meeting on January 30, 2006, 9:30 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

(1) Congressional Justification language.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: January 20, 2006.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 06–738 Filed 1–23–06; 11:51 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53142; File No. SR–NASD–2006–001]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto To Establish Generic Listing Standards for Index-Linked Securities

January 19, 2006.

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 January 3, 2006, 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'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Nasdaq. On January 13, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal, as amended, on an accelerated basis.

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

Nasdaq proposes to adopt generic listing standards for index-linked securities (''Index Securities'') pursuant to Rule 19b–4(e) under the Act.[4] Nasdaq will implement the proposed rule change immediately upon approval by the Commission.

The proposed rule change is available on the NASD's Web site at *http://www.nasd.com,* at the principal office of the NASD, and at the Commission's Public Reference Room. The text of the proposed rule change is also set forth below. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

4420. Quantitative Designation Criteria

In order to be designated for the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), [or] (l) *or (m)* below. Initial Public Offerings substantially meeting such criteria are eligible for immediate inclusion in the Nasdaq National Market upon prior application and with the written consent of the managing underwriter that immediate inclusion is desired. All other qualifying issues, excepting special situations, are included on the next inclusion date established by Nasdaq.

(a)–(l) No Change.

(m) Index-Linked Securities

Index-linked securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. Nasdaq may submit a rule filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 to permit the listing and trading of index-linked securities that do not otherwise meet the standards set forth below in paragraphs (1) through (9). Nasdaq will consider for listing and trading pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 index-linked securities, provided:

(1) Both the issue and the issuer of such security meet the criteria for other securities set forth in paragraph (f) of this rule, except that the minimum public distribution of the security shall be 1,000,000 units with a minimum of 400 public holders, unless the security is traded in $1,000 denominations, in which case there is no minimum number of holders.

(2) The issue has a term of not less than one (1) year and not greater than ten (10) years.

(3) The issue must be the non-convertible debt of the issuer.

(4) The payment at maturity may or may not provide for a multiple of the positive performance of an underlying index or indexes; however, in no event will payment at maturity be based on a multiple of the negative performance of an underlying index or indexes.

(5) The issuer will be expected to have a minimum tangible net worth in excess of $250,000,000 and to exceed by at least 20% the earnings requirements set forth in paragraph (a)(1) of this Rule. In the alternative, the issuer will be expected: (i) To have a minimum tangible net worth of $150,000,000 and to exceed by at least 20% the earnings requirement set forth in paragraph (a)(1) of this Rule, and (ii) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(6) The issuer is in compliance with Rule 10A–3 under the Securities Exchange Act of 1934.

(7) Initial Listing Criteria—Each underlying index is required to have at least ten (10) component securities. In addition, the index or indexes to which the security is linked shall either (A) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the 1934 Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or (B) the index or indexes meet the following criteria:

(i) Each component security has a minimum market value of at least $75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least $50 million;

(ii) Each component security shall have trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;

(iii) In the case of a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1 Nasdaq made minor revisions to the proposed rule text and clarified certain details of its proposal.

[4] 17 CFR 240.19b–4(e).

in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

(iv) No underlying component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities);

(v) 90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading on a national securities exchange or a national securities association;

(vi) Each component security shall be issued by a 1934 Act reporting company which is listed on Nasdaq or a national securities exchange and shall be an ''NMS'' stock as defined in SEC Rule 600 of Regulation NMS under the 1934 Act; and

(vii) Foreign country securities or American Depository Receipts (''ADRs'') that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index.

(8) Index Methodology and Calculation—(i) Each index will be calculated based on either a capitalization, modified capitalization, price, equal-dollar or modified equal-dollar weighting methodology. (ii) Indexes based upon the equal-dollar or modified equal-dollar weighting method will be rebalanced at least quarterly. (iii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a ''firewall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. (iv) The current value of an index will be widely disseminated at least every 15 seconds, except as provided in the next clause (v). (v) The values of the following indexes need not be calculated and widely disseminated at least every 15 seconds if, after the close of trading, the indicative value of the index-linked security based on one or more of such indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA BuyWrite Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm). (vi) If the value of an index-linked security is based on more than one (1) index, then the composite value of such indexes must be widely disseminated at least every 15 seconds.

(9) Surveillance Procedures. Nasdaq will implement written surveillance procedures for index-linked securities, including adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

(10) Index-linked securities will be treated as equity instruments. Furthermore, for the purpose of fee determination, index-linked securities shall be deemed and treated as Other Securities.

* * * * *

4450. Quantitative Maintenance Criteria

(a) and (b) No change.

(c) Other Securities Designated Pursuant to Rule 4420(f) *and Index-Linked Securities*.

(1) The aggregate market value or principal amount of publicly-held units must be at least $1 million.

(2) Delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading) with respect to any index-linked security that was listed pursuant to paragraph (7)(B) of Rule 4420(m) if any of the standards set forth in paragraph (7)(B) of such rule are not continuously maintained, except that:

(i) the criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index may not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted and price weighted indexes as of the first day of January and July in each year;

(ii) the total number of components in the index may not increase or decrease by more than 33⅓% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;

(iii) the trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and

(iv) in a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

(3) With respect to an index-linked security that was listed pursuant to paragraph (7)(A) of Rule 4420(m), delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading of the subject index-linked security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the 1934 Act approving the index or indexes for the trading of options or other derivatives.

(4) Delisting or removal proceedings will also be commenced with respect to any index-linked security listed pursuant to Rule 4420(m) (unless the Commission has approved the continued trading of the subject index-linked security), under any of the following circumstances:

(i) if the aggregate market value or the principal amount of the securities publicly held is less than $400,000;

(ii) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis, provided, however, that the values of the following indexes need not be calculated and disseminated at least every 15 seconds if, after the close of trading, the indicative value of any index-linked security linked to one or more of such indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA BuyWrite Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm); or

(iii) if such other event shall occur or condition exists which in the opinion of Nasdaq makes further dealings on Nasdaq inadvisable.

(d) through (i) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will establish generic listing standards to permit the listing and trading of Index Securities pursuant to Rule 19b–4(e) under the Act.[5] Rule 19b–4(e) under the Act provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4 under the Act,[6] if the Commission has approved, pursuant to Section 19(b) of the Act,[7] the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivatives securities product, and the self-regulatory organization has a surveillance program for the product class.[8] Hence Nasdaq is proposing to adopt generic listing standards under new NASD Rules 4420(m) and 4450(c) for this product class, pursuant to which it will be able to trade Index Securities without individual Commission approval of each product pursuant to Section 19(b)(2) of the Act.[9] Instead, Nasdaq represents that any securities it lists will satisfy all of the standards set forth in NASD Rules 4420(m) and 4450(c). The Exchange states that within five (5) business days of the commencement of trading of an Index Security in reliance on NASD Rule 4420(m), Nasdaq will file Form 19b–4(e).[10]

a. Generic Listing Standards

The Commission previously approved the generic listing standards for Index Securities on the American Stock Exchange LLC (''Amex'').[11] Nasdaq states that the proposed rule is substantially the same as the Amex Rule. The Commission has also previously approved the listing on Nasdaq of multiple Index Securities based on a variety of debt structures and market indexes.[12]

Adopting generic listing standards for these securities and applying Rule 19b–4(e) under the Act should fulfill the intended objective of that Rule by allowing those Index Securities that satisfy the proposed generic listing standards to commence trading, without the need for the public comment period and Commission approval. This has the potential to reduce the time frame for bringing Index Securities to market and thereby reducing the burdens on issuers and other market participants. The failure of a particular index to comply with the proposed generic listing standards under Rule 19b–4(e) under the Act, however, would not preclude a separate filing pursuant to Section 19(b)(2) of the Act, requesting Commission approval to list and trade a particular index-linked product.

b. Index Securities

Index Securities are designed for investors who desire to participate in a specific market segment or combination of market segments through an identifiable market index or combination of market indexes (the ''Underlying Index'' or ''Underlying Indexes'').[13] Index Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than ten years. Each Index Security is intended to provide investors with exposure to an identifiable underlying market index. Index Securities may or may not make interest payments, dividends or other cash distributions paid in the securities compromising the Underlying Index or Indexes to the holder during their term.[14] Despite the fact that Index Securities are linked to an underlying index, each will trade as a single, exchange-listed security.

The Exchange states that an Index Security cannot exist and therefore has no value without reference to the underlying index. In contrast to a typical corporate security (*e.g.*, a share of common stock of a corporation), whose value is determined by the interplay of supply and demand in the marketplace, the fair value of an index-based security can be determined only by reference to the underlying index itself, which is a proprietary creation of the particular index provider. For this reason, the Commission has always required that markets that list or trade index-based securities continuously monitor the qualifications of not just the actual securities being traded (*e.g.*, exchange-traded funds (''ETF''), index options, or Index Securities), but also of the underlying indexes and of the index providers.

Because the value and function of an Index Security are inseparable from the Underlying Index or Underlying Indexes, such indexes and their providers must either meet the criteria set forth herein or be indexes previously approved by the Commission under Section 19(b)(2) of the Act and rules thereunder for the trading of options or other derivative securities on a national securities exchange or national securities association (and be subject to the conditions of such prior approvals). In all cases, an Underlying Index is required to have a minimum of ten (10) component securities. Certain specific criteria for each underlying component security are set forth below.

A typical Index Security listed and traded on Nasdaq provides for a payment amount in a multiple greater than one (1) times the positive index return or performance, subject to a maximum gain or cap. Nasdaq represents that the proposed generic listing standards will not be applicable to Index Securities where the payment at maturity may be based on a multiple of negative performance of an underlying index or indexes.

Some Index Securities do not provide for a minimum guaranteed amount to be repaid, *i.e.*, no ''principal protection.'' Other Index Securities provide for participation in the positive return or performance of an index with the added protection of receiving a payment guarantee of the issuance price or ''principal protection.'' Further iterations may also provide ''contingent'' or partial protection of the principal amount, whereby the principal protection may disappear if the Underlying Index at any point in time during the life of such security reaches a certain pre-determined level. Nasdaq believes that the flexibility to list a variety of Index Securities will offer investors the opportunity to more

[5] 17 CFR 240.19b–4(e).

[6] 17 CFR 240.19b–4(c)(1).

[7] 15 U.S.C. 78s(b).

[8] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998)(the ''19b–4(e) Order'').

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 240.19b–4(e)(2)(ii); 17 CFR 249.820.

[11] *See* Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005)(the ''Amex Rule''); *see also* Securities Exchange Act Release No. 52204 (Aug. 3, 2005), 70 FR 46559 (August 10, 2005) (PCX Exchange rules applicable to the Archipelago Exchange (''Area Exchange'').

[12] *See, e.g.,* Securities Exchange Act Release Nos. 52725 (November 3, 2005), 70 FR 68486 (November 10, 2005)(approving the listing and trading of 9% Targeted Income Strategic Total Return Securities Linked to the CBOE Nasdaq-100 BuyWrite Index); 50724 (November 23, 2004), 69 FR 69655 (November 30, 2004)(approving the listing and trading of Accelerated Return Notes Linked to the Russell 2000 Index), 49670 (May 7, 2004), 69 FR 27959 (May 17, 2004)(approving the listing and trading of Accelerated Return Notes Linked to the Nikkei 225 Index).

[13] Nasdaq understands that the holder of an Index Security may or may not be fully exposed to the appreciation and/or depreciation of the underlying component securities. For example, an Index Security may be subject to a ''cap'' on the maximum principal amount to be repaid to holders or a ''floor'' on the minimum principal amount to be repaid to holders at maturity.

[14] Interest payments may be based on a fixed or floating rate.

precisely focus their specific investment strategies.

The original public offering price of Index Securities may vary with the most common offering price expected to be $10 or $1,000 per unit. As discussed above, Index Securities entitle the owner at maturity to receive a cash amount based upon the performance of a particular market index or combination of indexes. The structure of an Index Security may provide ''principal protection'' or provide that the principal amount is fully exposed to the performance of a market index. The Index Securities do not give the holder any right to receive a portfolio security, dividend payments, or any other ownership right or interest in the portfolio or index of securities comprising the Underlying Index. Because an index-linked security has no value without reference to the Underlying Index, the current value of an Underlying Index or composite value of the Underlying Indexes will be widely disseminated at least every 15 seconds during the trading day.[15]

Index Securities may (but do not need to) be structured with accelerated returns, upside or downside, based on the performance of the Underlying Index.[16] For example, an Index Security may provide for an accelerated return of 3-to-1 if the Underlying Index achieves a positive return at maturity. Index Securities are ''hybrid'' securities whose rates of return are largely the result of the performance of an Underlying Index or Indexes comprised of component securities. In connection with the listing and trading of Index Securities, Nasdaq will issue an information circular to members detailing the special risks and characteristics of the securities. Accordingly, the particular structure and corresponding risk of any Index Security traded on Nasdaq will be highlighted and disclosed.

The initial offering price for an Index Security is established on the date the security is priced for sale to the public. The final value of an Index Security is determined on the valuation date at or near maturity consistent with the mechanics detailed in the prospectus for such Index Security.

c. Eligibility Standards for Issuers

The following standards are proposed for each issuer of Index Securities:

(A) *Assets/Equity*—The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer which is unable to satisfy the income criteria set forth in NASD Rule 4420(a)(1), Nasdaq generally will require the issuer to have the following: (i) Assets in excess of $200 million and stockholders equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders equity of at least $20 million.[17]

(B) *Distribution*—Minimum public distribution of 1,000,000 notes with a minimum of 400 public shareholders, except, if traded in thousand dollar denominations, then no minimum number of holders.

(C) *Principal Amount/Aggregate Market Value*—Not less than $4 million.

(D) *Term*—The Index Security must have a term of at least one (1) year but not longer than ten (10) years.

(E) *Tangible Net Worth*—The issuer will be expected to have a minimum tangible net worth[18] in excess of $250,000,000 and to exceed by at least 20% the earnings requirements set forth in NASD Rule 4420(a)(1). In the alternative, the issuer will be expected: (i) To have a minimum tangible net worth of $150,000,000 and to exceed by at least 20% the earnings requirement set forth in NASD Rule 4420(a)(1); and (ii) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange (or on Nasdaq) exceeds 25% of the issuer's net worth.

d. Description of Underlying Indexes

Each Underlying Index will either be: (i) An index meeting the specific criteria set forth below: or (ii) an index approved by the Commission under Section 19(b)(2) of the Act and rules thereunder for the trading of options or other derivatives securities. However, in all cases, an Underlying Index must contain at least ten (10) component securities.

Examples of Underlying Indexes intended to be covered under the proposed generic listing standards include the Standard & Poor's 500 (''S&P 500''), the Nasdaq-100, the Dow Jones Industrial Average (''DJIA''), Nikkei 225, the Dow Jones EuroSTOXX 50, the Global Titans 50, the Amex Biotechnology Index, the Russell 2000 Index, the CBOE S&P 500 BuyWrite Index, the CBOE DJIA BuyWrite Index, the CBOE Nasdaq-100 BuyWrite Index, and certain other indexes that represent various industry and/or market segments.[19] An Index Security would lose its eligibility for continued Nasdaq listing if a change to the Underlying Index, including the deletion and addition of underlying component securities, index rebalancings and changes to the calculation of the index, resulted in this Underlying Index no longer satisfying the criteria for indexes that are either set forth below as part of the continued listing standards for Index Securities or contained in a Commission's Section 19(b)(2) order that approved the similar derivative product containing the Underlying Index.

In order to satisfy the proposed generic listing standards, the Underlying Index will typically be calculated based on a market capitalization,[20] modified market capitalization,[21] price,[22] equal-dollar,[23] or modified equal-dollar [24] weighting

[15] The values of CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA BuyWrite Index(sm), and CBOE Nasdaq-100 BuyWrite Index(sm) do not need to be so disseminated if, after the close of trading, the indicative value of any index-linked security linked to these indexes is disseminated.

[16] *See, e.g.*, Securities Exchange Act Release No. 48280 (August 1, 2003), 68 FR 47121 (August 7, 2003). As stated, however, the proposed generic listing standards will not be applicable to Index Securities that are structured with ''downside'' accelerated returns.

[17] Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on January 11, 2006.

[18] ''Tangible net worth'' is defined as total assets less intangible assets and total liabilities. Intangibles include non-material benefits such as goodwill, patents, copyrights and trademarks.

[19] *See* note 12 *supra*.

[20] A ''market capitalization'' index is the most common type of stock index. The components are weighted according to the total market value of the outstanding shares, *i.e.*, share price times the number of shares outstanding. This type of index will fluctuate in line with the price moves of the component stocks.

[21] A ''modified market capitalization'' index is similar to the market capitalization index, except that an adjustment to the weights of one or more of the components occurs. This is typically done to avoid having an index that has one or a few stocks representing a disproportionate amount of the index value.

[22] A ''price weighted'' index is an index in which the component stocks are weighted by their share price. The most common example is the DJIA.

[23] An ''equal dollar weighted'' index is an index structured so that share quantities for each of the component stocks in the index are determined as if one were buying an equal dollar amount of each stock in the index. Equal dollar weighted indexes are usually rebalanced to equal weightings either quarterly, semiannually, or annually.

[24] A ''modified equal-dollar weighted'' index is designed to be a fair measurement of the particular industry or sector represented by the index, without assigning an excessive weight to one or more index components that have a large market capitalization relative to the other index components. In this type of index, each component is assigned a weight that takes into account the relative market capitalization of the securities comprising the index. The index is subsequently rebalanced to maintain these pre-established weighting levels. Like equal-dollar weighted indexes, the value of a modified equal-dollar weighted index will equal the current combined market value of the assigned number of shares of each of the underlying components

Continued

methodology. If a broker-dealer is responsible for maintaining (or has a role in maintaining) the Underlying Index, such broker-dealer is required to erect and maintain a ''firewall,'' in a form satisfactory to Nasdaq, to prevent the flow of information regarding the Underlying Index from the index production personnel to the sales and trading personnel.[25] In addition, an Underlying Index that is maintained by a broker-dealer is also required to be calculated by an independent third party that is not a broker-dealer.

e. Eligibility Standards for Underlying Securities

Index Securities will be subject to both initial and continued listing criteria. For an Underlying Index to be appropriate for the initial listing of an Index Security, such Index must either have been previously approved for the trading (on a national securities exchange or national securities association) of options or other derivative securities by the Commission under Section 19(b)(2) of the Act and rules thereunder, or meet the following requirements:

- A minimum market value of at least $75 million, except that for each of the lowest weighted Underlying Securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least $50 million;
- Trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted Underlying Securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;
- In the case of a capitalization-weighted index or modified capitalization weighted index, the lesser of the five highest weight Underlying Securities in the index or the highest weighted Underlying Securities in the index that in the aggregate represent at least 30% of the total number of Underlying Securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;
- No component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index will not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 Underlying Securities);
- 90% of the index's numerical index value and at least 80% of the total number of component securities will meet the then current criteria for standardized options trading on a national securities exchange or a national securities association;
- Each component security shall be issued by an Act reporting company under the Act, shall be listed on Nasdaq or a national securities exchange and be subject to last sale reporting as a ''NMS'' stock; and
- Foreign country securities or American Depository Receipts (''ADRs'') that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index.

As stated above, under Description of Underlying Indexes, all Underlying Indexes are required to have at least ten (10) component securities.

For Index Securities listed under NASD Rule 4420(m)(7)(B),[26] Nasdaq will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the Index Security) if the applicable standard for Underlying Indexes under which the particular security's initial eligibility was determined is not being continuously met, except that:

- The criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index can not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted and price weighted indexes as of the first day of January and July in each year;
- The total number of components in the index may not increase or decrease by more than 33⅓% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;
- The trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and
- In a capitalization-weighted index or modified capitalization weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

In the case of an Index Security that is listed pursuant to NASD Rule 4420(m)(7)(A) (previously approved index), Nasdaq will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the Index Security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the Act approving the index or indexes for the trading of options or other derivatives.

Finally, as set forth in proposed rule, Nasdaq will commence delisting or removal proceedings with respect to an Index Security (unless the Commission has approved the continued trading of the Index Security), under any of the following circumstances:

- If the aggregate market value or the principal amount of the securities publicly held is less than $400,000;
- With a minor exception referenced below, if the value of the Underlying Index or composite value of the Underlying Indexes is no longer calculated and widely disseminated on at least a 15-second basis (because an index-linked security has no value without reference to the underlying index); or
- If such other event shall occur or condition exists which is the opinion of the Nasdaq makes further dealings on Nasdaq inadvisable.

The requirement that the value of the index be calculated and widely disseminated every 15 seconds does not apply to the following indexes: the CBOE S&P 500 BuyWrite Index, the CBOE DJIA BuyWrite Index, and the CBOE Nasdaq-100 BuyWrite Index.[27]

divided by the appropriate index divisor. A modified equal-dollar weighted index will typically be re-balanced quarterly.

[25] For certain indexes, an index provider, such as Dow Jones, may select the components and calculate the index, but overseas broker-dealer affiliates of U.S. registered broker-dealers may sit on an ''advisory'' committee that recommends component selections to the index provider. In such case, appropriate information barriers and insider trading policies should exist for this advisory committee. *See* Securities Exchange Act Release No. 50501 (October 7, 2004), 69 FR 61533 (October 19, 2004) (approving SR–NASD–2004–138, pertaining to index-linked notes on the Dow Jones Euro Stoxx 50 Index).

[26] The Commission expects Nasdaq to continuously monitor these continued listing criteria, unless the particular standard sets forth the particular dates on which such standard should be satisfied. Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on January 18, 2006.

[27] A ''buy-write'' is a conservative options strategy in which an investor buys a stock or portfolio and writes call options on the stock or

The Commission has previously approved for listing and trading several Index Securities linked to these three indexes,[28] and the exception for the first two of them is already incorporated in the Amex Rule. The Commission did not require dissemination of the BuyWrite index values every 15 seconds during trading hours because the value of these indexes is readily approximated from observable market prices from the current price of the relevant securities indexes and the nearest-to-expiration call and put options on these securities indexes.[29] Consistent with the Amex Rule, indicative values of Index Securities based on one of these three indexes must be calculated and disseminated after the close of trading to provide an updated value.

The issuers of the Index Securities listed on Nasdaq will be required to comply with Rule 10A–3 under the Act, but not the Index Securities themselves.[30]

f. Nasdaq Rules Applicable to Index Securities

Index Securities will be treated as equity instruments and will be subject to all Nasdaq rules governing the trading of equity securities, including trading halt rules. Index Securities will be subject to the same fee schedule as Other Securities listed under Rule 4420(f). The applicable fee schedule is currently codified as Rule 4530.

g. Information Circular

In addition, Nasdaq will evaluate the nature and complexity of each Index Security and, if appropriate, distribute a circular to the membership, prior to the commencement of trading, providing guidance with respect to, among other things, member firm compliance responsibilities when handling transactions in Index Securities and highlighting the special risks and characteristics. Specifically, the circular, among other things, will discuss and emphasize the structure and operation of the Index Security, the requirement under the Securities Act of 1933 (''1933 Act'') [31] that members and member firms deliver a prospectus to investors purchasing an Index Security in the initial distribution prior to or concurrently with the confirmation of a transaction, applicable Nasdaq rules, dissemination information regarding the Underlying Index, trading information and applicable suitability rules.[32]

h. Surveillance

The NASD will monitor activity in Index Securities to identify and discipline any improper trading activity in Index Securities.[33] For this purpose, the NASD will rely on its existing surveillance procedures applicable to equities, including derivative products. The NASD will maintain such procedures in writing. The NASD will also be developing, for future implementation, procedures for monitoring activity in the Index Security and in related Underlying Indexes and their underlying securities, which will enhance the NASD's ability to identify improper trading activity. Overall, while the NASD's existing surveillance procedures are adequate to properly monitor the trading of Index Securities, the NASD is expecting to begin phasing in significant enhancements to such procedures in 2006.

Nasdaq has a general policy prohibiting the distribution of material, non-public information by its employees. As detailed above in the description of the generic standards, if the issuer or a broker-dealer is responsible for maintaining (or has a role in maintaining) the Underlying Index, such issuer or broker-dealer is required to erect and maintain a ''firewall'' in a form satisfactory to Nasdaq, in order to prevent the flow of information regarding the Underlying Index from the index production personnel to sales and trading personnel. In addition, Nasdaq will require that calculation of Underlying Indexes be performed by an independent third party that is not a broker-dealer.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[34] in general, and with Section 15A(b)(6) of the Act,[35] 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.

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

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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, as amended, 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–NASD–2006–001 on the subject line.

portfolio. This strategy is also known as a ''covered call'' strategy. A buy-write strategy provides option premium income to cushion decreases in the value of an equity portfolio, but will under perform stocks in a rising market.

[28] *See, e.g.,* Securities Exchange Act Release Nos. 52756 (November 9, 2005), 70 FR 70006 (November 18, 2005) (approving the listing and trading of Index Securities linked to the CBOE Nasdaq-100 Buy Write Index); 52725 (November 3, 2005), 70 FR 68486 (November 10, 2005) (approving the listing and trading of Index Securities linked to the CBOE Nasdaq-100 BuyWrite Index); 51840 (June 14, 2005), 70 FR 35468 (June 20, 2005) (approving the listing and trading of Index Securities linked to the CBOE DJIA BuyWrite Index); and 51634 (April 29, 2005), 70 FR 24138 (May 6, 2005) (approving the listing and trading of Index Securities linked to the CBOE S&P 500 BuyWrite Index).

[29] Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, and Florence E. Harmon, Senior Special Counsel, Commission, Division on January 11, 2006.

[30] *See* Rule 10A–3(c)(7) under the Act, 17 CFR 240.10A–3(c)(7)

[31] 15 U.S.C. 77e(b)(2).

[32] Members conducting a public securities business are subject to the rules and regulations of the NASD, including NASD Rule 2310(a) and (b). Accordingly, NASD Notice to Members 03–71 regarding nonconventional investments or ''NCIs'' applies to members recommending/selling index-linked securities to public customers. This Notice specifically reminds members in connection with NCIs (such as index-lined securities) of their obligations to: (1) Conduct adequate due diligence to understand the features of the product; (2) perform a reasonable-basis suitability analysis; (3) perform customer-specific suitability analysis in connection with any recommended transactions; (4) provide a balanced disclosure of both the risks and rewards associated with the particular product, especially when selling to retail investors; (5) implement appropriate internal controls; and (6) train registered persons regarding the features, risk and suitability of the products.

[33] The Nasdaq Market Watch Department also performs certain day-to-day surveillance activities that will be applicable to the trading of the Index Securities. Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, and Florence E. Harmon, Senior Special Counsel, Commission, division on January 18, 2006.

[34] 15 U.S.C. 78*o*–3.

[35] 15 U.S.C. 78*o*–3(b)(6).

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2006–001. 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 Section. Copies of the filing also will be available for inspection and copying at the principal office of the NASD. 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–NASD–2006–001 and should be submitted on or before February 15, 2006.

IV. Commission's Findings

After careful consideration, 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 association.[36] In particular, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act[37] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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 has previously approved the listing and trading of several Index Securities based on a variety of debt structures and market indexes.[38] The Commission has also approved, pursuant to Rule 19b–4(e) under the Act,[39] generic listing standards for these securities proposed by the Amex that, in all material respects, are identical to those listing standards proposed by Nasdaq.

Consistent with its previous orders, the Commission believes that generic listing standards proposed by Nasdaq for Index Securities should fulfill the intended objective of Rule 19b-4(e) under the Act by allowing those Index Securities that satisfy the generic listing standards to commence trading without public comment and Commission approval.[40] This has the potential to reduce the time frame for bringing Index Securities to market and thereby reduce the burdens on issuers and other market participants and thus enhances investors' opportunities.

A. Trading of Index Securities

Taken together, the Commission finds that Nasdaq's proposal contains adequate rules and procedures to govern the trading of Index Securities listed pursuant to Rule 19b–4(e) on Nasdaq. All Index Security products listed under the standards will be subject to the full panoply of Nasdaq rules and procedures that now govern the trading of Index Securities and the trading of equity securities on Nasdaq.

Nasdaq has proposed asset/equity requirements and tangible net worth for each Index Security issuer, as well as minimum distribution, principal/market value, and term thresholds for each issuance of Index Securities. As set forth more fully above, Nasdaq's proposed listing criteria include minimum market capitalization, monthly trading volume, and relative weighting requirements for the Index Securities. These requirements are designed to ensure that the trading markets for index components underlying Index Securities are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. The Commission believes that these requirements should significantly minimize the potential for of manipulation. The Commission also finds that the requirement that each component security underlying an Index Security be listed on a national securities exchange or traded through the facilities of a national securities system and subject to last sale reporting will contribute significantly to the transparency of the market for Index Securities. Alternatively, if the index component securities are foreign securities that are not reporting companies, the generic listing standards permit listing of an Index Security if the Commission previously approved the underlying index for trading in connection with another derivative product and if certain surveillance sharing arrangements exist with foreign markets. The Commission believes that if it has previously determined that such index and its components were sufficiently transparent, then Nasdaq may rely on this finding, provided it has comparable surveillance sharing arrangements with the foreign market that the Commission relied on in approving the previous product.

The Commission believes that by requiring pricing information for both the relevant underlying index or indexes and the Index Security to be readily available and disseminated, the proposed listing standards should help ensure a fair and orderly market for Index Securities approved pursuant to such proposed listing standards.

The Commission also believes that the requirement that at least 90 percent of the component securities, by weight, and 80 percent of the total number of Underlying Securities, be eligible individually for options trading will prevent an Index Security from being a vehicle for trading options on a security not otherwise options eligible.

Nasdaq has also developed delisting criteria that will permit Nasdaq to suspend trading of an Index Security in case of circumstances that make further dealings in the product inadvisable. The Commission believes that the delisting criteria will help ensure a minimum level of liquidity exists for each Index Security to allow for the maintenance of fair and orderly markets. Also, Nasdaq will commence delisting proceedings in the event that the value of the underlying index or index is no longer calculated and widely disseminated on at least a 15-second basis.[41]

[36] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[37] 15 U.S.C. 78*o*–3(b)(6).

[38] *See* Securities Exchange Act Release Nos. 41091 (February 23, 1999), 64 FR 10515 (March 4, 1999) (Narrow-Based Index Options); 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (ETFs); and 43396 (September 29, 2000), 65 FR 60230 (October 10, 2000) (TIRs).

[39] 17 CFR 240.19b–4(e).

[40] The Commission notes that the failure of a particular index to comply with the proposed generic listing standards under Rule 19b–4(e) under the Act, however, would not preclude Nasdaq from submitting a separate filing pursuant to Section 19(b)(2) of the Act, requesting Commission approval to list and trade a particular index-linked product.

[41] In the case of the BuyWrite Index Securities, CBOE disseminates a daily index value.

B. Surveillance

Nasdaq must have surveillance procedures to monitor trading in any products listed under the generic listing standards. An Index Security, just like an ETF, derives its value by reference to the underlying index. For this reason, the Commission has required that markets that list index based securities monitor the qualifications of not just the actual security (*e.g.*, the ETF, index option, or Index Securities), but also of the underlying indexes (and of the index providers). In this regard, the Commission believes that a surveillance sharing agreement between a self-regulatory organization proposing to list a stock index derivative product and the self-regulatory organization trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. When a new derivative securities product based upon domestic securities is listed and traded on an exchange or national securities association pursuant to Rule 19b–4(e) under the Act, the self-regulatory organization should determine that the markets upon which all of the U.S. component securities trade are members of the Intermarket Surveillance Group (''ISG''), which provides information relevant to the surveillance of the trading of securities on other market centers.[42] For derivative securities products based on previously approved indexes that contain securities from one or more foreign markets, the self-regulatory organization should have a comprehensive Intermarket Surveillance Agreement, as prescribed in the prior Commission order, which covers the securities underlying the new securities product.[43] With respect to indexes not previously approved by the Commission, the Commission finds that Nasdaq's commitment to implement comprehensive surveillance sharing agreements,[44] as necessary, and the definitive requirements that: (i) Each component security shall be a registered reporting company under the Act; and (ii) no more than 20 percent of the weight of the Underlying Index or Underlying Indexes may be comprised of foreign country securities or ADRs not subject to a comprehensive surveillance sharing agreement,[45] will make possible adequate surveillance of trading of Index Securities listed pursuant to the proposed generic listing standards.

With regard to actual oversight, Nasdaq represents that its surveillance procedures are sufficient to detect fraudulent trading among members in the trading of Index Securities pursuant to the proposed generic listing standards.

C. Acceleration

The Commission finds good cause for approving proposed rule change, as amended, prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The proposal implements generic listing standards substantially identical to those already approved for the Amex. The Commission does not believe that Nasdaq's proposal raises any novel regulatory issues. The proposed generic listing criteria should enable more expeditious review and listing of Index Securities by Nasdaq, thereby reducing administrative burdens and benefiting the investing public. Thus, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that the proposed rule change, as amended (SR–NASD–2006–001), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

Nancy M. Morris,

Secretary.

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Additionally, a daily indicative value for the product is also disseminated.

[42] See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7–13–98). ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. The Commission notes that all of the registered national securities exchanges, including the ISE, as well as the NASD, are members of the ISG.

[43] Id.

[44] Proposed NASD Rule 4420(m)(9).

[45] Proposed NASD Rules 4420(m)(7)(vi)–(vii).

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53147; File No. SR–Phlx–2006–02]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay Implementation of a Split of the PHLX Housing Sector℠ Index Option

January 19, 2006.

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 January 4, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx. The Phlx filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Phlx, pursuant to section 19(b)(1) of the Act [6] and Rule 19b–4 thereunder,[7] proposes to delay until February 1, 2006 [8] the implementation of a split of the PHLX Housing Sector℠ Index (''Index'') option (''HGX'') [9] to one-half

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(6).

[5] As required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii), the Phlx submitted 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 filing.

[6] 15 U.S.C. 78s(b)(1).

[7] 17 CFR 240.19b–4.

[8] In its proposal, the Phlx requested a delay until February 2006. During a telephone conversation on January 12, 2006, the Exchange specified that it is seeking to delay implementation until February 1, 2006. Telephone conversation between Jurij Trypupenko, Director and Counsel, Phlx, and Christopher Chow, Attorney, Division of Market Regulation, on January 12, 2006.

[9] HGX is a modified capitalization-weighted index composed of 21 companies whose primary lines of business are directly associated with the U.S. housing construction market. The Index encompasses residential builders, suppliers of aggregate, lumber and other construction materials, manufactured housing and mortgage insurers. The

Continued