

adjusted rate; (4) provide the range maximum rate used to compute retained rate adjustments is the normal range maximum rate (including any locality adjustment or special rate supplement); and (5) provide when a frozen retained rate for an employee with a rating of record below Successful falls below the applicable adjusted rate for the normal grade maximum, the retained rate will be terminated and the employee's pay will be set at an adjusted rate equal to the retained rate).

Chapter 75, section 7512(4): Adverse actions (only to the extent necessary to provide that adverse actions do not apply to reductions in rates of basic pay to offset a locality pay or special rate supplement increase as a result of receiving a rating of record below Successful).

**Note:** If any of the provisions of title 5, United States Code, listed above are amended during the period this demonstration project is in effect, U.S. Department of Education/Federal Student Aid may choose to terminate the waiver of one or more such provisions with respect to employees participating in the project, without formally modifying the project itself. U.S. Department of Education/Federal Student Aid must notify OPM when any such waiver is terminated.

#### *B. Title 5, Code of Federal Regulations*

Part 359, subpart G, section 359.705: saved pay for former members of the Senior Executive Service (only to the extent necessary to (1) bar employees with a rating of record below Successful from receiving a saved rate increase under 5 CFR 359.705(d)(1); and (2) apply rules parallel to those governing adjustment and termination of retained rates under 5 U.S.C. part 536, as modified under this plan).

Part 430, subpart B, section 430.203: Definitions (only to the extent necessary to allow an additional rating of record to support a pay decision under sections III.C.3 or 4 of this project plan).

Part 530, section 530.304: Establishing or increasing special rates (only to the extent necessary to (1) provide that if the U.S. Department of Education/Federal Student Aid extends the maximum rate of a rate range by 5 percent above the normal maximum for Outstanding performers, a special rate may not exceed the rate for EX-IV, plus 5 percent) for employees in that range extension; (2) to interpret the references to the minimum and maximum rates of a grade as references to the normal minimum and maximum rates of a grade under this plan; and (3) apply an "effective" special rate supplement percentage for employees in the upper range extension under circumstances described in this plan.

Part 531, subpart B: Determining Rate of Basic Pay.

Part 531, subpart D: Within-Grade Increases.

Part 531, subpart E: Quality Step Increases.

Part 531, section 531.604: Determining an employee's locality rate (only to the extent necessary to apply an "effective" locality pay percentage for employees in the upper range extension under circumstances described in this plan).

Part 531, section 531.606: Maximum limits on locality rates (only to the extent necessary to provide that if the U.S. Department of Education/Federal Student Aid extends the maximum rate of a rate range by 5 percent above the normal maximum for Outstanding performers, a locality rate may not exceed the rate for EX-IV, plus 5 percent) for employees in that range extension.

Part 536, subpart C: Pay Retention (only to the extent necessary to (1) bar employees with a less than Successful rating of record from receiving retained rate increases under 5 CFR 536.305; (2) provide that if the U.S. Department of Education/Federal Student Aid extends the maximum rate of a rate range by 5 percent above the normal maximum for Outstanding performers, a retained rate may not exceed the rate for EX-IV, plus 5 percent; (3) provide the pay (including any locality adjustment or special rate supplement) of an employee in the upper range extension who is rated below Outstanding will be converted to a retained rate before processing any other actions; (4) provide a retained rate that is less than the maximum rate (including any locality adjustment or special rate supplement) of the upper range extension for an employee who receives a rating of record of Outstanding will be terminated and converted to an equal adjusted rate; (5) provide the range maximum rate used to compute retained rate adjustments is the normal range maximum rate (including any applicable locality adjustment or special rate supplement); and (6) provide when a frozen retained rate for an employee with a rating of record below Successful falls below the applicable adjusted rate for the normal grade maximum, the retained rate will be terminated and the employee's pay will be set at an adjusted rate equal to the retained rate).

Part 752, section 752.401(a)(4): Adverse actions (only to the extent necessary to provide that adverse action provisions do not apply to reductions in rates of basic pay to offset a locality pay or special rate supplement increase as a

result of receiving a rating of record below Successful).

**Note:** If any of the provisions of title 5, Code of Federal Regulations, listed above are revised during the period this demonstration project is in effect, U.S. Department of Education/Federal Student Aid may choose to terminate the waiver of one or more such provisions with respect to employees participating in the project, without formally modifying the project itself. U.S. Department of Education/Federal Student Aid must notify OPM when any such waiver is terminated.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56929; File No. SR-NASDAQ-2007-086]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Step-Outs and Transfers of Sales Fees

December 7, 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 October 31, 2007, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by Nasdaq. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to: (i) Offer, for a fee, a match/compare service for Nasdaq members to process step-outs between themselves and (ii) allow the transfer of Rule 7002 Sales Fees and similar fees of other self-regulatory organizations ("SROs") without an agreement between the transferring Nasdaq members when such transfers are accompanied by a transfer of the underlying shares.

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

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

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

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

## 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 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. 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

Nasdaq Rule 7038 enables Nasdaq members to utilize Nasdaq's Automated Confirmation Transaction Service ("ACT") to transfer all or a portion of the member's obligation to pay a NASD Rule 7002 sale fee or similar fee of another SRO ("sales fees").<sup>5</sup> In addition, Nasdaq members may also use ACT to process step-outs.<sup>6</sup>

Under the rule change, Nasdaq will modify Nasdaq Rule 7038(c) to specify that when members use ACT to transfer sales fees but do not also transfer the underlying shares, the clearing firms for the trades in question must be party to an agreement authorizing such transfers between themselves or the firms on whose behalf they clear trades.<sup>7</sup>

Nasdaq is also adding new paragraph (f) to Nasdaq Rule 7038 that will enable Nasdaq members to use ACT's "match/compare" functionality to process step-outs without an agreement between the transferring Nasdaq members when such transfers are accompanied by a

transfer of the underlying shares. Nasdaq will assess a fee for this service whereby each party to a matched/compared transfer will be assessed \$0.0144 per 100 shares with a minimum of 400 shares up to maximum of 7,500 shares except in cases where the same participant is on both sides of a transfer in which case the applicable per side fee will be assessed once rather than twice.

Nasdaq states that it believes that the proposed rule change is consistent with the provisions of Section 6 of the Act<sup>8</sup> and specifically with Sections 6(b)(4) and (5) of the Act<sup>9</sup> because the proposal provides 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 is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Nasdaq believes that offering match/compare functionality in connection with step-outs and reducing paperwork requirements for Sales Fee transfers benefits its members by enhancing the efficiency of their post-trade operations and that its proposed fees are reasonable and comparable to similar Financial Industry Regulatory Authority ("FINRA") fees for comparison services.<sup>10</sup>

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

Nasdaq does not believe that the proposed rule change will result in 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

Nasdaq did not solicit or receive written comments on the proposed rule change.

## 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)

of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder<sup>12</sup> because it does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

Nasdaq has requested that the Commission waive the 30-day operative delay pursuant to the Commission's authority under Rule 19b-4(f)(6)(iii)<sup>13</sup> to designate a shorter time when such action is consistent with the protection of investors and the public interest. The Commission hereby grants the request.<sup>14</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest in light of a FINRA rule, which became effective two business days after Nasdaq filed its proposed rule change that requires all shares that underlie a step-out transaction have been previously trade-reported to FINRA-only facilities.<sup>15</sup> In order to ensure that firms can use the same method to conduct step-out trades, it is appropriate for Nasdaq to be able to implement its match/compare functionality on an accelerated basis so that it can be in place for firms that wish to do step-outs through the match and compare functionality for shares that were not exclusively reported over-the-counter before the FINRA restriction became effective. Moreover, the Commission notes that the match/compare functionality has long existed at Nasdaq and that the modifications made by this rule change do not raise any novel legal or policy concerns. Accordingly, the Commission designates the proposed rule change to be operative upon filing with the Commission.

Rule 19b-4(f)(6)(iii) requires Nasdaq to notify the Commission of its intent to file the proposed rule change, along with a brief description and text of 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. Nasdaq has requested that the Commission designate a shorter

<sup>5</sup> Nasdaq Rule 7038(a). Rule 7002 fees are designed to defray the costs that Nasdaq pays to the Commission under Section 31(b) of the Act. 15 U.S.C. 78ee(b).

<sup>6</sup> Nasdaq Rule 7038(b). A "step-out" is a mechanism for transferring a broker's position in a security in a manner that does not constitute a trade. In one form of a step-out, a party to a previously executed trade transfers its position in the trade to one or more other parties. For example, a broker that buys a large block of stock on behalf of several broker-dealer customers may "step-out" of the trade in order to transfer and allocate its position to its broker-dealer customers. Thus, under this form of a step-out, there is a single trade on a securities market coupled with an arrangement between one of the trade counterparties and one or more additional parties to shift the settlement obligations for the trade to the additional parties. In another form of step-out, a broker uses a clearing-only report to transfer its position from at one clearing broker's account to another clearing broker's account.

<sup>7</sup> Examples of such an agreement include a Nasdaq "Attachment 2" or the Financial Industry Regulatory Authority's ("FINRA") new Uniform Trade Reporting Facility Service Bureau/Executing Broker Agreement.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> See NASD Rule 7002B.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 C.F.R. 240.19b-4(f)(6).

<sup>13</sup> 17 C.F.R. 240.19b-4(f)(6)(iii).

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> Securities Exchange Act Release No. 55962 (Jun. 26, 2007), 72 FR 36536 (Jul. 3, 2007) [SR-NASD-2007-040]. See also FINRA Regulatory Notice 07-38 (Aug. 2007), available online at [http://www.finra.org/web/groups/rules\\_regs/documents/notice\\_to\\_members/p036643.pdf](http://www.finra.org/web/groups/rules_regs/documents/notice_to_members/p036643.pdf).

notification time. The Commission hereby waives the five-day notice period. As explained above, it was necessary for Nasdaq to file its proposed rule change expeditiously so as to avoid any disruption in service to its members.

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:

##### *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-NASDAQ-2007-086 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File No. NASDAQ-2007-086. 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, 450 Fifth Street, NW., Washington DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and

copying at Nasdaq's principal office and on Nasdaq's Web site at [http://nasdaq.complinet.com/nasdaq/display/display.html?rbid=1705&element\\_id=4](http://nasdaq.complinet.com/nasdaq/display/display.html?rbid=1705&element_id=4). 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-NASDAQ-2007-086 and should be submitted on or before January 4, 2008.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-24201 Filed 12-12-07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56932; File No. SR-NYSEArca-2007-112]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to List and Trade Shares of the iShares S&P GSCI Commodity-Indexed Trust

December 7, 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 December 7, 2007, NYSE Arca, Inc. ("NYSE Arca" 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

NYSE Arca, through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), proposes to list and trade under NYSE Arca Equities Rule 8.203 shares ("Shares") of the iShares® S&P GSCI™ Commodity-Indexed Trust ("Trust").<sup>3</sup> The Trust

issues units of beneficial interest (*i.e.*, the Shares) representing fractional undivided beneficial interests in the net assets of the Trust. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange'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

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.203. The objective of the Trust is for the performance of the Shares to correspond generally to the performance of the S&P GSCI™ Total Return Index, before payment of the Trust's and the Investing Pool's (as described below) expenses and liabilities (the "Total Return Index"). The Trust is currently listed on the New York Stock Exchange LLC ("NYSE") and trades on NYSE Arca pursuant to unlisted trading privileges. Following Commission approval of this proposed rule change, the Trust will transfer listing from NYSE to NYSE Arca,<sup>4</sup> and will not trade on NYSE. The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.203 and thereby qualify for listing on the Exchange.

The commodity component of the Total Return Index is comprised of a group of commodities included in the S&P GSCI™ Commodity Index ("S&P GSCI™" or "Index"), which is a production-weighted index of the prices

<sup>4</sup> See Securities Exchange Act Release No. 54013 (June 16, 2006), 71 FR 36372 (June 26, 2006) (SR-NYSE-2006-17) ("NYSE Order") (approving listing and trading of the Shares on NYSE); Securities Exchange Act Release No. 54025 (June 21, 2006), 71 FR 36856 (June 28, 2006) (SR-NYSEArca-2006-12) (approving, among other things, the trading of the Shares on NYSE Arca pursuant to unlisted trading privileges).

<sup>16</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> iShares® is a registered trademark of Barclays Global Investors, N.A. "S&P GSCI" is a trademark of Standard & Poor's ("S&P" or "Index Sponsor"), a division of The McGraw-Hill Companies, Inc.