

## Information Circular: First Trust

**To:** Head of NASDAQ Trading  
Head of ETF Trading  
Structured Products Traders  
Compliance Officers

**From:** BX Listing Qualifications Department

**Date:** January 15, 2009

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### Overview

The Nasdaq-100 Index Tracking Stock (known as QQQ®) will commence trading on under the trading symbol **QQQQ** and the CUSIP number is 631100-10-4.<sup>1</sup> The ETF seeks to provide investment returns that closely correspond to the price and yield performance of the Nasdaq-100 Index.<sup>2</sup>

For further information on the Nasdaq-100 Index Tracking Stock, please refer to the prospectus dated January 30, 2004.

### Description

The Nasdaq-100 Index Tracking Stock is a security issued by The Nasdaq-100 Trust, Series 1 (Trust), a unit investment trust organized under the laws of the State of New York and governed by a trust agreement between The Bank of New York, a corporation organized under the laws of the State of New York with trust powers, and Nasdaq Financial Products Services, Inc. (NFPS or Sponsor).

The Nasdaq-100 Index Tracking Stock seeks to provide investment returns that closely correspond to the price and yield performance of the Nasdaq-100 Index (Index), a modified capitalization-weighted index of 100 of the largest non-financial securities listed on the Nasdaq National Market tier of The Nasdaq Stock Market (NASDAQ). To meet this objective, the portfolio of stock held by the Trust will, under most circumstances, consist of all the component securities of the Nasdaq-100 Index. Although the Trust may at any time fail to own certain of the index securities, the Trust will be substantially invested in index securities and the Sponsor believes that such investment should result in a close correspondence between the investment performance of the Index and that derived from ownership of the Index.

Like any index fund, the ETF earns dividends, interest, and other income from its investments and distributes this income (less expenses or losses) to shareholders as

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<sup>1</sup> The CUSIP Number on this notice is not provided by the American Banking Association and has been independently gathered.

<sup>2</sup> The NASDAQ-100 Index can be found on vendor terminals and websites under the following symbols: Bloomberg (NDX); Reuters (.NDX); Bridge (NDX or US:NDX); Thomson, including ILX (NDX); FactSet (NDX); Hyperfeed (NDX); and S&P Comstock (NDX); NASDAQ.com (IXNDX); Nasdaq Workstation (IXNDX).

dividends. The ETF also realizes capital gains from its investments, and distributes these gains (less any losses) to shareholders as capital gain distributions. The ETF normally pays dividends, if any, quarterly. Net realized capital gain distributions, if any, are paid annually.

If the ETF's shares are delisted from BX and not immediately relisted on a national securities exchange or a quotation medium operated by a national securities association the ETF will be terminated. The ETF may also be terminated if the Index is discontinued or the Sponsor's license with BX is terminated.

The Depository Trust Company (DTC), or its nominee, is the registered owner of all outstanding shares of the ETF.

## **Creation Units**

The Trust issues and redeems shares in the fund through ALPS Distributors, Inc. (Distributor) only in creation unit aggregations on a continuous basis as more fully disclosed in the prospectus. Each creation unit consists of a block of 50,000 shares. To be eligible to place orders with the Distributor or to purchase a creation unit of the fund, an entity must be either a "Participating Party" or a Depository Trust Company Participant and must have executed a Nasdaq-100 Participant Agreement. The term "Participating Party" means a broker-dealer or other participant in the Nasdaq-100 Clearing Process, through the Continuous Net Settlement System of the National Securities Clearing Corporation.

## **Continuous Offering**

The method by which creation units of shares are created and traded may raise certain issues under applicable securities laws. Because new creation units of shares are issued and sold by the fund on an ongoing basis, at any point a "distribution," as such term is used in the Securities Act of 1933, may occur. Broker-dealers and other persons are cautioned that some activities on their part may, depending on the circumstances, result in their being deemed participants in a distribution in a manner which could render them statutory underwriters and subject them to the prospectus delivery and liability provisions of the 1933 Act.

For example, a broker-dealer firm or its client may be deemed a statutory underwriter if it takes creation units after placing an order with the Distributor, breaks them down into constituent shares, and sells such shares directly to customers, or if it chooses to couple the creation of a supply of new shares with an active selling effort involving solicitation of secondary market demand for shares. A determination of whether one is an underwriter for purposes of the 1933 Act must take into account all the facts and circumstances pertaining to the activities of the broker-dealer or its client in the particular case, and the examples mentioned above should not be considered a complete description of all the activities that could lead to a categorization as an underwriter.

Dealers who are not "underwriters" but are participating in a distribution (as opposed to engaging in ordinary secondary market transactions), and thus dealing with shares as part of an "unsold allotment" within the meaning of Section 4(3) (C) of the 1933 Act, will be unable to take advantage of the prospectus delivery exemption provided by Section 4(3) of the Securities Act.

## Other Information and Risk Factors

There can be no assurances as to how the ETF will trade in the secondary market or whether such market will be liquid or illiquid. Securities with characteristics similar to the ETF are unique securities. The market value for the ETF will be affected by a number of factors including, but not limited to:

- Stock Market Volatility. Stock markets and stock market indexes are volatile, and can decline significantly in response to adverse issuer, political, regulatory, market, or economic developments.
- Issuer-Specific Changes. The value of an individual security or particular type of security included in the Index can be more volatile than the value of the market as a whole, and can perform differently from the market as a whole. The value of securities of smaller issuers can be more volatile than that of larger issuers.
- Fluctuation of NAV and Share Price. Although it is expected that the market price of an ETF share will approximate NAV, it is also possible that the market price and NAV will vary significantly. Therefore, you may pay more than the NAV when purchasing ETF shares in the secondary market, and you may receive less than the NAV when selling them.
- Correlation to Index. The performance of the ETF and the Index may vary somewhat as a result of timing differences, transaction costs and security selection.
- Trading Issues. There can be no assurance that an active trading market for the ETF's shares will be maintained. Trading may be halted, for example, due to market conditions.

Before a member undertakes to recommend a transaction in the ETF, such member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. Prior to the execution of a transaction in the ETF that has been recommended to a non-institutional customer, a member shall make reasonable efforts to obtain information concerning: (1) the customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

BX requires that members provide to all purchasers of the ETF a written description of the terms and characteristics of such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to the ETF that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to the ETF as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of the ETF has been prepared by the Trust and is available from your broker or BX. It is recommended that you obtain and review such circular before purchasing the ETF. In addition, upon request you may obtain from your broker a prospectus ETF."

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

Upon request of a customer, a member shall also provide a prospectus for the ETF.

## Trading Halts

Trading of the ETF shares will be halted whenever BX trading in equity securities generally is halted as a result of activation of market-wide “circuit breakers,” which are tied to large decreases in the Dow Jones Industrial Average. BX may also halt trading in the ETF shares upon consideration of, among other factors:

- The extent to which trading has ceased in the underlying security(s);
- Whether trading has been halted or suspended in the primary market(s) for any combination of underlying securities accounting for 20% or more of the applicable current index group value. The value being established to be the value at the close of the prior trading day;
- The presence of other unusual conditions or circumstances deemed to be detrimental to the maintenance of a fair and orderly market.

The trading in the shares of the ETF may resume following a trading halt or suspension when BX determines that the conditions that led to the halt or suspension are no longer present or that the interests of a fair and orderly market are served by a resumption of trading.

## Trading Hours

The values of each index underlying the Shares are disseminated to data vendors every 15 seconds. The Shares will trade on BX between 8:00 a.m. and 7:00 p.m. ET. For trading during BX’s Pre-Market and Post-Market Sessions, market participants should note that additional risks may exist with respect to trading the Funds during these sessions, when the underlying index’s values may not be disseminated.

## Contact Information

Any additional questions can be directed to:

- BX Listing Qualifications at 301.978.8088.
- BX Financial Products at 301.978.8416.