

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>5</sup> and Rule 19b-4(f)(1)<sup>6</sup> thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of DTC. At any time within 60 days of the filing of the 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:

#### 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 No. SR-DTC-2007-03 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 No. SR-DTC-2007-03. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at <http://www.dtc.org/impNtc/mor/index.html>. 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 submission should refer to File No. SR-DTC-2007-03 and should be submitted on or before March 30, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

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

[FR Doc. E7-4188 Filed 3-8-07; 8:45 am]

BILLING CODE 8010-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55388; File No. SR-NASDAQ-2006-067]

#### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Retroactively Reduce Fees for Nasdaq's Risk Management Service

March 2, 2007.

On December 29, 2006, 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 make retroactive to November 1, 2006, certain reductions in fees charged for the Nasdaq Risk Management Service ("Service"). In SR-NASDAQ-2006-066,<sup>3</sup> Nasdaq reduced the per trade fee for the Service to \$0.025, and capped the per month total Service fee per clearing firm at \$7,500. The instant proposed rule change would make those same fee and cap reductions retroactive to November 1, 2006. Nasdaq believes that these fee reductions will ensure that Nasdaq's charges for risk management services remain competitive with those of providers of similar services. The proposed rule change was published for notice and

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<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. 55131 (January 19, 2007), 72 FR 3891 (January 26, 2007) (SR-NASDAQ-2006-066).

comment in the **Federal Register** on January 26, 2007.<sup>4</sup> The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and 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>5</sup> and, in particular, the requirements of Section 6(b)(4) of the Act,<sup>6</sup> which requires, among other things, that Nasdaq's rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls, and that it not unfairly discriminate between customers, issuers, brokers or dealers. The Commission believes that the proposed rule change is consistent with these statutory standards. The Commission believes that reduction of the fee and cap for the Service retroactive to November 1, 2006 will enhance competition among providers of similar services.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>7</sup>, that the proposed rule change (SR-NASDAQ-2006-067) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

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

[FR Doc. E7-4187 Filed 3-8-07; 8:45 am]

BILLING CODE 8010-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55385; File No. SR-NASDAQ-2007-018]

#### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade iShares Silver Trust Pursuant to Unlisted Trading Privileges

March 2, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>4</sup> See Securities Exchange Act Release No. 55130 (January 19, 2007), 72 FR 3892.

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>6</sup> 17 CFR 240.19b-4(f)(1).

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 1, 2007, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. This order provides notice of the proposed rule change and approves it on an accelerated basis.

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

Nasdaq is proposing to trade shares ("Shares") of the iShares Silver Trust ("Trust") pursuant to unlisted trading privileges ("UTP"). The text of the proposed rule change is available from Nasdaq's Web site at <http://www.nasdaq.complinet.com>, at Nasdaq's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq 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**

Nasdaq proposes to trade the Shares on a UTP basis. Nasdaq is submitting this filing because its current listing standards do not extend to the Shares. However, systems operated by Nasdaq and its affiliates currently trade the Shares on an over-the-counter basis as facilities of NASD. This filing will allow Nasdaq to trade the Shares as an exchange.

The Shares represent beneficial ownership interests in the net assets of the Trust, consisting primarily of silver bullion. The investment objective of the Trust is for the Shares to reflect the performance of the price of silver, less the Trust's expenses. The Trust is not an investment company under the Investment Company Act of 1940.

The Commission previously approved the listing and trading of the Shares on

the American Stock Exchange LLC ("Amex").<sup>3</sup> Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities, including Nasdaq Rule 4630.<sup>4</sup> The primary trading hours for the Shares on Nasdaq would be 9:30 a.m. to 4 p.m. ET.

Issuances of Shares will be made only in baskets of 50,000 Shares or multiples thereof ("Baskets" or "Basket Aggregations"). The Trust issues and redeems the Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an "Authorized Participant").<sup>5</sup> Baskets are issued as an in-kind exchange for a corresponding amount of silver. The basket amount of silver, measured in ounces (the "Basket Silver Amount") is determined on each business day by Bank of New York, as trustee for the Trust ("Trustee").<sup>6</sup> Authorized Participants are the only persons that may place orders to create and redeem Baskets. An Authorized Participant purchasing a Basket is able to separate it into individual Shares for resale.

When calculating the net asset value ("NAV") per Share, the Trustee values the silver held by the Trust on the basis of the day's announced London silver fix price. The calculation methodology for the NAV is described in more detail in the Amex Order. After the NAV is determined, at or about 4 p.m. ET each business day, the Trustee then determines the Basket Silver Amount for orders placed by Authorized Participants received before 4 p.m. ET that day. The Trustee at the same time determines an "Indicative Basket Silver Amount" that Authorized Participants can use as an indicative amount of

<sup>3</sup> See Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR-AMEX-2005-072) ("Amex Order").

<sup>4</sup> On November 16, 2006, the Commission approved a filing by Nasdaq to adopt Rule 4630, which governs the trading of and surveillance procedures applicable to Commodity-Based Trust Shares. Securities Exchange Act Release No. 54765 (November 16, 2006), 71 FR 67668 (November 22, 2006) (SR-NASDAQ-2006-009). Because silver is included within the rule's definition of a commodity, Rule 4630 is applicable to the Shares.

<sup>5</sup> An "Authorized Participant" is a person, who at the time of submitting to the trustee of the Trust an order to create or redeem one or more Baskets: (a) Is a registered broker-dealer; (b) is a Depository Trust Company Participant or Indirect Participant; and (c) has in effect a valid Authorized Participant Agreement.

<sup>6</sup> On each business day, the Trustee makes available, immediately prior to the opening of trading on Amex, the Indicative Basket Silver Amount for the creation of a Basket. The sponsor of the Trust also makes the next day's Indicative Basket Silver Amount available on the Trust's Web site at <http://www.iShares.com> shortly after 4 p.m. ET each business day.

silver to be deposited for issuance of the Shares on the next business day. Thus, although Authorized Participants place orders to purchase Shares throughout the trading day, the actual Basket Silver Amount is determined at 4 p.m. ET or shortly thereafter.

After 4 p.m. ET each business day, the Trustee and the sponsor of the Trust disseminate the NAV for the Shares, the Basket Silver Amount (for orders properly placed by 4 p.m. ET during the day), and the next day's Indicative Basket Silver Amount. The Basket Silver Amount, the Indicative Basket Silver Amount, and the NAV are communicated by the Trustee to all Authorized Participants via facsimile or electronic mail and on the Trust's Web Site at <http://www.iShares.com> (to which Nasdaq will link from its Web site at <http://www.nasdaq.com>).

Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Tape System. The Web site for the Trust, which is publicly accessible at no charge, contains the following information: (a) The prior business day's NAV and the reported closing price; (b) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the "Bid-Ask Price"); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (e) the Basket Silver Amount; (f) the Indicative Basket Silver Amount; (g) the Prospectus; and (h) other applicable quantitative information, such as expense ratios, trading volumes, and the total returns of the Shares.

The Trust's Web site also provides at no charge continuously updated bids and offers indicative of the spot price of silver.<sup>7</sup> Complete real-time data for silver futures contracts and options prices traded on the COMEX, a division of the New York Mercantile Exchange, Inc. ("NYMEX"), is available by subscription from Reuters and Bloomberg and also on a delayed basis free of charge on the NYMEX Web site at <http://www.nymex.com>. The London silver fix price is readily available from the LBMA at <http://www.lbma.org.uk>, automated quotation systems, published or other public sources, or online

<sup>7</sup> The Trust's Web site's silver spot price is provided by The Bullion Desk (<http://thebulliondesk.com>), which is not affiliated with Amex, the Trust, the Trustee, or the sponsor of the Trust.

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

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

information services such as Bloomberg or Reuters.

According to the Amex Order, Amex also disseminates for the Trust on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Trust Value ("ITV") for the Trust. The ITV is disseminated on a per-Share basis at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET. The ITV is calculated based on the amount of silver required for creations and redemptions and a price of silver derived from updated bids and offers indicative of the spot price of silver.

Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the Shares will also be governed by provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of the Indicative Trust Value (which is comparable to the IIV or IOPV of an ETF) or the value of the spot price of silver. Additionally, Nasdaq may cease trading the Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq will stop trading the Shares if the listing market delists them.

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Shares on Nasdaq. Trading of the Shares through NASD facilities operated by Nasdaq is currently subject to NASD's surveillance procedures for equity securities in general and ETFs in particular. After Nasdaq begins to trade the Shares as an exchange, NASD, on behalf of Nasdaq, will continue to surveil Nasdaq trading, including Nasdaq trading of the Shares. Nasdaq's transition to exchange status will not result in any change in the surveillance process with respect to the Shares.<sup>8</sup> In addition, Nasdaq has entered into an information sharing agreement with NYMEX for the purpose of providing information in connection with trading

<sup>8</sup> Surveillance of all trading on NASD facilities operated by Nasdaq, including the trading of the Shares, is currently being conducted by NASD. After Nasdaq begins to trade the Shares as an exchange, NASD will continue to surveil trading pursuant to a regulatory services agreement. Nasdaq is responsible for NASD's performance under this regulatory services agreement.

in or related to COMEX silver futures contracts.

In connection with the trading of the Shares, Nasdaq will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (b) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the ITV is disseminated; (d) the requirement that members deliver a prospectus to investors purchasing the Shares prior to or concurrently with the confirmation of a transaction; and (e) trading information. Nasdaq notes that investors purchasing Shares directly from the Trust (by delivery of the Basket Silver Amount) will receive a prospectus. Members purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Registration Statement and that the number of ounces of silver required to create a Basket or to be delivered upon redemption of a Basket will gradually decrease over time because the Shares comprising a Basket will represent a decreasing amount of silver due to the sale of the Trust's silver to pay Trust expenses. The Information Circular will also reference the fact that there is no regulated source of last-sale information regarding physical silver, that the Commission has no jurisdiction over the trading of silver as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of silver futures contracts and options on silver futures contracts. The Information Circular will also discuss any relief granted by the Commission or the staff from any rules under the Act.

## 2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act<sup>9</sup> in general and Section 6(b)(5) of the Act<sup>10</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

addition, Nasdaq believes that the proposal is consistent with Rule 12f-5 under the Act<sup>11</sup> because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities.

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

Nasdaq 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

Written comments on the proposed rule change were neither solicited nor received.

## III. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-018 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-NASDAQ-2007-018. 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

<sup>11</sup> 17 CFR 240.12f-5.

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 Nasdaq. 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-NASDAQ-2007-018 and should be submitted on or before March 30, 2007.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,<sup>14</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>15</sup> The Commission notes that it previously approved the listing and trading of the Shares on Amex.<sup>16</sup> The Commission also finds that the proposal is consistent with Rule

12f-5 under the Act,<sup>17</sup> which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. Nasdaq has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities, including Nasdaq Rule 4630 which governs the trading of and surveillance procedures applicable to Commodity-based trust shares such as the Shares.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>18</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Tape System. Furthermore, an ITV for each Trust on a per-Share basis is disseminated by Amex through the CTA/CQ High Speed Lines at least every 15-seconds during Nasdaq's regular trading hours. In addition, the Trustee disseminates the Basket Silver Amount, the Indicative Basket Silver Amount, and the NAV to all Authorized Participants via facsimile or e-mail. This information—as well as additional trading data such as the prior business day's NAV and reported closing price, the Bid-Ask Price and updated bids and offers indicative of the spot price of silver—is also available on the Trust's Web site to which Nasdaq's Web site will link. Furthermore, complete real-time data for silver future contracts and option prices traded on COMEX is available by subscription from Bloomberg and Reuters and also on a delayed basis free of charge on NYMEX's Web site. The London silver fix price is readily available from the LBMA Web site, automated quotation systems, published or other public sources, or on-line information services. If the listing market halts trading in the Shares, or if the ITV or the value of the spot price of silver is not being calculated or disseminated, Nasdaq would halt trading in the Shares.

The Commission notes that, if the Shares should be delisted by the listing exchange, Nasdaq would no longer have

authority to trade the Shares pursuant to this order.

In support of this proposal, Nasdaq has made the following representations:

(1) Nasdaq's surveillance procedures are adequate to address any concerns associated with the trading of the Shares on Nasdaq.

(2) Nasdaq has entered into an Information Sharing Agreement with NYMEX for the purpose of providing information in connection with trading in or related to COMEX silver futures contracts.

(3) Nasdaq would inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares, including procedures for purchases and redemptions of Shares, suitability recommendation requirements, dissemination of the ITV, and trading information.

(4) Nasdaq would require its members to deliver a prospectus to investors purchasing Shares prior to or concurrently with a transaction in such Shares and will note this prospectus delivery requirement in the Information Circular.

This approval order is conditioned on Nasdaq's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted above, the Commission previously found that the listing and trading of the Shares on Amex is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on Nasdaq pursuant to UTP. Furthermore, accelerated approval of this proposal will facilitate Nasdaq's ability to continue trading these securities as Nasdaq becomes an exchange with respect to non-Nasdaq-listed securities, where there appears to be no regulatory concerns about such trading. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such Shares.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>19</sup> that the proposed rule change (SR-NASDAQ-2007-018), be, and it hereby is, approved on an accelerated basis.

<sup>12</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78f(f).

<sup>15</sup> Section 12(a) of the Act, 15 U.S.C. 78f(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

<sup>16</sup> See *supra* note 3.

<sup>17</sup> 17 CFR 240.12f-5.

<sup>18</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>19</sup> *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-4192 Filed 3-8-07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55386; File No. SR-NASDAQ-2007-016]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Trading of 16 Commodity-Related Securities Pursuant to Unlisted Trading Privileges on a Pilot Basis

March 2, 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 March 1, 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 proposal on an accelerated basis.

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

Nasdaq proposes to amend Rule 4630 to govern trading in any Commodity-Related Security (as defined below) and to make conforming amendments to Rule 4120. Pursuant to the amended rule and in accordance with the terms and conditions specified in this filing, Nasdaq also proposes to trade, pursuant to unlisted trading privileges, the 16 Commodity-Related Securities described below.

The text of the proposed rule change is available from Nasdaq’s Web site at <http://nasdaq.complinet.com>, at Nasdaq’s principal office, and at the Commission’s Public Reference Room.

#### 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

Nasdaq is proposing to trade the following securities pursuant to UTP for a pilot period of three months beginning on March 5, 2007: (1) Shares of the PowerShares DB Commodity Index Tracking Fund, (2) shares of the PowerShares DB G10 Currency Harvest Fund, (3) shares of the PowerShares DB Agricultural Fund, (4) shares of the PowerShares DB Oil Fund, (5) shares of the PowerShares DB Base Metals Fund, (6) shares of the PowerShares DB Energy Fund, (7) shares of the PowerShares DB Silver Fund, (8) shares of the PowerShares DB Gold Fund, (9) shares of the PowerShares DB Precious Metals Fund, (10) iPath Dow Jones-AIG Commodity Index Total Return Exchange-Traded Notes, (11) iPath GSCI Total Return Index Exchange-Traded Notes, (12) iPath Goldman Sachs Crude Oil Total Return Index Exchange-Traded Notes, (13) shares of the iShares GSCI Commodity-Indexed Trust, (14) units of the United States Oil Fund, LP, (15) Claymore MACROShares Oil Up Tradeable Shares, and (16) Claymore MACROShares Oil Down Tradeable Shares (collectively, the “Covered Securities”). The Commission previously approved the original listing and trading of each of the Covered Securities by the New York Stock Exchange (“NYSE”) or the American Stock Exchange (“Amex”).<sup>3</sup> Since the

time of their listing on NYSE or Amex, the Covered Securities have traded on an over-the-counter (“OTC”) basis on systems operated as facilities of NASD by Nasdaq and its affiliates. Specifically, the products are currently traded on the ITS/CAES System, which Nasdaq operates for NASD pursuant to a Transitional System and Regulatory Services Agreement (the “Transitional Agreement”).

Under Rule 602 of Regulation NMS (the “Quote Rule”),<sup>4</sup> NASD is required to collect the best bid, best offer, and quotation sizes communicated otherwise than on an exchange by each NASD member acting in the capacity of an “OTC market maker” for any “NMS stock,”<sup>5</sup> unless the executed volume of such member, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security (the “1% Rule”).<sup>6</sup>

Nasdaq has operated ITS/CAES under the Transitional Agreement in order to allow NASD to fulfill its Quote Rule obligation to provide a quotation facility for non-Nasdaq exchange-listed securities (“CQS Securities”). On March 5, 2007, NASD expects to begin to fulfill its obligation to provide a quotation facility for CQS Securities without Nasdaq’s assistance through its Alternative Display Facility (the “ADF”).<sup>7</sup> Also at that time, Nasdaq expects to stop operating the ITS/CAES System.

On July 28, 2006, the Commission granted NASD a limited exemption<sup>8</sup>

Goldman Sachs Crude Oil Total Return Index Exchange-Traded Notes); Securities Exchange Act Release No. 54013 (June 16, 2006), 71 FR 36372 (June 26, 2006) (SR-NYSE-2006-17) (iShares GSCI Commodity-Indexed Trust); Securities Exchange Act Release No. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR-Amex-2005-127) (United States Oil Fund, LP); Securities Exchange Act Release No. 54839 (November 29, 2006), 71 FR 70804 (December 6, 2006) (SR-Amex-2006-82) (MACROShares Oil Up and Oil Down Tradeable Shares).

<sup>4</sup> 17 CFR 242.602.

<sup>5</sup> “OTC market maker” means any dealer that holds itself out as being willing to buy from and sell to its customers, or others, in the United States, an NMS stock for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than block size. See 17 CFR 242.600(b)(52). “NMS stock” means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. See 17 CFR 242.600(b)(47).

<sup>6</sup> OTC market makers that are not subject to the 1% Rule may nevertheless elect to communicate quotations in exchange-listed securities to NASD, in which case NASD must disseminate such quotations.

<sup>7</sup> NASD already uses the ADF to fulfill its obligations under the Quote Rule with respect to Nasdaq-listed securities.

<sup>8</sup> See Letter from Robert L.D. Colby, Acting Director, Division of Market Regulation,

<sup>3</sup> Securities Exchange Act Release No. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR-Amex-2005-059) (PowerShares DB Commodity Index Tracking Fund); Securities Exchange Act Release No. 54351 (August 23, 2006), 71 FR 51245 (August 29, 2006) (SR-Amex-2006-44) (PowerShares DB G10 Currency Harvest Fund); Securities Exchange Act Release No. 55029 (December 29, 2006), 72 FR 806 (January 8, 2007) (SR-Amex-2006-76) (seven PowerShares DB commodity funds); Securities Exchange Act Release No. 53876 (May 25, 2006), 71 FR 32158 (June 2, 2006) (SR-NYSE-2006-16) (iPath Dow-Jones AIG Commodity Index Total Return Exchange-Traded Notes); Securities Exchange Act Release No. 53849 (May 22, 2006), 71 FR 30706 (May 30, 2006) (SR-NYSE-2006-20) (iPath GSCI Total Return Index Exchange-Traded Notes); Securities Exchange Act Release No. 54177 (July 19, 2006), 71 FR 42700 (July 27, 2006) (SR-NYSE-2006-19) (iPath

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

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