

month period. The actual phase-in will be set forth in a Notice to Members to be issued within 30 days of the SEC order approving this proposed rule change. The initial phase-in date will be no longer than 60 days from the date of such Notice. The second and third phase-in dates will be six months and twelve months from the initial phase-in date.

The amounts of the phase-in will be as follows:

- For non-clearing specialists, the \$100,000 standard will apply as of the initial phase-in date.
- For self-clearing specialist registered in less than 200 securities, the CHX net capital standard for the initial, second and third phase dates will be \$150,000, \$200,000, and \$250,000 respectively.
- For self-clearing specialists registered in 200 or more securities, the CHX net capital standard for the initial, second and third phase dates will be \$200,000, \$275,000 and \$350,000 respectively.
- For members that clear for other specialists, the CHX net capital standard for the initial, second and third phase dates will be \$350,000, \$425,000, and \$500,000 respectively.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act⁶ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating securities transactions, 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.

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

CHX does not believe that the proposed rule change will impose any burden on competition.

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 with respect to the proposed rule change.

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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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 CHX. All submissions should refer to File No. SR-CHX-99-01 and should be submitted by April 13, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-7091 Filed 3-22-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41174; File No. SR-NASD-99-13]

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

March 16, 1999.

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 March 4, 1999, 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 ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the NASD under Section 19(b)(3)(A)(ii) of the Act,³ which renders the proposal effective upon filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq is filing a proposed rule change to NASD Rule 7010. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7010 System Services

(a)-(b) No Change

(c)

(1) Consolidated Quotation Service. Existing Paragraph remains the same.

(2) *Listed Securities Transaction Credit. For a pilot period, qualified NASD members that trade securities listed on the NYSE and Amex in over-the-counter transactions reported by the NASD to the Consolidated Tape Association may receive from the NASD transaction credits based on the number of trades so reported. To qualify for the credit with respect to either Tape A reports or Tape B reports, an NASD member must have accounted for 500 or more average daily Tape or Tape B reports of over-the-counter transactions (but not in combination) as reported to the Consolidated Tape by the NASD over the period of July 1, 1998 to December 31, 1998, and must continue to average either 500 or more daily Tape A or 500 or more daily Tape B reports (but not in combination) of over-the-counter transactions as reported to the Consolidated Tape by the NASD during the term of the pilot. If an NASD member is so qualified to earn credits based either on its Tape A activity, or its Tape B activity, or both, that member may earn credits from one or both (as*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 200.30-3(a)(12).

the case may be, depending on the qualification standards) pools maintained by the NASD, each pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. A qualified NASD member may earn credits from such pools according to the member's pro rata share of the NASD's over-the-counter trade reports in each of Tape A and Tape B for each calendar quarter starting with October 1, 1998, and ending with the calendar quarter starting on April 1, 1999.

* * * * *

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 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

Nasdaq is proposing to establish a pilot program to provide a transaction credit⁴ to NASD members who exceed certain level of trading activity in exchange-listed securities. The NASD has determined to establish a program regarding these transaction credits to assist in finding ways to lower investor costs associated with trading, and to respond to steps taken by other exchanges that complete for investors order flow in these securities. The NASD has established the program as a limited period pilot program to develop experience with assisting NASD members trading in exchange-listed securities and to learn how best to lower the cost of trading these securities.

Background

Nasdaq's Third Market is a quotation, communication and execution system which allows NASD members to trade stocks listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX"). The Third Market competes with regional

exchanges like the Chicago Stock Exchange ("CHX") and the Cincinnati Stock Exchange ("CSE") for retail order flow in stocks listed on the NYSE and AMEX.⁵ The NASD collects quotations from broker-dealers that trade these securities over-the-counter and provides such quotations to the Consolidated Quotation System for dissemination. Additionally, the NASD collects trade reports from these broker-dealers trading such securities in the over-the-counter market and provides the trade reports to the Consolidated Tape Association ("CTA/CQA") for inclusion in the Consolidated Tape. As a participant in the CTA and CQA, the NASD earns a share of those organizations' revenue from trades that it reports in NYSE-listed securities ("Tape A") and in Amex-listed securities ("Tape B"). It is from the NASD's share of these revenues that Nasdaq intends to create credit pools for qualified members.

Nasdaq's transaction credit pilot is intended to both lower costs for Third Market Makers and for their customers, who execute trades in exchange-listed stocks through NASD members and Nasdaq facilities. The NASD believes that lowering the cost of trading increases competition among market centers trading listed securities. The pilot will also allow Nasdaq to evaluate the efficacy of this revenue sharing model and more effectively compete for the retention of Third Market participants with other regional exchanges who have adopted similar revenue distribution methodologies.

Pilot Program

Under the pilot proposal, Nasdaq will first calculate two separate pools of revenue from which credits can be earned—one representing 40% of the gross revenues received from the Consolidated Tape Association ("CTA") for providing trade reports in NYSE-listed securities executed in the Third Market for dissemination by CTA ("Tape A"), the other representing 40% of the gross revenue received from CTA for reporting AMEX trades ("Tape B"). To earn a credit from either of these

pools, an NASD member must have reached a minimum trading level in that market segment for the period of July 1, 1998 to December 31, 1998. The measure that the NASD will use for this pilot period is 500 average daily executions in Tape A (to qualify for the Tape A pool) or 500 average daily executions for Tape B (to qualify for this pool).⁶ Only those NASD members who both exceeded this 500 average daily execution threshold during the July to December 1998 time period and continue to average either 500 or more Tape A or 500 or more Tape B daily executions during the term of the pilot will be eligible for transaction credits. If an NASD member is so qualified, it will become part of the pilot's control group, and thus, be eligible to receive a pro-rata portion of the 40% revenue calculation during the term of the pilot.

A qualifying NASD member's transaction credit under the calculation will be determined by taking its percentage of total Third Market Transaction during the applicable calculation period and providing an equivalent percentage from the appropriate Tape A or B calculation pools. Thus, for each calendar quarter, commencing with the calendar quarter that started on October 1, 1998, the NASD will measure a qualified member's trade reported activity for that calendar quarter in each of Tape A and B and create a credit for that member based upon such activity. For example, should a qualifying NASD member's transactions represent 10% of the NASD's Tape A transactions, that member would receive a 10% share of the Tape A 40% calculation pool.

It must be noted that Nasdaq's transaction credit program is being proposed on a pilot basis only. There can be no guarantee that transaction credits will be available to qualifying NASD members beyond the term of the pilot.⁷

Nasdaq believes that the proposed rule change is consistent with the

⁶ The NASD has chosen to establish the threshold for qualification at 500 trades per day because it believes that such number represents a clear example of a member's commitment to operating in the Third Market and competing for order flow. It also is being used as a rough, temporary measure to balance the credit program incentives against Nasdaq's costs in operating facilities that facilitate Third Market trading. The NASD plans to use the pilot period to carefully evaluate the need for a qualification threshold and, depending on its experience in the pilot, may change or eliminate the threshold at a future date.

⁷ Nasdaq also reserves the right to terminate the transaction credit pilot at any time. The NASD will file a proposed rule change to terminate their pilot program.

⁴ The transaction credit can be applied to any and all charges imposed by NASD or its non-SRO affiliates. Any remaining balance may be paid directly to the member.

⁵ Both CHX and CSE have established similar programs pursuant to Section 19(b)(3)(A). See Securities Exchange Act Release No. 38237 (February 4, 1997), 62 FR 6592 (February 12, 1997) (providing a transaction credit for specialists based upon a percentage of the CTA tape revenue); Securities Exchange Act Release No. 39395 (December 3, 1997), 62 FR 65113 (December 10, 1997) (providing a transaction credit to members on a pro rata basis, based upon a percentage of the quarterly CSE Tape B transaction market share). To remain competitive with these markets, the NASD believes that it must evaluate programs designed to effectively respond to other market's approaches to trading the same securities.

provisions of Section 15A(b)(6)⁸ of the Act in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system and, in general, to protect investors and the public interest. Nasdaq believes its pilot is also consistent with Section 15A(b)(5)⁹ of the Act in that it provides 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 association operates or controls.

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

The foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(ii)¹⁰ of the Act and subparagraph (f) of Rule 19b-4 thereunder¹¹ in that it establishes or changes a due, fee or other charge.

At any time within 60 days of the filing of such proposed rule change pursuant to Section 19(b)(3)(A) of the Act, 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. 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 the file number in the caption above and should be submitted by April 13, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-6970 Filed 3-22-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41173; File No. SR-Phlx-98-24]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Floor Procedure Advice A-1 (Responsibility of Displaying Best Bid and Offer Prices Established on the Equity Floor)

March 15, 1999.

I. Introduction

On July 13, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or the "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")¹ and Rule 19b-4 thereunder,² a proposed rule change that would update and amend its Equity Floor Procedure Advice A-1 to more closely track the SEC's customer limit order display rule.

On October 22, 1998, the proposed rule change was published for comment in the **Federal Register**.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to update and amend its Equity Floor Procedure Advice A-1 to more closely track the SEC's customer limit order display rules. Currently, Advice A-1 ("Responsibility Best Bid and Offer Prices Established on the Equity Floor") requires specialist to use due diligence to ensure proper and timely display of bids and offers respecting primary issues. For secondary issues, this requirement applies where the bid or offer is equal to or better than the national best bid or offer ("NBBO"). Advice A-1 pre-dates Exchange Act Rule 11Ac1-4,⁴ which imposed new display requirements for "reported securities" and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in Section 3(a)(51)(A)(ii) of the Act. Since primary stock issues assigned to specialists on regional exchanges are not subject to this requirement, the proposed rule change amends Advice A-1 only with respect to secondary issues that are traded pursuant to unlisted trading privileges ("UTP"). The proposed change amends Advice A-1 to provide that the display requirement for secondary issues is the Commission's display rule, which requires specialists, subject to certain exceptions, to display not only those orders that are at or better than the NBBO, but also those that improve the specialist's quote or add 10% or more to the specialist's quote when the quote is the NBBO.⁵

Currently, Advice A-1 contains a fine schedule, which is administered pursuant to the Exchange's minor rule violation enforcement and reporting plan.⁶ Under the proposed amendment,

⁴ The limit order display rule was adopted by the Commission as part of its Order Handling Rules. See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Order Handling Rules Adopting Release"); amended in Securities Exchange Act Release No. 38139 (January 8, 1997), 62 FR 1385 (January 10, 1997).

⁵ In the Order Handling Rules Adopting Release, the Commission stated that a customer limit order should be considered *de minimis* if it less than or equal to 10% of the displayed size associated with a specialist's bid or offer. If a customer limit order is *de minimis*, the specialist does not need to add that order to his quote. See Order Handling Rules Adopting Release, *supra* note 4, at note 177 and accompanying text. For this reason, the Exchange is requiring a specialist to display only those customer orders that add 10% or more to the size of the specialist's quote.

⁶ The Phlx's minor rule violation enforcement and reporting plan ("minor rule plan"), codified in Phlx Rule 970, contains floor procedure advices with accompanying file schedules. Exchange Act Rule 19d-1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78o-3(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 40554 (October 14, 1998), 63 FR 56685.