

## NASDAQ Introduces New Market Maker Requirements for UTP Trading of Commodity-Based Securities



**Please Route To:** Head Traders; Technical Contacts; Compliance Officers

### What you need to know:

- When NASDAQ begins operating as an [exchange](#) in NYSE- and Amex-listed securities on February 12, 2007, NASDAQ members registered and acting as market makers in NYSE- and Amex-listed commodity-based shares (Shares) will be subject to new requirements pursuant to [NASDAQ Rule 4630](#).
- Market makers currently trading these Shares will need to complete the [Market Maker Disclosure Report for Commodity-Based Trust Shares form](#), establish written supervisory procedures regarding these Shares and submit them to NASD prior to February 12, 2007, in order to continue making markets in these securities after February 12<sup>th</sup>.

### Whom you should contact:

- NASDAQ Office of General Counsel at 301.978.8400
- NASD Market Regulation at 240.386.5102
- [NASDAQ Market Sales](#) at 800.846.0477

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### What is changing?

Securities based on a broad range of commodities, including gold and foreign currencies, are listed on the New York Stock Exchange (NYSE) and the American Stock Exchange (Amex). These commodity-based shares (Shares) are currently traded over-the-counter on The NASDAQ Stock Market<sup>®</sup>. Once NASDAQ<sup>®</sup> begins [operating as a national securities exchange](#) in NYSE- and Amex-listed securities on February 12, 2007, NASDAQ plans to continue trading certain NYSE- and Amex-listed Shares pursuant to Unlisted Trading Privileges (UTP). At that time, NASDAQ members registered and acting as market makers in the Shares (Market Makers) will be subject to the following new requirements established in [NASDAQ Rule 4630](#).

### What are the new requirements pursuant to NASDAQ Rule 4630?

Once NASDAQ becomes an exchange in NYSE- and Amex-listed securities on February 12, 2007, Market Makers will be subject to the following requirements regarding the trading of Shares:

1. **Information Barriers** — Market Makers must establish adequate information barriers when engaging in inter-departmental communications and should refer to the NASD/NYSE Joint Memo on Chinese Wall Policies and Procedures in [NASD Notice to Members 91-45](#) for guidance on the minimum elements of adequate information barriers. For purposes of the Shares only, “inter-departmental” communications include communications to other departments within the same firm or the firm’s affiliates that involve trading in an underlying commodity, related commodity futures or options on commodity futures or any other related commodity derivatives.

Market Makers are also responsible for establishing adequate written supervisory procedures regarding commodity-based trust shares.

2. **Market Maker Accounts** — Market Makers will be required to file and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, that the Market Maker may have or over which it may exercise investment discretion. No Market Maker shall trade in an account that has not been reported as required by this Rule.
3. **Books and Records** — Market Makers will be required to make available to NASDAQ Regulation such books, records or other information pertaining to transactions in the underlying physical commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, as may be requested by NASDAQ Regulation.
4. **Material Non-Public Information** — In connection with trading the underlying physical commodity, related commodity futures or options on commodity futures or any other related commodity derivatives (including the Shares), Market Makers will not be permitted to use any material non-public information received from any person associated with the Market Maker or employee of such person regarding trading by such person or employee in the physical commodity, commodity futures or options on commodity futures or any other related commodity derivatives.

### **What do I need to do if I am an existing Market Maker in these Shares?**

Market Makers currently trading these Shares must complete the [Market Maker Disclosure Report for Commodity-Based Trust Shares form](#) and establish written supervisory procedures for trading these Shares. The form and procedures must be submitted to NASD via fax at 240.386.5135 prior to February 12, 2007, in order to continue making markets in these securities after February 12<sup>th</sup>.

If existing Market Makers would like to register in additional commodity-based Share products after the supervisory procedures have been submitted, they would generally only need to submit the new account information, if applicable.

### **What do I do when I register for the first time as a Market Maker in a commodity-based Shares product?**

Upon registering as a new Market Maker in a commodity-based Shares product, your firm must file the following documents with NASD:

- [Market Maker Disclosure Report for Commodity-Based Trust Shares form](#) — must be kept current
- Written supervisory procedures regarding commodity-based trust shares

Fax the completed form and the firm's written supervisory procedures to NASD at 240.386.5135.

### **Where can I get additional information?**

- Refer to [NASDAQ Rule 4630](#).
- Contact NASDAQ Office of General Counsel at 301.978.8400.
- Contact NASD Market Regulation at 240.386.5102.
- Contact [NASDAQ Market Sales](#) at 800.846.0477.

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NASDAQ is the largest U.S. electronic stock market. With approximately 3,200 companies, it lists more companies and, on average, trades more shares per day than any other U.S. market. It is home to companies that are leaders across all areas of business including technology, retail, communications, financial services, transportation, media and biotechnology. NASDAQ is the primary market for trading NASDAQ-listed stocks. For more information about NASDAQ, visit the NASDAQ Trader website at [www.NASDAQTrader.com](http://www.NASDAQTrader.com).