exchanges.[20] The Commission believes that the considerations upon which it relied in approving those proposals equally apply with respect to the instant proposed rule change by the ISE.

As noted by the Exchange, the market capitalization of the NDX as of October 18, 2005 was $1.82 trillion. The ADTV for a period of three months prior to that date for all underlying components of the index was 716 million shares. As it stated in the CBOE and Amex NDX Approval Orders, the Commission believes that the enormous market capitalization of the NDX and the deep, liquid markets for the underlying component securities significantly reduce concerns regarding market manipulation or disruption in the underlying market. Removing position and exercise limits for NDX options may also bring additional depth and liquidity, in terms of both volume and open interest, to NDX options without significantly increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.

In addition, the Commission believes that financial requirements imposed by both the Exchange and the Commission adequately address concerns that a ISE member or its customer may try to maintain an inordinately large unhedged position in NDX options. Current risk-based haircut and margin methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer.[21] As specified in the proposal, the ISE also would have the authority under its rules to impose a higher margin requirement upon an account maintaining an under-hedged position in NDX options when it determines a higher requirement is warranted. As also noted in the applicable ISE rules, the clearing firm carrying the account would be subject to capital charges under Rule 15c3–1 under the Act to the extent of any margin deficiency resulting from the higher margin requirement.

Finally, in approving the elimination of position and exercise limits for options on the indexes noted above, the Commission took note of the enhanced surveillance and reporting safeguards that the relevant exchange had adopted to allow it to detect and deter trading abuses that might arise as a result.[22] The ISE's updated safeguards, including the 100,000-contract reporting requirement described above, would allow the ISE to monitor large positions in order to identify instances of potential risk and to assess and respond to any market concerns at an early stage. In this regard, the Commission expects the ISE to take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop. Moreover, as previously noted, the Exchange has the flexibility to specify other reporting requirements, as well as to vary the limit at which the reporting requirements may be triggered.

The ISE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. As already noted, the Commission recently approved similar proposals eliminating position and exercise limits for NDX options on the CBOE and the Amex. The Commission believes that granting accelerated approval of the proposal will allow the ISE to conform its rules to those of other exchanges trading NDX options without delay. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[23] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–ISE–2005–45), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Jonathan G. Katz,

Secretary.

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[20] *See* Securities Exchange Act Release Nos. 52650 (October 21, 2005), 70 FR 62147 (October 28, 2005) (order approving File No. SR–CBOE–2005–41); and 52649 (October 21, 2005), 70 FR 62146 (October 28, 2005) (order approving File No. SR–Amex–2005–063) ("CBOE and Amex NDX Approval Orders").

[21] *See* SPX/OEX/DJX Pilot Approval Order, *supra* note 5.

[22] *See*, in particular, SPX/OEX/DJX Pilot Approval Order, *supra* note 5.

[23] 15 U.S.C. 78s(b)(2).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52897; File No. SR–NASD–2005–099]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Restated Certificate of Incorporation of The Nasdaq Stock Market, Inc.

December 6, 2005.

On August 19, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to amendments to the Restated Certificate of Incorporation of The Nasdaq Stock Market, Inc. ("Certificate"). On September 30, 2005, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] Nasdaq has proposed to amend its Certificate to afford the holders of its 3.75% Series A Convertible Notes due October 2012 ("Series A Notes") and its 3.75% Series B Convertible Notes due 2012 ("Series B Notes" and, collectively with the Series A Notes, the "Notes") the right to vote with Nasdaq stockholders. The Series A Notes and the Series B Notes were issued in connection with Nasdaq's entry into a definitive agreement and plan of merger with Instinet Group Incorporated ("Instinet"), under which Nasdaq will acquire all outstanding shares of Instinet for an aggregate purchase price of approximately $1.878 billion in cash and Instinet will merge into a wholly owned subsidiary of Nasdaq.[4]

The proposed rule change, as amended, was published for comment in the **Federal Register** on October 24, 2005.[5] The Commission received no comments on the proposal.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made minor edits to the originally filed proposed rule change and clarified the proposed definition of "Broker Affiliate" set forth in Paragraph C.6. of the Certificate to include a broker or dealer or an affiliate thereof. In Amendment No. 1, Nasdaq also reflected approval of the proposal by the Board of Directors of Nasdaq and by its stockholders.

[4] The Commission notes that Nasdaq has filed a proposed rule change to establish rules governing the operation of the INET system. *See* Securities Exchange Act Release No. 52723 (November 2, 2005), 70 FR 67513 (November 7, 2005).

[5] *See* Securities Exchange Act Release No. 52574 (October 7, 2005), 70 FR 61484 ("Notice").

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 registered securities association.[6] In particular, the Commission believes that the proposed rule change, as amended, is consistent with sections 15A(b)(2) and (6) of the Act,[7] which require, among other things, that a national securities association be so organized and have the capacity to be able to carry out the purposes of the Act and to comply and enforce compliance with the provisions of the Act, and that its rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission notes that the proposed rule change, as amended, provides holders of the Notes the same rights and subjects them to the same restrictions under Paragraphs C.1. and C.2. of the Certificate that currently apply to holders of Nasdaq's 4.0% Convertible Subordinated Notes due 2006, which are being retired. Specifically, the holders will be entitled to vote on all matters submitted to a vote of the stockholders of Nasdaq. The holders' ability to vote is limited in Paragraph C.2. of the Certificate, which provides that holders of the Notes and common stock cannot vote any shares that they own excess of five percent of the then-outstanding shares of stock generally entitled to vote as of the record date in respect of such matter. Paragraph C.6.(b) of the Certificate, however, gives Nasdaq's Board of Directors (''Board'') the authority to exempt certain persons from the five percent voting restriction. If the Board grants such an exemption to any person, then the holders would be permitted to receive a similar exemption from the voting restriction.[8] The Board, however, is not permitted to grant exemptions from the five percent voting restriction to any registered broker or dealer or an affiliate thereof (''Broker Affiliate'').[9] The Commission believes that it would be inconsistent with Nasdaq's Certificate for the Board to grant an exemption from the five percent voting restriction to any person if, as a consequence, a Broker Affiliate received a similar exemption.[10]

The Commission finds that, since this proposal extends the same rights and obligations under the Nasdaq Certificate to certain new holders of the Notes, the proposal is consistent with the Act. In addition, the Commission believes that the five percent voting restriction should limit the ability of any entity, particularly a registered broker or dealer, from controlling Nasdaq.[11]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–NASD–2005–099), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

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[6] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3(b)(2) and (6).

[8] The Commission notes that, currently, one of the holders is a Broker Affiliate. Nasdaq represented in the Notice that if the Board were to consider granting a waiver to any person, it would have to consider that such action would trigger an exemption for the holders that would be deemed inconsistent with the provision in Paragraph C.6. *See* Notice, *supra* note 5, at note 9.

[9] Nasdaq has stated that the definition of ''Broker Affiliate'' set forth in Paragraph C.6. includes a broker or a dealer or an affiliate thereof. *See* Notice, *supra* note 5, at note 11.

[10] Nasdaq states that, if in the future the Board exempts any Broker Affiliate from the five percent voting restriction, the holders of the Notes would automatically receive the same percentage voting rights or the highest percentage voting rights to which their Notes and shares held entitled them at the time. As noted, Paragraph C.6. prohibits the Board from granting any exemption from the five percent voting restriction to a Broker Affiliate. Accordingly, the Board is not permitted to grant such an exemption under its current authority and any change to this authority would have to be filed with, and approved by, the Commission pursuant to Section 19(b) of the Act.

[11] *See* Securities Exchange Act Release No. 42983 (June 26, 2000), 65 FR 41116 (July 3, 2000) (SR–NASD–00–27).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52887; File No. SR–NYSE–2005–82]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to a Pilot Program Relating to Minimum Numerical Standards in Section 102.01A of the Listed Company Manual

December 5, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 23, 2005, the New York Stock Exchange, Inc. (''NYSE'' 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 prepared by the NYSE. On December 1, 2005, NYSE filed Amendment No. 1 to the proposed rule change.[3] NYSE has filed the proposal as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6)[5] thereunder, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The NYSE is proposing to amend, on a six-month pilot program basis (the ''Pilot Program''), to expire on May 31, 2006, section 102.01A of the Exchange's Listed Company Manual (the ''Manual'') regarding the minimum numerical listing standards.[6] The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the principal office of the NYSE, 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 NYSE 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. The NYSE 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.

[3] In Amendment No. 1, NYSE made a technical change to Exhibit 5 (text of the proposed rule change). The correction to Exhibit 5 does not make any changes to the current initial listing distribution criteria for companies listing in connection with a transfer or quotation, but only adds missing rule text that was inadvertently excluded in the filing submitted by the Exchange on November 23, 2005.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] Telephone conversation between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Annemarie Tierney, Assistant General Counsel, NYSE, on December 2, 2005 (clarifying that the pilot program expires on May 31, 2006).