distributing a Regulatory Information Circular prior to the implementation of any change.

2. Statutory Basis

The Exchange believes the proposal is consistent with Section 6(b) of the Act[7], in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest in that it would promote efficient interaction of market maker quotations.

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

The Exchange believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended 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–ISE–2005–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2005–48. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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–ISE–2005–48 and should be submitted on or before December 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–22416 Filed 11–9–05; 8:45 am]

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

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52725; File No. SR–NASD–2005–118]

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 Relating to the Listing and Trading of 9% Targeted Income Strategic Total Return Securities℠ Linked to the CBOE Nasdaq–100 BuyWrite Index

November 3, 2005.

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 September 30, 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 (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On October 14, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

Nasdaq proposes to list and trade 9% Targeted Income Strategic Total Return Securities℠ (''9% STRS'' or ''Notes''), the return on which is based upon the CBOE Nasdaq–100 BuyWrite Index (''BXN Index'' or ''Index'') and issued by Morgan Stanley. The text of the proposed rule change is available on the NASD's Web site (*http://www.nasd.com*), at the principal offices of the Nasdaq, and at the Commission's Public Reference Room.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Nasdaq proposes to list and trade the Notes. The Notes provide for a return based upon the BXN Index.

Description of Notes

The Notes are non-convertible debt issued by Morgan Stanley that are due on October 30, 2011 and have a principal amount and issue price of $10. The Notes will trade as a single, exchange-listed security. However, the principal amount is initially reduce by underwriting commissions of 1.20%, so that the Notes, in fact, are initially valued at $9.88, which is known as the initial net entitlement value (''Initial NEV''). Additional fees of 2% each year reduce the Net Entitlement Value (''NEV''). Because the initial NEV is 1.20% less than the issue price of the securities and because the 2% per annum adjustment amount reduces the NEV over the term of the securities, the BXN Index must increase for the investor to receive an amount upon sale, exchange, redemption or at maturity equal to the issue price for each security. Thus, unlike ordinary debt, the Notes have no guaranteed return of principal and do not pay interest.[4]

The Notes will pay 9% per annum, payable monthly beginning November 30, 2005. If the investor exchanges the Notes, or Morgan Stanley calls the Notes the investor will receive accrued but unpaid interim payments on the exchanged or redeemed Notes in exchange for a reduction of the NEV of the Notes (''Adjustment Amount''). This Adjustment Amount takes into account the interim payments on the Notes. As a result, for investing in the Notes, the investor will receive current income in the form of the interim payments on the Notes in exchange for a reduction in the NEV of the Notes.[5]

The payout on the Notes upon exchange, upon redemption, or at maturity will be based on the applicable NEV of the securities determined on a valuation date, as compared to the Initial NEV.

For each trading day, the NEV is equal to $9.88 (*e.g.*, the Initial NEV) multiplied by the ratio of the BXN Index closing value on that trading day over the closing value of the Index on the pricing date (''Initial BXN Index Value'') minus the Adjustment Amount[6] as of that trading day. In other words:

$$NEV_T = NEV_{T-1} * \left(\frac{BXN_T}{BXN_{T-1}}\right) - \text{Adjustment Amount}$$

Where

T = each trading day

BXN_T = the closing value of the BXN Index on T.

The Notes are cash-settled in U.S. dollars and 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 Index. The Commission has previously approved the listing of options on, and other securities the performance of which have been linked to or based on similar and parallel buy-write indexes.[7]

Beginning in October 2008, upon at least 10 but not more than 30 days notice to the holders, Morgan Stanley may redeem the Notes each quarter on certain dates specified in the prospectus (''Exchange Date''). In addition, prior to October 2008, Morgan Stanley may redeem the Notes for mandatory exchange on any Exchange Date if the NEV (which is a value calculated as described in the immediately following paragraph) equals or is less than $2.00 on any trading day. Furthermore, during the period from January 2006 to July 2011, a holder may exchange the Notes each quarter on certain specified dates for an amount of cash for each security equal to the NEV, plus accrued but unpaid interim payments, subject to a minimum of at least 10,000 Notes. The payout on the Notes upon exchange, upon redemption, or at maturity will be based on the applicable NEV of the securities determined on a valuation date, as compared to the Initial NEV.

Description of the Index

The BXN Index[8] is a benchmark index designed to measure the performance of a hypothetical ''buy-write''[9] strategy on the Nasdaq-100 Index.[10] Developed by the CBOE in

[4] Telephone conference between Jonathan Cayne, Associate General Counsel, Nasdaq, and Geoffrey Pemble, Special Counsel, Division of Market Regulation (''Division''), Commission, on November 1, 2005 (relating to additional descriptive material about the Notes provided in prospectus supplement).

[5] *Id.*

[6] On any trading day, the Adjustment Amount is the sum of (i) 9% multiplied by the Issue Price multiplied by the number of calendar days since the previous calculation of NEW divided by 365 plus (ii) 2% multiplied by NEV on the previous trading day multiplied by the number of calendar days since the previous calculation of NEV divided by 365.

[7] The BXN Index is similar to Chicago Board Options Exchange's (''CBOE'') BXM and BXD indexes, which are buy-writes on the S&P 500 and the Dow Jones Industrial Average, respectively. The Commission has previously, on multiple occasions, approved the listing and trading of notes linked to the BXM and BXD indexes. *See* Securities Exchange Act Release Nos. 51966, (July 1, 2005), 70 FR 40069 (July 12, 2005) (approving an exception to the requirement in the American Stock Exchange LLC (''Amex'') ''generic'' listing standards pursuant to Rule 19b–4(e) for index-linked notes that index values be disseminated at least every 15 seconds, thereby allowing the listing and trading of notes linked to the BXM and BXD even though the BXM and BXD values are not so disseminated); 51840 (June 14, 2005), 70 FR 35468 (June 20, 2005) (approving the listing and trading of JPMorgan Chase notes linked to the BXD Index); 51634 (April 29, 2005), 70 FR 24138 (May 6, 2005) (approving the listing and trading of Wachovia notes linked to the BXM Index); 51426 (March 23, 2005), 70 FR 16315 (March 30, 2005) (approving the listing and trading of Morgan Stanley notes linked to the BXM Index); and 50719 (November 22, 2004), 69 FR 69644 (November 30, 2004) (approving the listing and trading of Morgan Stanley notes linked to the BXM Index).

[8] Morgan Stanley and Nasdaq have entered into a non-exclusive license agreement providing for the use of the Index by Morgan Stanley in connection with the Notes. Nasdaq is not responsible for and will not participate in the issuance of the Notes.

[9] 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 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 underperform stocks in a rising market. A buy-write strategy tends to lessen overall volatility in a portfolio.

[10] The BXN Index consists of a long position in the component securities of the Nasdaq-100 Index and options on the Nasdaq-100 Index. The Commission has approved the listing of numerous securities linked to the performance of the Nasdaq-100 Index as well as options on the Nasdaq-100 Index. *See, e.g.*, Securities Exchange Act Release Nos. 50916 (December 22, 2004), 69 FR 78508 (December 30, 2004) (approving the listing and trading of Performance Leveraged Upside Securities based on the value of the Nasdaq-100 Index); 48065 (June 19, 2003), 68 FR 38414 (June 27, 2003) (approving the listing and trading of Performance Leveraged Upside Securities based on the value of the Nasdaq-100 Index); 45429 (February 11, 2002), 67 FR 7438 (February 19, 2002) (approving the

Continued

cooperation with Nasdaq, the Index was initially announced in 2005.[11] The CBOE developed the BXN Index in response to requests by options portfolio managers that the CBOE provide an objective benchmark for evaluating the performance of buy-write strategies, one of the most popular option trading strategies. In addition, the BXN Index could provide investors with a straightforward indicator of the risk-reducing character of options.

The BXN Index is a passive total return index based on (1) buying a portfolio consisting of the component stocks of the Nasdaq-100, and (2) ''writing'' (or selling) near-term Nasdaq-100 call options with the closest out-of-the money strike price, generally on the third Friday of each month. This strategy consists of a hypothetical portfolio consisting of a ''long'' position indexed to the Nasdaq-100 on which are deemed sold a succession of one-month, at-the-money call options on the Nasdaq-100 listed on the CBOE. Dividends paid on the component stocks underlying the Nasdaq-100 and the dollar value of option premium deemed received from the sold call options are functionally ''reinvested'' in the covered Nasdaq-100 portfolio.

The value of the BXN Index on any given date will equal: (1) The value of the BXN Index on the previous day, multiplied by (2) the daily rate of return [12] on the covered Nasdaq-100 portfolio on that date. Thus, the daily change in the BXN Index reflects the daily changes in value of the covered Nasdaq-100 portfolio, which consists of the Nasdaq-100 (including dividends) and the component Nasdaq-100 option. The daily closing price of the BXN Index is calculated and disseminated by the CBOE on its Web site at *http://www.cboe.com* and via the Options Pricing and Reporting Authority (''OPRA'') at the end of each trading day. The value of the Nasdaq-100 Index is disseminated at least once every fifteen (15) seconds throughout the trading day. Nasdaq believes that the intraday dissemination of the Nasdaq-100 Index along with the ability of investors to obtain real-time, intraday Nasdaq-100 call option pricing provides sufficient transparency regarding the BXN Index.[13] In addition, as indicated above, the value of the BXN Index is calculated once every trading day, thereby providing investors with a daily value of such ''hypothetical'' buywrite options strategy on the Nasdaq-100.

As noted above, the Index is not calculated or disseminated continuously throughout the trading day. Instead, the CBOE calculates the value of the Index shortly after the close.[14] In addition, CBOE will disseminate daily an updated value of the amount investors would receive for the Notes if exchanged or redeemed (''Indicative Value''). The Indicative Value equals the performance of the Index less fees and other adjustment amounts, if any. The Indicative Value is calculated by the CBOE after the close of trading and after the BXN is calculated for use by investors during the next trading day. It is designed to provide investors with a daily reference value of the adjusted Index. The Indicative Value may not reflect the precise value of the Notes.

As stated below, in the event the calculation and dissemination of the Index is discontinued, Nasdaq will consult with the Commission and will prohibit the continued listing of the Notes unless otherwise authorized by the Commission.[15]

Listing and Trading Rules

Under NASD Rule 4420(f), Nasdaq may approve for listing and trading innovative securities that cannot be readily categorized under traditional listing guidelines.[16] Nasdaq proposes to list and trade Notes based on the BXN Index under NASD Rule 4420(f).

The Notes, which will be registered under Section 12 of the Act, will initially be subject to Nasdaq's listing criteria for other securities under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million.[17] In the case of an issuer which is unable to satisfy the income criteria set forth in 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;

(B) There must be a minimum of 400 holders of the security; provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units;

(D) The aggregate market value/principal amount of the security will be at least $4 million.

In addition, Morgan Stanley satisfies the listed marketplace requirement set forth in NASD Rule 4420(f)(2).[18] Lastly, pursuant to NASD Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular

listing and trading of Enhanced Return Notes Linked to the Nasdaq-100 Index); 45024 (November 5, 2001), 66 FR 56872 (November 13, 2001) (approving the listing and trading of Enhanced Return Notes Linked to the Nasdaq-100 Index); 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (approving the listing and trading of Performance Leveraged Upside Securities based upon the performance of the Nasdaq-100 Index); 43000 (June 30, 2000), 65 FR 42409 (July 10, 2000) (approving the listing and trading of options based upon one-tenth of the value of the Nasdaq-100 Index); 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) (approving the listing and trading of Portfolio Depositary Receipts based on the Nasdaq-100 Index); and 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994) (approving the listing and trading of options on the Nasdaq-100 Index).

As of the close of business on September 30, 2005, the adjusted market capitalization of the securities included in the Index ranged from a high of $178 billion to a low of $3 billion. As of the same date, the average daily trading volume for these same securities since the beginning of 2005 ranged from a high of 67 million shares to a low of 450,000 shares.

[11] *See* supra note 7.

[12] The daily rate of return on the covered Nasdaq-100 portfolio is based on (a) the change in the closing value of the stocks in the Nasdaq-100 portfolio, (b) the value of ordinary cash dividends on the stocks underlying the Nasdaq-100 that are trading ''exdividend'' on that date (that is, when transactions in the stock on an organized securities exchange or trading system no longer carry the right to receive that dividend or distribution) as measured from the close in trading on the previous day and (c) the change in the market price of the call option.

[13] Call options on the Nasdaq-100 are traded on the CBOE, and both last sale and quotation information for the call options are disseminated in real-time through OPRA. Nasdaq states that the value of the BXN can be readily approximated as a function of observable market prices throughout the trading day. In particular, such a calculation would require information on the current price of the Nasdaq-100 Index and specific nearest-to-expiration call and put options on that Index. These components trade in highly liquid markets, and real-time prices are available continuously throughout the trading day from a number of sources including Bloomberg and the CBOE.

[14] The Commission previously approved the listing and trading of notes linked to similar CBOE indexes (BXM and BXD) that are not disseminated every 15 seconds. The Commission also recently approved an exception to the 15-second requirement in the American Stock Exchange ''generic'' listing standards for notes linked to these indexes. *See* supra note 7.

[15] Prior to such change in the manner in which the Index is calculated, or in the event of any Index substitution, Nasdaq will file a proposed rule change pursuant to Rule 19b–4, which must be approved by the Commission prior to continued listing and trading in the Notes.

[16] *See* Securities Exchange Act Release No. 32988 (September 29, 1993); 58 FR 52124 (October 6, 1993).

[17] Morgan Stanley satisfies this listing criterion.

[18] NASD Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on The Nasdaq National Market or the New York Stock Exchange, Inc. (''NYSE'') or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of NASD Rule 4450 will be applied to sovereign issuers of ''other'' securities on a case-by-case basis.

to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. In particular, Nasdaq will advise members recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The Notes will be subject to Nasdaq's continued listing criterion for other securities pursuant to NASD Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly held units must be at least $1 million. The Notes also must have at least two registered and active market makers, which is a continued listing requirement under NASD Rule 4310(c)(1). In addition, Nasdaq will commence delisting or removal proceedings with respect to the Notes (unless the Commission has approved the continued trading of the Notes) under any of the following circumstances:

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

(ii) If the value of the Index is no longer calculated or widely disseminated as described above in this filing; or

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

Nasdaq will also consider prohibiting the continued listing of the Notes if Morgan Stanley is not able to meet its obligations on the Notes. The Notes will be subject to the NASD's existing trading halt rules.

Since the Notes will be deemed equity securities for the purpose of NASD Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. First, pursuant to NASD Rule 2310 and IM–2310–2, members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.[19] In addition, as previously described, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. Furthermore, the Notes will be subject to the equity margin rules. Lastly, the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to transactions in the Notes.

Surveillance

Nasdaq represents that NASD's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, NASD will rely on its current surveillance procedures governing equity securities and will include additional monitoring on key pricing dates, such as redemption, call, and maturity dates.[20]

Pursuant to Rule 10A–3 of the Act and Section 3 of the Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, 116 Stat. 745 (2002), Nasdaq will prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements set forth therein.

Morgan Stanley will deliver a prospectus in connection with every purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Morgan Stanley's current procedure involving primary offerings.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[21] in general, and with Section 15A(b)(6) of the Act,[22] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market 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 will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments 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, as amended, 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–2005–118 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–118. 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 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–2005–118 and should be submitted on or before December 1, 2005.

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[19] NASD Rule 2310(b) requires members to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, the customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

[20] Telephone conference between Jonathan Cayne, Associate General Counsel, Nasdaq, and Geoffrey Pemble, Special Counsel, Division of Market Regulation, Commission, on November 1, 2005.

[21] 15 U.S.C. 78o–3.

[22] 15 U.S.C. 78o–3(6).

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Nasdaq requests that the Commission approve this filing on an accelerated basis since it raises no new or novel issues and will enable Nasdaq to accommodate the timetable of listing the Notes. In this regard, Nasdaq notes that the Commission has previously approved the listing of securities the performance of which has been linked to the Index.[23]

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, the requirements of Section 15A of the Act.[24] Specifically, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act, which requires that the rules be designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in processing information with respect to and facilitating transactions in securities, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[25]

In approving the product, the Commission recognizes that the Index is a passive total return index based on (1) buying a portfolio consisting of the component stocks of the Nasdaq-100, and (2) ''writing'' (or selling) near-term Nasdaq-100 call options, with the closest out-of-the money strike price, generally on the third Friday of each month. Given the large trading volume and capitalization of the compositions of the stocks underlying the Index, the Commission believes that the listing and trading of the Notes that are linked to the BXN Index should not unduly impact the market for the underlying securities compromising the Nasdaq-100 or raise manipulative concerns.[26] Moreover, the issuers of the underlying securities comprising the Nasdaq-100 are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets.

The Commission also believes that any concerns that a broker-dealer, such as Morgan Stanley, or a subsidiary providing a hedge for the issuer, will incur undue position exposure are minimized by the size of the Notes issuance in relation to the net worth of Morgan Stanley.[27]

Finally, the Commission notes that the value of the Index will be calculated and disseminated by CBOE once every trading day after the close of trading. However, the Commission notes that the value of the Nasdaq-100 will be widely disseminated at least once every fifteen seconds throughout the trading day and that investors are able to obtain real-time call option pricing on the Nasdaq-100 Index during the trading day. Further, the Indicative Value, which will be calculated by the CBOE after the close of trading and after the CBOE calculates the BXN Index for use by investors the next trading day, is designed to provide investors with a daily reference value of the adjusted Index.

Further, the Commission notes that the Nasdaq has agreed to undertake to delist the Notes in the event that CBOE ceases to calculate and disseminate the Index, and Morgan Stanley is unable to arrange to have the BXN Index calculated and widely disseminated through a third party.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. Nasdaq has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Nasdaq.[28] Additionally, the Notes will be listed pursuant to Nasdaq's existing hybrid security listing standards as described above. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[29] to approve the proposal on an accelerated basis.

Accordingly, the Commission believes there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act,[30] to approve the proposal, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–NASD–2005–118) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–22414 Filed 11–9–05; 8:45 am]

BILLING CODE 8010–01–P

[23] *See* supra note 10.

[24] 15 U.S.C. 78*o*–3.

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

[26] The issuer, Morgan Stanley, disclosed in the prospectus that the original issue price of the Notes includes commissions (and the secondary market prices are likely to exclude commissions) and Morgan Stanley's costs of hedging its obligations under the Notes. These costs could increase the initial value of the Notes, thus affecting the payment investors receive at maturity. Additionally, the issuer discloses in the prospectus that the hedging activities of its affiliates, including selling call options on the Nasdaq-100, could affect the value of these call option during the half hour period in which their value is determined for purposes of inclusion in the BXN Index. Such hedging activity must, of course, be conducted in accordance with applicable regulatory requirements.

[27] *See* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 3774 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (SR–Amex–96–27).

[28] *See* supra not 10.

[29] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[30] 15 U.S.C. 78o3(b)(6) and 78s(b)(2).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52715; File No. SR–NYSE–2005–65]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Regarding the Euro Currency Trust

November 1, 2005.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 29, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, III below, which Items have been prepared by the Exchange. 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 Exchange proposes to list and trade under new NYSE Rules 1300A *et seq.* (''Currency Trust Shares'') Euro

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.