

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55385; File No. SR-NASDAQ-2007-018)

March 2, 2007

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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").³ 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 4630.⁴ The primary trading hours for the Shares on Nasdaq would be 9:30 a.m. to 4:00 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

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

⁴ 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.

on a continuous basis, by or through participants that have entered into participant agreements (each, an “Authorized Participant”).⁵ 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”).⁶ 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 4:00 p.m. ET each business day, the Trustee then determines the Basket Silver Amount for orders placed by Authorized Participants received before 4:00 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 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

⁵ 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.

⁶ 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 4:00 p.m. ET each business day.

trading day, the actual Basket Silver Amount is determined at 4:00 p.m. ET or shortly thereafter.

After 4:00 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 4:00 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 www.iShares.com (to which Nasdaq will link from its Web site at 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.⁷ 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 www.nymex.com. The London silver fix price is readily available from the LBMA at www.lbma.org.uk, automated quotation systems, published or other public sources, or online 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

⁷ 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.

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.⁸ In addition, 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.

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

⁸ 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.

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 Act⁹ in general and Section 6(b)(5) of the Act¹⁰ 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 addition, Nasdaq

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

believes that the proposal is consistent with Rule 12f-5 under the Act¹¹ because it deems the Shares to be an 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. Please include File Number SR-NASDAQ-2007-018 on the subject line.

¹¹ 17 CFR 240.12f-5.

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 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 [insert date 21 days from publication in the Federal Register].

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.¹² In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹³ 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,¹⁴ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.¹⁵ The Commission notes that it previously approved the listing and trading of the Shares on Amex.¹⁶ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,¹⁷ 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

¹² 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).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78l(f).

¹⁵ Section 12(a) of the Act, 15 U.S.C. 78l(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.

¹⁶ See supra note 3.

¹⁷ 17 CFR 240.12f-5.

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,¹⁸ 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

¹⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

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,¹⁹ that the proposed rule change (SR-NASDAQ-2007-018), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Florence E. Harmon
Deputy Secretary

¹⁹ Id.

²⁰ 17 CFR 200.30-3(a)(12).