.''). Other commenters supported the proposal because the approach is innovative and offers new services to its customers. *See, e.g.*, November 29, 2006 letter from E.E. Wang ''I support NASDAQ's attempt to provide value-added, complimentary services to its customers.''); November 29, 2006 letter from Donald F. Kuratko (''This is another example where NASDAQ, using continuous innovation in all products and services, seeks to maximize the level of service and value of listing for its listed companies and their investors.''); December 8, 2006 letter from Constantine Konstans (''NASDAQ is to be commended once again for taking innovative and progressive actions that will certainly increase the level of service to their listees as well as to the investors in NASDAQ-listed companies.'').

[8] *See, e.g.*, October 13, 2006 letter from David B. Armon, COO, PR Newswire; December 11, 2006 letter from Mari-Anne Pisarri, Pickard and Djinis LLP on behalf of Thomson Financial LLC; December 11, 2006 letter from Marc R. Paul and Margaret R. Blake, Baker & McKenzie LLP on behalf of PR Newswire; December 11, 2006 from Robert L. Stolebarger, Roger Myers, Richard M. Mooney, Holme Roberts & Owen LLP and James R. Doty, Brad Bennett, Baker Botts LLP.

[9] *See, e.g.*, October 25, 2006 letter from Jon Olson, CFO, Xilinx, Inc. (''* * *Xilinx's fee increase is $20,000, which we do not view as a 'nominal amount'.''); November 22, 2006 letter from Paul Richins, VP of IR, Utah Medical Products, Inc. (''The proposed increase is more than 3x higher than we currently pay for the services we would get for 'free' under the proposal.''); November 24, 2006 letter from Frank Cinatl, VP, Abatix Corp. (''* * *the proposed increase in our fees to Nasdaq are estimated to be 40% more than my old fees plus what I paid for the proposed bundled services.'') (*See also* January 23, 2007 letter from Frank Cinatl, VP, Abatix Corp., citing no opposition to a moderate fee increase, but disagreeing with the proposed rule change, as amended.)

[10] *See, e.g.*, January 29, 2007 letter from Marc R. Paul and Margaret R. Blake, Baker & McKenzie LLP on behalf of PR Newswire Association LLC (''* * *although a justification for the listing fees has been removed, NASDAQ proposes no corresponding decrease in the amount of its proposed fee increase.'').

[11] Nasdaq Response at 3. Nasdaq offers comparisons of its fees with those of NYSE Arca, the American Stock Exchange, and the New York Stock Exchange (''NYSE'').

[12] *Id.* at 3. 15 U.S.C. 78f(b)(4).

analyze risk of exposure to securities litigation. As a result of this modification to the proposed rule change, Nasdaq did not address the arguments raised by commenters that objected to Nasdaq providing these services, for these services are no longer a basis for the proposed fee increase.[13]

Even with the removal of these services from the proposed rule change, Nasdaq believes the proposed fee increase is reasonable because of ''the substantial resources Nasdaq dedicates to its regulatory programs'' which Nasdaq cites in detail.[14] Additionally, Nasdaq states that the proposed increase in listing fees for companies listed on the Capital Market, though a greater percentage increase than that for Global and Global Select Market companies, is also appropriate because the fees for companies listed on the Capital Market remain lower than the fees of companies listed on the Global and Global Select Markets, while those companies share in all of the regulatory programs cited in the Nasdaq Response.[15] Finally, Nasdaq believes that the proposed fees are equitably allocated because other fee structures that allocate listing fees by shares outstanding have been approved by the Commission.[16]

V. Discussion and Commission Findings

The Commission has reviewed the proposed rule change, the comment letters, and Nasdaq's Response Letter,[17] and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.[18] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[19] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

The Commission believes that Nasdaq's proposed fee increases are reasonable, for the resultant fees are comparable to similar fees of other self-regulatory organizations. The Commission recognizes that competition for listings is becoming increasingly vigorous, and that such competition should help assure the reasonableness of fees among the markets vying for new listings. Nasdaq also has cited the resources it dedicates to its regulatory programs as evidence of value added for the increase in fees. The Commission believes that Nasdaq's proposed fee increases are reasonable, given the current competitive landscape, the listing fees charged by other self-regulatory organizations, and the value Nasdaq offers issuers that choose to list with Nasdaq. For these reasons, the Commission believes the proposed fee increases meet the statutory standard of an equitable allocation of reasonable dues, fees and other charges.

The proposal would also eliminate the entry fee for most companies transferring between the Capital Market and the Global Market, and waive the entry fee if a non-listed company acquires a company listed on another market (and in connection with the acquisition the surviving entity lists on Nasdaq). The Commission believes that these changes to Nasdaq's fee structure are consistent with Section 6(b)(4) of the Act,[20] and notes that they result in a reduction of fees. Also, the Commission believes Nasdaq's adoption of new Interpretive Material to clarify that Nasdaq would provide a pro-rated waiver of the annual fee for the period of time following a merger in the case where a Nasdaq-listed company is acquired by a non-Nasdaq company and the surviving entity of the merger lists on the Global Market or the Capital Market is both reasonable and a benefit to those issuers choosing to list on Nasdaq in these particular circumstances.[21]

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice thereof in the **Federal Register**. The Commission believes the proposed rule change will allow Nasdaq to more effectively compete for listings with other markets. The Commission believes that no novel issues are raised by Amendment No. 3. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2006–040 on the subject line.

Paper Comments

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

All submissions should refer to File Number NASDAQ–2006–040. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying

[13] Nasdaq Response at 2. Nasdaq's proposed enhancements to NASDAQ Online and the Market Intelligence Desk remain part of this proposed rule change.

[14] *Id.* For example, Nasdaq cites its Listing Qualifications and MarketWatch Departments, initiatives Nasdaq has undertaken to increase issuer visibility such as MarketSite and international conferences and the renaming of the Nasdaq SmallCap Market as the Nasdaq Capital Market, enhancements to its trading platform, and enhancements made to Nasdaq Online and the Market Intelligence Desk.

[15] *Id.*

[16] *Id.* at 3. Nasdaq references analogous fee structures in place at the NYSE, NYSE Arca and the American Stock Exchange.

[17] The Commission believes that Nasdaq has responded adequately to the comments.

[18] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78f(b)(4).

[21] One commenter objects in principle to Nasdaq venturing beyond being ''a regulated entity in the narrow market for listing services'' to operating other businesses. *See* January 25, 2007 letter from Robert L. Stolebarger, et al., at 5–10. Another commenter objects to Nasdaq allegedly using fees to subsidize ''non-exchange-related commercial activities.'' *See* January 29, 2007 letter from Marc R. Paul and Margaret R. Blake, Baker & McKenzie LLP. The Commission notes that these issues are beyond the scope of this proposed rule change, since Nasdaq has removed its initial offer of products and services with the filing of Amendment No. 3.

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2006–040 and should be submitted on or before March 1, 2007.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–2006–040), as modified by Amendment Nos. 2 and 3, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55222; File No. SR–NYSE–2006–68]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendments No. 1, 2, and 3 Thereto To List and Trade Exchange-Traded Notes of Barclays Bank PLC Linked to the Performance of the U.S. Dollar/Japanese Yen Exchange Rate

February 1, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 24, 2006 the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the Exchange. On January 3, 2007, the Exchange submitted Amendment No. 1.[3] On January 23, 2007, the Exchange submitted Amendment No. 2.[4] On January 29, 2007, the Exchange submitted Amendment No. 3.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade exchange-traded notes (''Notes'') of Barclays Bank PLC (''Barclays'') linked to the performance of the U.S. dollar/Japanese yen exchange rate (the ''USD/JPY exchange rate''). The Exchange also proposes to add new Supplementary Material .10 to Rule 1300A and Rule 1301A. Below is the text of the proposed rule change. Proposed new language is in *italics*.

Rule 1300A. Currency Trust Shares

* * * * *

• • • *Supplementary Material:*

.10 The provisions of Rule 1300A(b) and Rule 1301A shall apply to securities listed on the Exchange pursuant to Section 703.19 (''Other Securities'') of the Listed Company Manual where the price of such securities is based in whole or part on the price of (a) a non-U.S. currency or currencies, (b) any futures contracts or other derivatives based on a non-U.S. currency or currencies, or (c) any index based on either (a) or (b) above.

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Rule 1301A. Currency Trust Shares: Securities Accounts and Orders of Specialists

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• • • *Supplementary Material:*

.10 The provisions of Rule 1300A(b) and Rule 1301A shall apply to securities listed on the Exchange pursuant to Section 703.19 (''Other Securities'') of the Listed Company Manual where the price of such securities is based in whole or part on the price of (a) a non-U.S. currency or currencies, (b) any futures contracts or other derivatives based on a non-U.S. currency or currencies, or (c) any index based on either (a) or (b) above.

* * * * *

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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

The Notes

Under Section 703.19 of the Listed Company Manual (the ''Manual''), the Exchange may approve for listing and trading securities not otherwise covered by the criteria of Sections 1 and 7 of the Manual, provided the issue is suited for auction market trading. The Exchange proposes to list and trade, under Section 703.19 of the Manual, the Notes, which are linked to the performance of the USD/JPY exchange rate. Barclays intends to issue the Notes under the name ''iPath℠ Exchange Traded Notes.''

The Exchange believes that the Notes will conform to the initial listing standards for equity securities under Section 703.19, as Barclays is an affiliate of Barclays PLC,[6] which is a listed company in good standing, the Notes will have a minimum life of one year, the minimum public market value of the Notes at the time of issuance will exceed $4 million, there will be at least one million Notes outstanding, and there will be at least 400 holders at the time of issuance. The Notes are a series of medium-term debt securities of Barclays that provide for a cash payment at maturity or upon earlier redemption at the holder's option, based on the performance of the USD/JPY exchange rate subject to the adjustments described below. The original issue price of each Note will be $25. The Notes will trade on the Exchange's equity trading floor, and the Exchange's existing equity trading rules will apply to trading in the Notes.

The USD/JPY exchange rate is a foreign exchange spot rate that measures the relative values of two currencies, the Japanese yen and the U.S. dollar. When the Japanese yen appreciates relative to the U.S. dollar, the USD/JPY exchange rate decreases (and the value of the

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[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the Exchange's original submission in its entirety.

[4] Amendment No. 2 replaced and superseded Amendment No. 1 in its entirety.

[5] Amendment No. 3 replaced and superseded Amendment No. 2 in its entirety.

[6] The issuer of the Notes, Barclays, is an affiliate of an Exchange-listed company (Barclays PLC) and not an Exchange-listed company itself. However, Barclays, though an affiliate of Barclays PLC, would exceed the Exchange's earnings and minimum tangible net worth requirements in Section 102 of the Manual. Additionally, Barclays has informed the Exchange that the original issue price of the Notes, when combined with the original issue price of all other iPath securities offerings of the issuer that are listed on a national securities exchange (or association), does not exceed 25% of the issuer's net worth.