

that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposal.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). The Exchange provided the Commission with written notice of its intention to file the proposed rule change on May 16, 2007.

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2007-56 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 SR-CBOE-2007-56. 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 such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2007-56 and should be submitted on or before July 2, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>12</sup> 17 CFR 200.30-3(a)(12).

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-55832; File No. SR-NASDAQ-2007-040]

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval to a Proposed Rule Change Relating to the Waiver of Fees upon Relisting of Companies Removed for Late Filings**

May 31, 2007.

On April 4, 2007, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to waive fees upon the relisting of companies removed for late filings. The proposed rule change was published for comment in the **Federal Register** on April 25, 2007.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

In its filing, Nasdaq proposed to allow, in certain circumstances, a company to relist without paying a new entry and application fee if the company was delisted solely for the failure to file a required periodic report with the Commission or other appropriate regulatory authority. In addition, Nasdaq proposed to delete separate, duplicative provisions in its rules.

Nasdaq has proposed to waive the entry and application fee for any company that was suspended<sup>4</sup> and/or delisted from the Nasdaq Stock Market solely for its failure to file a required periodic report with the Commission or other appropriate regulatory authority, if the company regains compliance with this requirement and applies to relist on Nasdaq within one year of the date it was delisted from Nasdaq.<sup>5</sup> In addition,

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 55645 (April 19, 2007), 72 FR 20572.

<sup>4</sup> Nasdaq Rule 4802(f) requires a security to meet the requirements for initial listing (which include the requirement to pay the applicable listing fees) if the security has been the subject of a decision to delist by a Listing Qualifications Panel, the Nasdaq Listing and Hearing Review Council or the Nasdaq Board.

<sup>5</sup> The Commission notes that Nasdaq has the authority under its rules to waive fees on a case-by-case basis. See Securities Exchange Release No. 28731 (January 2, 1991), 56 FR 906 (January 9, 1991) (SR-NASD-90-61). The Commission notes that it is not, as a general matter, appropriate to allow for the waiver of fees to one class of non-members, while excluding other non-members from such class, without first providing interested persons an opportunity to comment on the proposed rule change pursuant to section 19(b)(2) under the Act.

if such a company relists during the same calendar year that it has previously paid an annual fee, the company will not be subject to a second annual fee in that same year.

Nasdaq believes that this waiver is appropriate given that, on average, the review of such an issuer is likely to be simpler than the typical application for several reasons. First, because these companies were previously listed on Nasdaq and compliant with all requirements except the filing requirement, Nasdaq believes it is more likely that they will be compliant with all other quantitative and qualitative requirements. Further, Nasdaq notes that relevant information about these companies is already contained in Nasdaq's compliance systems. Finally, in its filing, Nasdaq states that it anticipates there would be fewer questions concerning the company's financial statements given that these companies will often have undergone extensive review by their auditors and, in some cases, by independent investigators and the Commission or other regulatory entities, in order to resolve the issues that caused the late filings.<sup>6</sup>

Nasdaq is implementing these waivers as an incentive for companies to re-list on Nasdaq upon regaining compliance with the periodic filing requirement. Nasdaq believes that this waiver is appropriate since Nasdaq's rules governing the delisting of companies that are delinquent in periodic reports are generally stricter than those of other markets. Nasdaq believes that the proposed waivers will promote competition between Nasdaq and other exchange markets.

After careful review, 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.<sup>7</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>8</sup> which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission also finds that the proposal is consistent with Section 6(b)(5) of the

Act,<sup>9</sup> which requires, *inter alia*, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and not designed to permit unfair discrimination between issuers.

The Commission notes that Nasdaq has represented that the waiver of listing fees should not have a material financial impact on the exchange, or impact Nasdaq's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

In addition, the proposal does not have any impact on whether a company is actually eligible to list on Nasdaq. Nasdaq has represented that a complete review of compliance with listing standards will be conducted for any company seeking to take advantage of the fee waiver, just as for any company that applies for listing on Nasdaq. Nasdaq has also represented that any fee waiver granted under this rule is predicated upon the company successfully completing the review process and demonstrating compliance with the initial listing standards.

Finally, the Commission notes that companies eligible for the fee waiver have previously paid entry and annual fees to Nasdaq. Under the fee waiver, companies must reapply within one year of delisting and are eligible for the waiver of the annual fee only if they relist during the same year for which the annual fee had previously been paid. The Commission believes it reasonable for Nasdaq to conclude that eligible companies should not be charged duplicate fees if they relist within such time periods.

Based on the above, the Commission agrees that the proposed waiver does not constitute an inequitable allocation of reasonable dues, fees, and other charges, does not permit unfair discrimination between issuers, and is generally consistent with the Act.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-NASDAQ-2007-040) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55861; File No. SR-NASDAQ-2007-054]

### Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Trade the Shares of the iShares GSCI Commodity-Indexed Trust Pursuant to Unlisted Trading Privileges

June 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 18, 2007, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

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

Nasdaq proposes to trade shares of the iShares GSCI Commodity-Indexed Trust (the "Trust") pursuant to unlisted trading privileges ("UTP"). The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and [nasdaq.complinet.com](http://nasdaq.complinet.com).

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

In its filing with the Commission, 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

Pursuant to Nasdaq Rule 4630, which permits the Exchange to approve for

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>6</sup> The Commission notes that the timely filing of accurate financial reports under the Act is critical to investors and out national market and assures that investors receive up to date financial information about listed companies.

<sup>7</sup> In approving this 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).

<sup>8</sup> 15 U.S.C. 78f(b)(4).