

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55380; File No. SR-NASDAQ-2007-014)

March 1, 2007

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 the iShares COMEX Gold 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 February 28, 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 Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving 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 is proposing to trade shares (“Shares”) of the iShares COMEX Gold Trust (“Trust”) pursuant to unlisted trading privileges (“UTP”). The text of the proposed rule change is available from Nasdaq’s Web site at 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 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 units of fractional undivided beneficial interest in and ownership of the Trust. The purpose of the Trust is to hold gold bullion, and the investment objective of the Trust is for the Shares to reflect the performance of the price of gold, 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 trading hours for the Shares on Nasdaq would be 9:30 a.m. to 4:00 p.m. Eastern Time (“ET”).

³ See Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR-Amex-2004-38).

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

Shares are issued only in baskets of 50,000 shares or multiples thereof (such aggregation referred to as the “Basket Aggregation” or “Basket”). 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”)⁵ at the net asset value (“NAV”)⁶ per Share next determined after an order to purchase or redeem Shares in a Basket Aggregation is received in proper form. Authorized Participants are the only persons that may place orders to create and redeem Baskets. Authorized Participants purchasing Baskets are able to separate a Basket into individual Shares for resale.

Basket Aggregations are issued in exchange for a corresponding amount of gold, measured in fine ounces (the “Basket Gold Amount”). The Basket Gold Amount is determined at or about 4:00 p.m. ET each business day by the Trustee.⁷ On each day that Amex is open for regular trading, the Trustee adjusts the quantity of gold constituting the Basket Gold Amount as appropriate to reflect sales of gold, any loss of gold that may occur, and accrued expenses. The Trustee determines the Basket Gold Amount for a given business day by multiplying the NAV

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

⁶ The Bank of New York, as trustee of the Trust (the “Trustee”) calculates the NAV by multiplying the fine ounces of gold held by the Trust (after gold has been sold for that day to pay that day’s fees and expenses of the Trust) by the daily settlement value of the COMEX spot month gold futures contract.

⁷ At the same time, the Trustee determines an “Indicative Basket Gold Amount” that Authorized Participants can use as an indicative amount of gold to be deposited for issuance of the Shares on the next business day. The Trustee disseminates daily the Indicative Basket Gold Amount on the Trust’s Web site (www.ishares.com). Because the creation/redemption process is based entirely on the physical delivery of gold (and does not contemplate a cash component), the actual number of fine ounces required for the Indicative Basket Gold Amount does not change intraday, even though the value may change based on the market price of gold.

for each Share by the number of Shares in each Basket (50,000) and dividing the resulting product by that day's COMEX settlement price for the spot month gold futures contract.

Authorized Participants that submitted an order prior to 4:00 p.m. ET to purchase a Basket must transfer the Basket Gold Amount to the Trust in exchange for a Basket.

Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Tape System. The Web site for the Trust at <http://www.ishares.com>, which is publicly accessible at no charge, contains the following information about the Shares: (a) the prior business day's NAV, Basket Gold Amount, the reported closing price, and the present day's Indicative Basket Gold Amount; (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 Prospectus; and (f) other applicable quantitative information, such as expense ratios, trading volumes, and the total return of the Shares. Nasdaq will provide a hyperlink from its Web site (www.nasdaq.com) to the Trust's Web site.

Nasdaq will also provide a hyperlink on its Web site to the Amex Web site at <http://www.amex.com>, on which Amex will make available daily trading volume, closing prices, and the NAV from the previous day for the Shares. Amex also disseminates during regular Amex trading hours from 9:30 a.m. to 4:15 p.m. ET through the facilities of the Consolidated Tape Association ("CTA") the last sale price for the Shares on a real-time basis. In addition, Amex disseminates each day the prior day's NAV and shares outstanding through the facilities of the CTA. Amex also disseminates the Indicative Trust Value on a per-Share basis every 15

seconds through the facilities of the CTA during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. ET.⁸ Shortly after 4:00 p.m. ET each business day, the Trustee, Amex, and the sponsor of the Trust will disseminate the NAV for the Shares, the Basket Gold Amount (for orders placed during the day), and the Indicative Basket Gold Amount (for use by Authorized Participants contemplating placing orders the following business day). The Basket Gold Amount, the Indicative Basket Gold Amount, and the NAV are communicated by the Trustee to all Authorized Participants via facsimile or electronic mail and will be available on the Trust's Web site at <http://www.ishares.com>.

The Trust's Web site also provides at no charge continuously updated bids and offers indicative of the spot price of gold.⁹ Complete real-time data for gold futures and options prices traded on the COMEX is available by subscription from Reuters and Bloomberg. The closing price and settlement prices of the COMEX gold futures contracts are publicly available from the NYMEX at <http://www.nymex.com>, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. NYMEX also provides

⁸ The Indicative Trust Value is calculated based on the estimated amount of gold required for creations and redemptions on that day (e.g., Indicative Basket Gold Amount) and a price of gold derived from the most recently reported trade price in the active gold futures contract. The prices reported for the active contract month will be adjusted based on the prior day's spread differential between settlement values for that contract and the spot month contract. In the event that the spot month contract is also the active contract, the last sale price for the active contract will not be adjusted. The Indicative Trust Value will not reflect changes to the price of gold between the close of trading at the COMEX, typically 1:30 p.m. ET, and the open of trading on the NYMEX ACCESS market at 2:00 p.m. ET. While the market for the gold futures is open for trading, the Indicative Trust Value can be expected to closely approximate the value per share of the Indicative Basket Gold Amount. The Indicative Trust Value on a per-Share basis disseminated during Amex trading hours should not be viewed as a real-time update of the NAV, which is calculated only once a day.

⁹ The Trust's Web site's gold 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.

delayed futures and options information on current and past trading sessions and market news free of charge on its Web site.

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 intraday indicative value or the intraday optimized portfolio value of an ETF) or the value of the underlying COMEX gold futures contract. 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, the 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.¹⁰

¹⁰ 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.

Nasdaq is able to obtain information regarding trading in the Shares and the underlying COMEX gold futures contract through its members in connection with the proprietary or customer trades that such members effect on any relevant market. 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 gold futures contracts.

Nasdaq will distribute an Information Circular to its members in connection with the trading of the Shares. The Information Circular will discuss the special characteristics and risks of trading this type of security. Specifically, the Information Circular, among other things, will discuss what the Shares are, how a basket is created and redeemed, the requirement that members deliver a prospectus to investors purchasing the Shares prior to or concurrently with the confirmation of a transaction, applicable Nasdaq rules, dissemination information regarding the per-share Indicative Trust Value, and trading information. The Information Circular will also explain that the Gold Trust is subject to various fees and expenses described in the Registration Statement and that the number of ounces of gold 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 gold due to the sale of the Trust's gold to pay Trust expenses. The Information Circular will also reference the fact that there is no regulated source of last-sale information regarding physical gold and that the Commission has no jurisdiction over the trading of gold as a physical commodity.

The Information Circular will also notify members about the procedures for purchases and redemptions of Shares in baskets and that Shares are not individually redeemable but are redeemable only in basket-size aggregations or multiples thereof. The Information Circular will advise members of their suitability obligations under Nasdaq Rule 2310 with respect to

recommended transactions to customers in Shares. The Information Circular will also discuss any relief granted by the Commission or the staff from any rules under the Act. Finally, the Information Circular will disclose that the NAV for Shares will be disseminated shortly after 4:00 p.m. ET each trading day based on the COMEX daily settlement value, which is disseminated shortly after 1:30 p.m. ET each trading day.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act¹¹ in general and Section 6(b)(5) of the Act¹² in particular, in that 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 believes that the proposal is consistent with Rule 12f-5 under the Act¹³ 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.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 17 CFR 240.12f-5.

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-2007-014 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-2007-014. 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 offices 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-2007-014 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 the Proposed Rule Change

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

¹⁴ 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).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78l(f).

¹⁷ 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.

and trading of the Shares on Amex and NYSE Arca, Inc.¹⁸ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,¹⁹ 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. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,²⁰ 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 is disseminated through the Consolidated Tape System. The Commission notes that there is a considerable amount of gold price and gold market information available 24 hours per day on public Web sites and through professional and subscription services, and the Exchange will link to the Amex and Trust Web sites, which provide trading information about the Shares. Furthermore, Amex disseminates the Indicative Trust Value on a per-Share basis every 15 seconds through the facilities of the CTA during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. ET (except between 1:30 p.m. and 2:00 p.m., the time from the close of regular trading of the COMEX gold futures contract and the start of trading of COMEX gold futures contracts on

¹⁸ See supra note 3 and Securities Exchange Act Release No. 51067 (January 21, 2005), 70 FR 3952 (January 27, 2005) (SR-PCX-2004-132).

¹⁹ 17 CFR 240.12f-5.

²⁰ 15 U.S.C. 78k-1(a)(1)(C)(iii).

NYMEX ACCESS). The Commission also notes that the Trust's Web site is publicly accessible at no charge and will contain the NAV of the Shares and the Basket Gold Amount as of the prior business day, the Bid-Ask Price, and a calculation of the premium or discount of the Bid-Ask Price in relation to the closing NAV. Additionally, the Trust's Web site will also provide 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; the Prospectus; and other applicable quantitative information. If Amex halts trading in the Shares, or the Indicative Trust Value or the value of the underlying COMEX gold futures contract is not being calculated or disseminated, the Exchange would halt trading in the Shares.

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

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

- (1) The Exchange's surveillance procedures are adequate to address any concerns associated with the trading of the Shares on a UTP basis.
- (2) The Exchange would inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares, including suitability recommendation requirements.
- (3) The Exchange would require its members to deliver a prospectus or product description 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 the Exchange'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 and NYSE Arca is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or would preclude the trading of the Shares on the Exchange 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 Act,²¹ that the proposed rule change (SR-NASDAQ-2007-014), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Florence E. Harmon
Deputy Secretary

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).