

19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to become operative immediately. The Commission hereby grants that request.<sup>12</sup> The Commission believes that the Exchange's proposal raises no regulatory issues, as the Exchange represents that proposed rule change will result in a retroactive reduction in fees for all executions in non-Nasdaq securities priced under \$1 from March 5, 2007 to March 21, 2007. Furthermore, this rule change will allow the Exchange to immediately comply with the requirements of Rule 610(c)(2) of Regulation NMS, which limits the fee on an execution of an order against a protected quotation, if the price of the protected quotation is less than \$1, to 0.3% of the quotation's price per share.<sup>13</sup> Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.

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 Number SR-NASDAQ-2007-038 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 Number SR-NASDAQ-2007-038. 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-2007-038 and should be submitted on or before May 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55585; File No. SR-NYSE-2006-75]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval to Proposed Rule Change as Modified by Amendment No. 1 Thereto To List and Trade Four iShares® GS Commodity Indexed Trusts

April 5, 2007.

#### I. Introduction

On September 22, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") 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 list and trade under NYSE Rules 1300B, *et seq.* four iShares® GS Commodity Indexed Trusts. The Exchange filed Amendment No. 1 to the proposed rule change on November 22, 2006.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on December 29, 2006 for a 15-day comment period.<sup>4</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule as modified by Amendment No. 1.

#### II. Description

The Exchange proposes to list and trade under NYSE Rules 1300B *et seq.* ("Commodity Trust Shares") shares of the following ("Shares"): iShares GS Commodity Light Energy Indexed Trust; iShares GS Commodity Industrial Metals Indexed Trust; iShares GS Commodity Livestock Indexed Trust; and iShares GS Commodity Non Energy Indexed Trust (collectively, the "Trusts"). Each Trust is a Delaware statutory trust that will issue units of beneficial interest called Shares, representing fractional undivided beneficial interests in its net assets. Substantially all of the assets of each Trust consist of holdings of the limited liability company interests of a specified commodity pool ("Investing Pool Interests"), which are the only securities in which the Trust may invest. The Trusts and the Investing Pools are each commodity pools managed by a commodity pool operator registered as

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6). As required by Rule 19b-4(f)(6)(iii) under the Act, the Exchange also provided with the Commission with written notice 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 the proposed rule change.

<sup>12</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. See 15 U.S.C. 78c(f).

<sup>13</sup> 17 CFR 242.610(c)(2).

<sup>14</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> Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 54992 (December 21, 2006), 71 FR 78482 ("Notice").

such with the Commodity Futures Trading Commission ("CFTC"). According to the Registration Statements,<sup>5</sup> neither the Trusts nor the Investing Pools are investment companies registered under the Investment Company Act of 1940.

In its proposal, the Exchange provided detailed description regarding the structure of the Trusts and the listing and trading of the Shares. In particular, the Exchange addressed (i) The designation and calculation of each underlying index that each Trust tracks, (ii) the calculation and dissemination of net asset value ("NAV"), (iii) the application of continued listing criteria, (iv) the creation and redemption process, (v) dissemination of pricing and other information pertaining to the Shares, including the indicative value, Share price, and underlying index values, (vi) listing fees, (vii) applicable Exchange trading rules, (viii) events triggering trading halts and/or delisting, (ix) the distribution of an information memo regarding the Shares to Exchange members, and (x) surveillance procedures. Key features of the proposal are noted below.

#### *Product Description*

Each Trust, through its respective Investing Pool, will be a passive investor in CERFs, which are cash-settled futures contracts listed on the Chicago Mercantile Exchange ("CME") that have a term of approximately five years after listing and whose settlement at expiration is based on the value of the respective Index at that time, and the cash or Short-Term Securities<sup>6</sup> posted as margin to collateralize the Investing Pool's CERF positions. The Investing Pools will hold long positions in CERFs and will also earn interest on the assets used to collateralize its holdings of CERFs.

Neither such Trust nor the respective Investing Pool will engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the value of CERFs or securities posted as margin. Each Investing Pool, and some other types of market participants, will be required to deposit margin with a value equal to 100% of the value of each CERF position at the time it is established. Those market participants not subject to the 100% margin requirement are required to deposit margin generally with a value of 3% to 5% of the

established position. Interest paid on the collateral deposited as margin, net of expenses, will be reinvested by the Investing Pool or, at the Trustee's discretion, may be distributed from time to time to the Shareholders. The Investing Pool's profit or loss on its CERF positions should correlate with increases and decreases in the value of the applicable Index, although this correlation will not be exact. The interest on the collateral deposited by the Investing Pool as margin, together with the returns corresponding to the performance of the applicable Index, is expected to result in a total return for the Investing Pool that corresponds generally, but is not identical, to the applicable Index.

#### *Underlying Indexes*

The objective of each Trust is for the performance of the Shares to correspond generally to the performance of the following indexes, respectively, before payment of the Trust's and the Investing Pool's expenses and liabilities: Goldman Sachs Industrial Metals Total Return Index; Goldman Sachs Light Energy Total Return Index; Goldman Sachs Livestock Total Return Index, and Goldman Sachs Non Energy Total Return Index (the "Total Return Indexes").<sup>7</sup>

Each of the Total Return Indexes is comprised of a group of commodities included in the Goldman Sachs Commodity Index ("GSCI"),<sup>8</sup> which is a production-weighted index of the prices of a diversified group of futures contracts on physical commodities. Each Total Return Index reflects the return of the corresponding Goldman Sachs Excess Return Index together with the return on specified U.S. Treasury securities that are deemed to have been held to collateralize a hypothetical long position in the futures contracts comprising the corresponding index.

The Index Sponsor has established a Policy Committee to assist it with the operation of the GSCI. The principal purpose of the Policy Committee is to advise the Index Sponsor with respect to, among other things, the calculation of the GSCI, the effectiveness of the GSCI as a measure of commodity futures market performance and the need for changes in the composition or the methodology of the GSCI. All decisions

with respect to the composition, calculation and operation of the GSCI are made by the Index Sponsor.<sup>9</sup>

#### *Creations and Redemptions of Baskets*

##### *Creations of Baskets*

Creation and redemption of interests in the Trusts, and the corresponding creation and redemption of interests in the respective Investing Pools, will generally be effected through transactions in "exchanges of futures for physicals," or "EFPs." In the context of CERFs, CME rules permit the execution of EFPs consisting of simultaneous purchases (sales) of CERFs and sales (purchases) of Shares. This mechanism will generally be used by the Trusts in connection with the creation and redemption of Baskets. Specifically, it is anticipated that an Authorized Participant requesting the creation of additional Baskets typically will transfer CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) to the Trusts in return for Shares.

The Trusts will offer Shares on a continuous basis on each Business Day, but only in Baskets consisting of 50,000 Shares. Baskets will be typically issued only in exchange for an amount of CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) equal to the Basket Amount for the Business Day on which the creation order was received by the Trustee. The Basket Amount for a Business Day will have a per Share value equal to the NAV as of such day. However, orders received by the Trustee after 2:40 p.m., New York time, will be treated as received on the next following Business Day. The Trustee will notify the Authorized Participants of the Basket Amount on each Business Day.

It is expected that delivery of the Shares will be made against transfer of consideration on the next Business Day following the Business Day on which

<sup>9</sup> The Index Sponsor, Goldman, Sachs & Co., is a broker dealer. Therefore, appropriate firewalls must exist around the personnel who have access to information concerning changes and adjustments to an index and the trading personnel of the broker-dealer. Prior to commencement of trading of the Shares on the Exchange, the Index Sponsor will represent to the Exchange that it (1) has implemented and maintained procedures reasonably designed to prevent the use and dissemination by personnel of the Index Sponsor, in violation of applicable laws, rules and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Total Return Indexes; and (2) periodically checks the application of such procedures as they relate to such personnel of the Index Sponsor directly responsible for such changes. In addition, the Policy Committee members are subject to written policies with respect to material, non-public information.

<sup>5</sup> Terms not otherwise defined herein have the same meaning as the meaning given in the Notice.

<sup>6</sup> "Short-Term Securities" means U.S. Treasury Securities or other short-term securities and similar securities, in each case that are eligible as margin deposits under the rules of the CME.

<sup>7</sup> Barclays Global Investors International, Inc., (the "Sponsor for the Trusts") filed Form S-1 on behalf of each Trust on August 31, 2006. See Registration Nos. 333-135823 through 333-135826.

<sup>8</sup> The Commission has previously approved listing on the Exchange of the iShares GSCI Commodity Indexed Trust. See Securities Exchange Act Release No. 54013 (June 16, 2006), 71 FR 36372 (June 26, 2006) (SR-NYSE-2006-17).

the creation order is received by the Trustee. If the Trustee has not received the required consideration for the Shares to be delivered on the delivery date, by 11 a.m., New York time, the Trustee may cancel the creation order.<sup>10</sup>

#### Redemptions of Baskets

Authorized Participants may typically surrender Baskets in exchange only for an amount of CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) equal to the Basket Amount on the Business Day the redemption request is received by the Trustee. However, redemption requests received by the Trustee after 2:40 p.m., New York time (or, on any day on which the CME is scheduled to close early, after the close of trading of CERFs on the CME on such day), will be treated as received on the next following Business Day. Holders of Baskets who are not Authorized Participants will be able to redeem their Baskets only through an Authorized Participant. It is expected that Authorized Participants may redeem Baskets for their own accounts or on behalf of Shareholders who are not Authorized Participants, but they are under no obligation to do so.

It is expected that delivery of the CERFs, cash or Short-Term Securities to the redeeming Shareholder will be made against transfer of the Baskets on the next Business Day following the Business Day on which the redemption request is received by the Trustee. If the Trustee's DTC account has not been credited with the total number of Shares to be redeemed pursuant to the redemption order by 11 a.m., New York time, on the delivery date, the Trustee may cancel the redemption order.

#### *Dissemination of Information Relating to the Shares*

#### Computation of Trust's Net Asset Value

On each Business Day on which the NYSE is open for regular trading, as soon as practicable after the close of regular trading of the Shares on the NYSE (normally, 4:15 p.m., New York time), the Trustee will determine the net asset value of the Trusts and the NAV as of that time.

The Trustee will value the Trusts' assets based upon the determination by the Manager, which may act through the Investing Pool Administrator, of the net asset value of the Investing Pool. The

Manager will determine the net asset value of the Investing Pool as of the same time that the Trustee determines the net asset value of the Trusts.

Once the value of the Trusts' Investing Pool Interests have been determined and provided to the Trustee, the Trustee will subtract all accrued expenses and other liabilities of each Trust from the total value of the assets of the Trust, in each case as of the calculation time. The resulting amount is the net asset value of the Trust. The Trustee will determine the NAV by dividing the net asset value of the Trust by the number of Shares outstanding at the time the calculation is made.

#### Indicative Value

In order to provide updated information relating to the Trusts for use by investors, professionals, and other persons, the Exchange will disseminate through the facilities of CTA an updated Indicative Value on a per Share basis as calculated by Bloomberg. The Indicative Value will be disseminated at least every 15 seconds from 9:30 a.m. to 4:15 p.m. New York time. The Indicative Value will be calculated based on the cash and collateral in a Basket Amount divided by 50,000, adjusted to reflect the market value of the investments held by the applicable Investing Pool, *i.e.* CERFs. The Indicative Value will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and the close of trading on the NYSE at 4:15 p.m. New York time. The value of a Share may accordingly be influenced by non-concurrent trading hours between the NYSE and the various futures exchanges on which the futures contracts based on the Index commodities are traded.

#### Other Pricing Information

The Web site for the Trusts (<http://www.ishares.com>), which will be publicly accessible at no charge, will contain the following information: (a) The prior Business Day's NAV and the reported closing price; (b) the mid-point of the bid-ask price<sup>11</sup> 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; (f) the holdings of the Trusts, including CERFs, cash and Treasury securities; (g) the Basket Amount, and (h) other applicable quantitative information. The Exchange on its Web site at <http://www.nyse.com> will include a hyperlink to the Trusts' Web site at <http://www.ishares.com>. The Exchange will also make available on <http://www.nyse.com> daily trading volume, closing prices, and the NAV.

At present, official calculation by the Index Sponsor of the value of each GS Index is performed continuously and is updated on Reuters at least every fifteen seconds during NYSE trading hours for the Shares and during business hours on each Business Day on which the offices of Goldman Sachs in New York City are open for business. In the event that the Exchange is open for business on a day that is not a GSCI Business Day, the Exchange will not permit trading of the Shares on that day.

In addition, values updated at least every fifteen seconds are disseminated on Reuters for the Total Return Indexes during Exchange trading hours. Daily settlement values for the GS Indexes, Total Return Indexes and Excess Return Indexes are also widely disseminated.

Various data vendors and news publications publish futures prices and data. Futures quotes and last sale information for the commodities underlying the Index are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, complete real-time data for such futures is available by subscription from Reuters and Bloomberg. The futures exchanges or which the underlying commodities and CERFs trade also provide delayed futures information on current and past trading sessions and market news generally free of charge on their respective Web sites. The specific contract specifications for the futures contracts are also available from the futures exchanges on their Web sites as well as other financial informational sources.

#### *Exchange Trading Rules and Policies*

The Shares are considered "securities" pursuant to NYSE Rule 3 and are subject to all applicable trading rules.

The Trust is exempt from corporate governance requirements in Section 303A of the NYSE Listed Company Manual, including the Exchange's audit committee requirements in Section 303A.06.<sup>12</sup>

<sup>10</sup> The price at which the Shares trade should be disciplined by arbitrage opportunities created by the ability to purchase or redeem shares of the Trust in Basket size. This should help ensure that the Shares will not trade at a material discount or premium to their net asset value or redemption value.

<sup>11</sup> The bid-ask price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

<sup>12</sup> See Rule 10A-3(c)(7), 17 CFR 240.10A-3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A-3 if the issuer is

The Exchange has adopted NYSE Rules 1300B ("Commodity Trust Shares") to deal with issues related to the trading of the Shares. Specifically, for purposes of NYSE Rules 13 ("Definitions of Orders"), 36.30 ("Communications Between Exchange and Members' Offices"), 98 ("Restrictions on Approved Person Associated with a Specialist's Member Organization), 104 ("Dealings by Specialists"), 105(m) ("Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 105"), 460.10 ("Specialists Participating in Contests"), 1002 ("Availability of Automatic Feature"), and 1005 ("Order May Not Be Broken Into Smaller Accounts"), the Shares will be treated similar to Investment Company Units.<sup>13</sup>

### III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>14</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act<sup>15</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market

organized as a trust or other unincorporated association that does not have a board of directors and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

See also Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (SR-NYSE-2002-33, SR-NASD-2002-77, *et al.*) (specifically noting that the corporate governance standards will not apply to, among others, passive business organizations in the form of trusts); and 47654 (April 25, 2003), 68 FR 18788 (April 16, 2003) (noting in Section II(F)(3)(c) that "SROs may exclude from Exchange Act Rule 10A-3's requirements issuers that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities").

<sup>13</sup> In particular, NYSE Rule 1300B provides that Rule 105(m) is deemed to prohibit an equity specialist, his member organization, other member, allied member or approved person in such member organization or officer or employee thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in the applicable futures contracts, except as otherwise provided therein.

<sup>14</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. <sup>15</sup> U.S.C. 78c(f).

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

and a national market system and, in general, to protect investors and the public interest. The Commission notes that the listing and trading of shares of the iShares GS Commodity Indexed Trusts pursuant to NYSE Rules 1300B *et seq.* has been previously approved by the Commission.<sup>16</sup>

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,<sup>17</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. Key information will be disseminated at least every 15 seconds throughout the trading day, including the Indicative Value on a per-Share basis, as well as the value of each GS Index. Official calculation of each GS Index is currently performed continuously by the Index Sponsor and is updated at least every fifteen seconds on Reuters. The Sponsor for the Trusts has represented to the Exchange that the Trustee for the Trusts will make the NAV for the Trusts available to all market participants at the same time. In addition, futures quotes and last sale information for the commodities underlying the Indexes are widely disseminated through a variety of major market data vendors, and complete real-time data for such futures are available by subscription from such vendors. Daily settlement values for the Indexes are also widely disseminated. The Exchange's Web site will also disclose information regarding the Shares, including, among other things, their daily trading volume, closing prices, and NAVs.

The Commission notes that, prior to commencement of trading of the Shares on the Exchange, the Index Sponsor, a broker-dealer, will represent to the Exchange that it (a) Has implemented and maintained procedures reasonably designed to prevent the use and dissemination by personnel of the Index Sponsor, in violation of applicable laws, rules and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Total Return Indexes; and (b) periodically checks the application of such procedures as they relate to such personnel of the Index Sponsor directly responsible for such changes. In

<sup>16</sup> Securities Exchange Act Release No. 54013, *supra* note 8.

<sup>17</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

addition, Policy Committee members will be subject to written policies with respect to material, non-public information.

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

(1) NYSE would rely on its existing surveillance procedures, which are adequate to properly monitor the trading of the Shares, to detect violations of applicable rules and deter manipulation. Specifically, the Exchange will rely upon existing procedures governing equities with respect to surveillance of the Shares. In addition, pursuant to its comprehensive information sharing agreements with each exchange, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the New York Mercantile Exchange, the Kansas City Board of Trade, ICE and the LME, in order to monitor for fraudulent and manipulative trading practices. All of the other trading venues on which current components of the Total Return Indexes and CERFs are traded are members of the Intermarket Surveillance Group and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange.

(2) The Exchange will halt trading of the Shares if the NAV of each Fund is not calculated or disseminated daily or not made available to all market participants at the same time, and the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares, including the extent to which trading is not occurring in the underlying commodities. Likewise, if the value of the Total Return Index associated with a Trust's Shares or the applicable Indicative Value is not being disseminated on at least a 15 second basis during the hours the Shares trade on the Exchange, the Exchange may halt trading during the day in which the interruption to the dissemination of the Indicative Value or the Index value occurs. If the interruption to the dissemination of the Indicative Value or the Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

(3) NYSE will distribute an Information Memo to its members providing guidance with regard to the special characteristics and risks of trading this type of security, the creation

and redemption procedures, applicable Exchange rules, the various fees and expenses, and the prospectus delivery requirements applicable to the Shares.

This Order is conditioned on NYSE's adherence to the foregoing representations.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-NYSE-2006-75), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E7-6897 Filed 4-11-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55593; File No. SR-NYSE-2004-56]

### Self-Regulatory Organizations; New York Stock Exchange Inc. (n/k/a New York Stock Exchange LLC); Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to Amendments to Exchange Rule 611, "Disqualification or Other Disability of Arbitrators"

April 6, 2007.

#### I. Introduction

On October 12, 2004, the New York Stock Exchange Inc. (n/k/a New York Stock Exchange LLC) ("NYSE" or "Exchange") 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 amending NYSE Rule 611 ("Disqualification or other Disability of Arbitrators") to give the Director of Arbitration the authority to remove an arbitrator in the event a conflict comes to the attention of the parties or the Exchange that, for any reason, was not appropriately disclosed pursuant to NYSE rules. On May 26, 2006, the Exchange filed Amendment No. 1 to the proposed rule change ("Amendment No. 1").<sup>3</sup> The proposed rule change, as

amended by Amendment No. 1, was published for comment in the **Federal Register** on August 7, 2006.<sup>4</sup> The Commission received one comment on the proposal, as amended.<sup>5</sup> On January 11, 2007, the NYSE filed Amendment No. 2 ("Amendment No. 2"),<sup>6</sup> and on March 21, 2007, the Exchange filed Amendment No. 3 ("Amendment No. 3")<sup>7</sup> to the proposed rule change. This order approves the proposed rule change, as amended, on an accelerated basis, and solicits comment from interested persons on the proposed rule change as modified by Amendment Nos. 2 and 3.

#### II. Description of the Proposed Rule Change

##### A. Description of the Proposal

At present, once an arbitrator has taken the Oath of Arbitrators for a particular case, NYSE rules do not provide for the Director of Arbitration to remove an arbitrator from serving on that case. Rather, NYSE Rule 610 permits the Director of Arbitration to remove an arbitrator prior to, but not after, the commencement of the hearing. The need to remove a sitting arbitrator could arise if, for example, an item that should have been disclosed by the

should have been disclosed, or from a conflict that arises after the commencement of the hearing. The Exchange also amended the filing to eliminate the proposal to provide the Director of Arbitration with discretion to limit a party's additional information requests of an arbitrator.

<sup>4</sup> See Exchange Act Release No. 54233 (July 27, 2006), 71 FR 44751 (Aug. 7, 2006) (the "Notice").

<sup>5</sup> See letter from Seth E. Lipner (Aug. 28, 2006) ("Lipner Letter").

<sup>6</sup> In Amendment No. 2, which supplemented the original filing, the Exchange modified the proposed rule to provide that the Director of Arbitration may remove an arbitrator from a panel based on information that was not known to the parties when the arbitrator was appointed. Amendment No. 2 also limited the reasons for which the Director of Arbitration may remove an arbitrator to information not known to the parties when the arbitrator was appointed and information required to be disclosed pursuant to NYSE Rule 610 that was not previously disclosed. The rule, as amended by Amendment No. 1, had not required the parties to be unaware of the information serving as the basis for the Director of Arbitration's decision, and had not limited the reasons for removal of the arbitrator.

<sup>7</sup> In Amendment No. 3, which supplemented the original filing, the Exchange corrected an ambiguity in Amendment No. 2. Amendment No. 3 clarified that the Director of Arbitration could remove an arbitrator for information that should have been disclosed pursuant to NYSE Rule 610, providing for disclosure of conflicts, and that either was not known to the parties prior to the commencement of the hearing, or that represented a new conflict, arising after the commencement of the hearing. The amendment also clarified that the Director of Arbitration could also remove an arbitrator where circumstances known to the parties before the commencement of the hearing developed into a conflict after the commencement of the hearing. The rule as amended by Amendment No. 2 did not clearly establish these requirements for removal.

arbitrator pursuant to Exchange rules had not been disclosed, or a conflict arises after commencement of the hearing. Historically, when this situation has arisen, the remedy has been for the arbitrator to recuse himself or herself. Nevertheless, the Exchange proposed to amend its rules, indicating that it would be prudent to give the Director of Arbitration the authority to remove an arbitrator in the event a conflict comes to the attention of the parties or the Exchange that for any reason was not appropriately disclosed pursuant to NYSE rules and was unknown to the parties, or if a conflict arises after the commencement of the hearing.

##### B. Comment Summary and NYSE's Response

###### 1. Comments Received

The proposal was published for comment in the **Federal Register** on August 7, 2006,<sup>8</sup> and the Commission received one comment.<sup>9</sup> The commenter generally supported the proposed rule change, but expressed concern that it would not sufficiently protect against possible gamesmanship or delays in seeking to remove arbitrators. In the commenter's view, a party who is aware of grounds for removal but does not act should be prevented from bringing a later challenge to remove the arbitrator.

###### 2. NYSE's Response to Comments

The NYSE responded to the commenter's concerns by filing Amendment No. 2 to the proposed rule change, providing that the Director of Arbitration may remove an arbitrator from an arbitration panel solely for information not disclosed pursuant to NYSE Rule 610 or based on information not known to the parties when the arbitrator was appointed. Subsequently, the NYSE filed Amendment No. 3, correcting an ambiguity in the rule, and clearly setting forth that the grounds for removal from the panel would be either a new conflict, arising after the commencement of the hearing (whether arising from circumstances known to the parties prior to the commencement of the hearing but only developing into a conflict after the commencement of the hearing, or from circumstances arising after the hearing), or, alternatively, an undisclosed conflict of which the parties were previously unaware.

<sup>8</sup> See Notice, *supra* note 4.

<sup>9</sup> See Lipner Letter, *supra* note 5.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</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> In Amendment No. 1, which supplemented the original filing, the Exchange amended the filing to note that the need to remove an arbitrator might arise from a failure to disclose information that