

For the Nuclear Regulatory Commission.

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of January 26, 1998.

A closed meeting will be held on Thursday, January 29, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, January 29, 1998, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: January 21, 1998.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98-1852 Filed 1-21-98; 3:40 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39555; File No. SR-NASD-97-98]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to SelectNet Fees

January 15, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 31, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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

Pursuant to Rule 19b-4 under the Act Nasdaq is herewith filing a proposed extension of the temporary 50% fee reduction currently charged under NASD Rule 7010(1) for the execution of a transaction in SelectNet.

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

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change.

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

Nasdaq is proposing to extend the temporary 50% fee abatement currently charged under NASD Rule 7010(1) for the execution of a transaction in SelectNet. This proposed extension continues the current SelectNet fee reduction from \$2.50 per side to \$1.25 per side and is effective January 1, 1998, through March 31, 1998. The proposed extension constitutes only a temporary abatement in the fee Nasdaq collects and, if no further action is taken, SelectNet fees will revert to the \$2.50 per side level on April, 1998.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

The reasons justifying a SelectNet fee reduction are contained in Nasdaq's original rule filing in October of 1997 seeking a 50% abatement for the period of October 1, 1997, through December 31, 1997.<sup>2</sup> SelectNet usage has continued to grow with more than 107,000 transactions in October of 1997 and over 79,000 transactions in November of 1997. Nasdaq believes that while the level of SelectNet activity supports a continuation of lower SelectNet fees, the volatility of current SelectNet usage levels militates in favor of the maintenance of the fee reduction on a temporary basis.

Nasdaq believes that the proposed extension of the fee reduction is consistent with Section 15A(b)(5) of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

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

The NASD believes that the proposed rule change will not 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

Comments were neither solicited nor received.

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

This filing applies to the assessment of SelectNet fees to NASD members, and thus the proposed rule change is effective immediately upon filing pursuant to Section 19(b)(3)(A)(ii)<sup>3</sup> of the Act and subparagraph (e)(2) of Rule 19b-4 under the Act<sup>4</sup> because the proposal is establishing or changing a due, fee or other charge.

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.

<sup>2</sup> See Securities Exchange Act Release No. 39248 (October 16, 1997), 62 FR 55296 (October 23, 1997).

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

<sup>4</sup> 17 CFR 240.19b-4(e)(2).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-97-98 and should be submitted by February 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39548; File No. SR-Phlx-97-23]

#### Self-Regulatory Organizations: Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to the Treatment of PACE Orders in Double-up/Double-down Tick Situations

January 13, 1998.

#### I. Introduction

On May 2, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to double-up/double-down automatic price improvement and

manual price protection. On August 4, 1997, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.<sup>3</sup>

The proposed rule change was published for comment in Securities Exchange Act Release No. 39000 (September 2, 1997), 62 FR 47865 (September 11, 1997). No comments were received on the proposal. On October 20, 1997, the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change.<sup>4</sup> This order approves the proposal, including Amendment No. 2 on an accelerated basis.

#### II. Description

##### A. Background

The Exchange, pursuant to Rule 19b-4 of the Act, proposes to adopt Supplementary Material .07(c) to Phlx Rule 229, Philadelphia Stock Exchange Automatic Communication and Execution ("PACE") System, relating to automatic double-up/double-down price improvement and manual double-up/double-down price protection. The PACE System accepts orders for automatic or manual execution in accordance with the provisions of Phlx Rule 229, which governs the operation of the PACE System and defines its objectives and parameters. Agency orders received through PACE are subject to certain minimum execution parameters and non-agency orders are subject to the provisions of Supplementary Material .02 of Rule 229. In addition, Rule 229 establishes execution parameters for orders depending on type (market or limit), size, and the guarantees offered by specialists.<sup>5</sup>

<sup>3</sup> See Letter from Philip H. Becker, Senior Vice President and Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated August 1, 1997 ("Amendment No. 1").

<sup>4</sup> See Letter from Philip H. Becker, Senior Vice President, Phlx, to Michael Walinskas, Senior Special Counsel, SEC, dated October 17, 1997 ("Amendment No. 2"). Amendment No. 2 revises the proposal to provide that relief from the requirements concerning double-up/down guarantee sizes may be granted pursuant to the extraordinary circumstances language contained in the text of proposed Rule 229.07(c)(iii), rather than that of existing Rule 229.13. Moreover, the text of Rule 229.07(c)(iii) is proposed to be amended to state that extraordinary circumstances also include situations where the Exchange is unable to receive market quotations in a timely and accurate manner. In addition, while the Form 19b-4 filing containing the proposed rule change stated that member organizations may decline to participate in both double-up/down automatic price improvement and manual price protection, the text of proposed Rule 229.07(c)(i)(D) did not reflect this option. Amendment No. 2 adds such language to the text.

<sup>5</sup> Rule 229.05 provides that round-lot market orders up to 500 shares and partial round-lot ("PRL") market orders of up to 599 shares, which

##### B. Automatic Double-up/Double-down Price Improvement

The Exchange proposes to adopt Rule 229.07(c)(i), Automatic Double-up/Double-down Price Improvement, which would state that where the specialist voluntarily agrees to provide automatic double-up/double-down price improvement to all customers and all eligible orders in a security, in any instance where the bid/ask spread of the PACE Quote<sup>6</sup> is a  $\frac{1}{4}$  point or greater, market and marketable limit orders<sup>7</sup> in NYSE-listed or Amex-listed securities for 599 shares or less that are received through PACE in double-up/double-down situations shall be provided with automatic price improvement of  $\frac{1}{8}$  of a point, beginning at 9:45 a.m.

Under the proposal, a "double-up/double-down situation" is defined as a trade that would be at least: (i)  $\frac{1}{4}$  point (up or down) from the last regular way sale on the primary market; or (ii)  $\frac{1}{4}$  point from the regular way sale that was the previous intra-day change on the primary market. The term "double" originated with two  $\frac{1}{8}$  point ticks, meaning  $\frac{1}{4}$  of a point. Under the proposal, a down tick of  $\frac{1}{16}$  of a point followed by a down tick of  $\frac{3}{16}$  of a point would be a double-down situation, because it equals  $\frac{1}{4}$  of a point.

As an example of the part (i) of the definition of a double up/double-down situation, assuming that the specialist has agreed to participate in this feature, where the PACE Quote is  $22\frac{1}{2}$ – $22\frac{3}{4}$ , if the last sales on the primary market were  $22\frac{3}{4}$  followed by a down tick at  $22\frac{5}{8}$ , a double-up/double-down situation would not occur for a market order to buy, because buying at  $22\frac{3}{4}$  is a single up tick of  $\frac{1}{8}$  of a point and,

combine a round-lot with an odd-lot, are stopped at the PACE Quote at the time of their entry into PACE ("Stop Price") for a 30 second delay to provide the Phlx specialist with the opportunity to effect price improvement when the spread between the PACE Quote exceeds  $\frac{1}{8}$  of a point. This feature is known as the Public Order Exposure System ("POES") "window." Rule 229.05 further provides that market orders for more than 599 shares that a specialist voluntarily has agreed to execute automatically also are entitled to participation in POES. If orders eligible for POES are not executed within the POES 30 second window, the order is automatically executed at the Stop Price.

<sup>6</sup> The PACE Quote consists of the best bid/offer among the American Stock Exchange ("Amex"); New York Stock Exchange ("NYSE"); Pacific Exchange; Phlx, Boston Stock Exchange, Cincinnati Stock Exchange, and Chicago Stock Exchange, as well as the Intermarket Trading System/Computer Assisted Execution System ("TTS/CAES"). See Rule 229.

<sup>7</sup> A market order is an order to buy or sell a stated amount of a security at the best price obtainable when the order is received. A marketable limit order is an order to buy or sell a stated amount of a security at a specified price, which is received at a time when the market is trading at or better than such specified price.

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. § 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.