entirely eliminated their limitations on electronic generation of orders.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that the proposed rule change 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. The Exchange believes allowing members to electronically generate and communicate orders will enhances access to the Exchange.

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

The ISE believes that 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The Exchange asserts that the foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder [10] because it does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.

The ISE has requested that the Commission waive the 30-day pre-operative period, which would make the rule change operative immediately, because the proposed rule change is based on rule changes filed by CBOE and the Phlx and approved by the Commission. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case. Allowing the proposed rule change to become operative immediately should enhance access to the Exchange and the proposed rule change does not raise any new issues of regulatory concern as the proposal is based on a rule change previously filed by CBOE with the Commission pursuant to Section 19(b)(3)(A) of the Act,[11] as well as, a rule change previously filed by the Phlx and approved by the Commission pursuant to Section 19(b)(2) of the Act.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2005–15 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2005–15. 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 ISE.

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–2005–15 and should be submitted on or before April 20, 2005.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–1390 Filed 3–29–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51425; File No. SR–NASD–2004–139]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Leveraged Index Return Notes Linked to the Dow Jones Industrial Average

March 23, 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 15, 2004, the National Association of Securities Dealers, Inc.

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[6] Securities Exchange Act Release Nos. 51030 (January 12, 2005), 70 FR 3404 (January 24, 2005) (SR–CBOE–2004–91); and 48648 (October 16, 2003), 68 FR 60762 (October 23, 2003) (SR–Phlx–2003–37).

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

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 15 U.S.C. 78s(b)(2). For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

(''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, II, and III below, which Items have been prepared by Nasdaq. On March 21, 2005, the Exchange amended its proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to list and trade Leveraged Index Return Notes Linked to the Dow Jones Industrial Average (''Notes'') issued by Merrill Lynch & Co., Inc. (''Merrill Lynch'').

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

Nasdaq proposes to list and trade the Notes. The Notes provide for a return based upon the Dow Jones Industrial Average (''Index'').

The Index

The Index is a price-weighted index published by Dow Jones & Company, Inc. A component stock's weight in the Index is based on its price per share, rather than the total market capitalization of the issuer of that component stock. The Index is designed to provide an indication of the composite price performance of 30 common stocks of corporations representing a broad cross-section of U.S. industry. The corporations represented in the Index tend to be market leaders in their respective industries, and their stocks are typically widely held by individuals and institutional investors. The corporations currently represented in the Index are incorporated in the U.S. and its territories, and their stocks are traded on the New York Stock Exchange and The Nasdaq National Market. The component stocks in the Index are selected (and any changes are made) by the editors of the *Wall Street Journal* (''WSJ''). Changes to the stocks included in the Index tend to be made infrequently. Historically, most substitutions have been the result of mergers, but from time to time, changes may be made to achieve what the editors of the WSJ deem to be a more accurate representation of the broad market of the U.S. industry. The value of the Index is the sum of the primary market prices of each of the 30 common stocks included in the Index, divided by a divisor that is designed to provide a meaningful continuity in the value of the Index. In order to prevent certain distortions related to extrinsic factors, the divisor may be adjusted appropriately. The current divisor of the Index is published daily in the WSJ and other publications. Other statistics based on the Index may be found in a variety of publicly available sources.

As of August 27, 2004, the market capitalization of the securities included in the Index ranged from a high of approximately $346 billion to a low of approximately $24 billion. The average daily trading volume for Index components (calculated over the previous thirty trading days) ranged from a high of approximately 24 million shares to a low of approximately 1.7 million shares.

The value of the Index is widely disseminated at least every 15 seconds by providers that are independent from Merrill Lynch. In the event the calculation or dissemination of the Index is discontinued, Nasdaq will delist the Notes.

Other Information

Under NASD Rule 4420(f), Nasdaq may approve for listing and trading innovative securities that cannot be readily categorized under traditional listing guidelines.[4] Nasdaq proposes to list the Notes for trading 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 Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million.[5] 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;

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;

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

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

In addition, Merrill Lynch satisfies the listed marketplace requirement set forth in NASD Rule 4420(f)(2).[6] Lastly, pursuant to Rule 4420(f)(3), prior to the commencement of trading of the Notes, 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. In particular, in accordance with NASD Rule 2310(a), Nasdaq will advise members recommending a transaction in the Notes to have reasonable grounds for believing that the recommendation 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. In addition, pursuant to Rule 2310(b), prior to the execution of a transaction in the Notes that has been recommended to a non-institutional customer, a member shall make reasonable efforts to obtain information concerning: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member in making recommendations to the customer.

The Notes will be subject to Nasdaq's continued listing criterion for other

[3] *See* Amendment No. 1, dated March 21, 2005 (''Amendment No. 1''). In Amendment No. 1, the Exchange provided additional details regarding the proposed index linked notes and underlying index.

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

[5] Merrill Lynch satisfies this listing criterion.

[6] 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 (''NYSE'') or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of ''other'' securities on a case-by-case basis.

securities pursuant to 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 as required by Rule 4310(c)(1). Nasdaq will also consider prohibiting the continued listing of the Notes if Merrill Lynch is not able to meet its obligations on the Notes.

The Notes are a series of senior non-convertible debt securities that will be issued by Merrill Lynch and will not be secured by collateral. The Notes will be issued in denominations of whole units (''Unit''), with each Unit representing a single Note. The original public offering price will be $10 per Unit. The Notes will not pay interest and are not subject to redemption by Merrill Lynch or at the option of any beneficial owner before maturity. The Notes' term to maturity is 5 years.

At maturity, if the value of the Index has increased, a beneficial owner of a Note will be entitled to receive the original offering price ($10), plus an amount calculated by multiplying the original offering price ($10) by an amount expected to be between 105 percent and 115 percent (''Participation Rate'') of the percentage increase in the Index. If, at maturity, the value of the Index has not changed or has decreased by up to 20 percent, then a beneficial owner of a Note will be entitled to receive the full original offering price.

However, unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity. Therefore, if the value of the Index has declined at maturity by more than 20 percent, a beneficial owner will receive less, and possibly significantly less, than the original offering price: for each 1 percent decline in the Index below 20 percent, the redemption amount of the Note will be reduced by 1.25 percent of the original offering price.

The change in the value of the Index will normally (subject to certain modifications explained in the prospectus supplement) be determined by comparing (a) the average of the values of the Index at the close of the market on five business days shortly before the maturity of the Notes to (b) the closing value of the Index on the date the Notes are priced for initial sale to the public. The value of the Participation Rate will be determined by Merrill Lynch on the date the Notes are priced for initial sale based on the market conditions at that time. Both the value of the Index on the date the Notes are priced and the Participation Rate will be disclosed in Merrill Lynch's final prospectus supplement, which Merrill Lynch will deliver in connection with the initial sale of the Notes.

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 of securities comprising the Index. The Notes are designed for investors who want to participate or gain exposure to the Index, and who are willing to forego market interest payments on the Notes during the term of the Notes.

Since the Notes will be deemed equity securities for the purpose of Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. First, as stated, 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.[7] Members are also reminded that the Notes are considered non-conventional investments for purposes of NASD's Notice to Members 03–71.[8] 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.

Pursuant to Securities Exchange Act Rule 10A–3 and Section 3 of the Sarbanes-Oxley Act of 2002, Public Law 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.

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

In connection with initial distributions of its Nasdaq-listed notes, Merrill Lynch is required to deliver the appropriate prospectus.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[9] in general, and with Section 15A(b)(6) of the Act,[10] 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. Specifically, the proposed rule change will provide investors with another investment vehicle based on the Index.

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, as amended.

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. 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 self-regulatory organization consents, the Commission will:

A. By order approve such 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:

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[7] 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.

[8] *See* NASD, NTM 03–71 (November 2003), note 1.

[9] 15 U.S.C. 78o–3.

[10] 15 U.S.C. 78o–3(b)(6).

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–2004–139 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–139. 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, 450 Fifth Street, NW., Washington, DC 20549. 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–2004–139 and should be submitted on or before April 20, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–1393 Filed 3–29–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51428; File No. SR–Phlx–2005–12]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Fees Applicable to Remote Streaming Quote Traders

March 24, 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 February 11, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On March 15, 2005, Phlx filed Amendment No. 1 to the proposed rule change.[3] On March 22, 2005, Phlx filed Amendment No. 2 to the proposed rule change.[4] The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[5] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Phlx proposes to amend its schedule of fees to adopt fees applicable to Remote Streaming Quote Traders (''RSQTs'').[6] The complete text of the proposed rule change is available on Phlx's Web site (*http://www.phlx.com*), at the Phlx's principal office, and at the Commission's Public Reference Room.

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 clarified the proposed RSQT fees in response to comments received from Commission staff.

[4] Amendment No. 2 made further clarifications to the proposed RSQT fees in response to comments received from Commission staff.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] A RSQT is an Exchange Registered Options Trader (''ROT'') that is a member or member organization of the Exchange with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through the Exchange's Automated Options Market in eligible options in which such RSQT has been assigned. A RSQT may only submit such quotations electronically from off the floor of the Exchange. A RSQT may only trade in a market making capacity in classes of options in which he is assigned. *See* Phlx Rule 1014(b)(ii)(B).

Fees and credits under the proposal would apply as follows:

Category I: $1700.00 per Calendar Month

RSQT is eligible to trade:
- 1 issue selected from the top 5 national volume leaders.
- 1 issue selected from the 6th to 10th national volume leaders.
- 3 issues selected from the 11th to 25th national volume leaders.
- 4 issues selected from the 26th to 50th national volume leaders.
- 1 index issue.
- 190 other issues.

Maximum permit credit is $1200 per calendar month.

Category II: $3200.00 per Calendar Month

RSQT is eligible to trade:
- 2 issues selected from the top 5 national volume leaders.
- 2 issues selected from the 6th to 10th national volume leaders.
- 6 issues selected from the 11th to 25th national volume leaders.
- 8 issues selected from the 26th to 50th national volume leaders.
- 2 index issues.
- 380 other issues.

Maximum permit credit is $2200.00 per calendar month.

Category III: $4700.00 per Calendar Month

RSQT is eligible to trade:
- 3 issues selected from the top 5 national volume leaders.
- 3 issues selected from the 6th to 10th national volume leaders.
- 9 issues selected from the 11th to 25th national volume leaders.
- 12 issues selected from the 26th to 50th national volume leaders.
- 3 index issues.
- 570 other issues.

Maximum permit credit is $3200.00 per calendar month.

Category IV: $6200.00 per Calendar Month

RSQT is eligible to trade:
- 4 issues selected from the top 5 national volume leaders.
- 4 issues selected from the 6th to 10th national volume leaders.
- 12 issues selected from the 11th to 25th national volume leaders.
- 16 issues selected from the 26th to 50th national volume leaders.
- 5 index issues.
- 759 other issues.

Maximum permit credit is $4200.00 per calendar month.

Category V: $7700.00 per Calendar Month

RSQT is eligible to trade: