

margined on a good faith basis if hedged with a listed option.²³

2. Statutory Basis

The Exchange believes that the proposed rule change described above is consistent with the provisions of section 6(b) of the Act,²⁴ in general, and specifically furthers the objectives of section 6(b)(5) of the Act,²⁵ in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest. The proposed portfolio margin rule change is intended to promote greater reasonableness, accuracy and efficiency in respect of Exchange margin requirements for complex, multiple position listed index option strategies, and to offer a cross-margin capability with related index futures positions in eligible accounts.

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

CBOE does not believe that the proposed rule change will 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 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 Exchange 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, NW, Washington, DC 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 CBOE. All submissions should refer to File No. SR-CBOE-2002-03 and should be submitted by April 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45638; File No. SR-NASD-2002-36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Certificates of Designation for Preferred Stock of the Nasdaq Stock Market, Inc.

March 25, 2002.

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 8, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Nasdaq is filing Certificates of Designations, Preferences and Rights ("Certificates of Designation") of Series A Cumulative Preferred Stock ("Series A Preferred") and Series B Preferred Stock ("Series B Preferred," collectively "Series A and B Preferred") authorized to be issued to the NASD. The Series A and B Preferred will be issued as part of a transaction designed to reduce the NASD's economic interest in Nasdaq to the greatest extent practicable while maintaining the NASD's voting control until Nasdaq begins operating as a national securities exchange. Under Section 151(g) of the General Corporation Law of the State of Delaware ("Delaware Law"), such Certificates of Designation are deemed to be an amendment to Nasdaq's Restated Certificate of Incorporation. Pursuant to Rule 19b-4(f)(3),³ Nasdaq has designated this filing as one concerned solely with the administration of the self-regulatory organization because the authorization and issuance of the Series A and B Preferred result in no substantive change in the NASD's control of Nasdaq until exchange registration, and as such, the filing is immediately effective. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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 is filing the Certificates of Designations described below. Under Article Fourth, Paragraph B of Nasdaq's Restated Certificate of Incorporation, the Nasdaq Board may authorize the issuance of preferred stock and fix its designation, powers, preferences and

³ 17 CFR 240.19b-4(f)(3).

²³ See "OTC Derivatives Dealers," Securities Exchange Act Release No. 40594, (October 23, 1998), 63 FR 59362 (November 3, 1998).

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

rights, as well as any qualifications, limitations, and restrictions on it. Under Delaware Law, such Certificates of Designation are deemed to be an amendment to Nasdaq's Restated Certificate of Incorporation, and as such, Nasdaq is filing the Certificates of Designation with the Commission.

The issuance of the Series A and B Preferred is part of a transaction between the NASD and Nasdaq to reduce the NASD's ownership interest in Nasdaq while maintaining the NASD's control over Nasdaq until exchange registration. The Series A Preferred will pay a dividend and is non-voting unless Nasdaq fails to pay a timely dividend. In such case, Nasdaq must increase the size of its Board to add two directors elected by the holders of the Series A Preferred. Such directors would be required to resign upon the payment of the dividend or the redemption of the Series A Preferred. The NASD may not transfer the Series A Preferred without the prior written consent of Nasdaq for a period of one year from its issuance.

Nasdaq is currently discussing with the Commission staff how Nasdaq intends to meet its obligation for fair representation of members on its Board under Section 6(b)(3) of the Act⁴ if Nasdaq obtains approval of its exchange registration application. As a result of these discussions, Nasdaq may submit to the Commission amendments to its By-Laws with respect to its Board composition. The potential By-Law amendments under discussion could require the election of additional Board members if the Series A Preferred holder's right to elect Board members is triggered to ensure that the fair representation obligation is met at all times.

The Series B Preferred is a single share designed to ensure that the NASD maintains voting control over Nasdaq until exchange registration. The Series B Preferred is not transferable and must be redeemed when Nasdaq begins operating as a national securities exchange. The Series B will vote, together as one class with Nasdaq's common stock, on all matters submitted to a vote of holders of common stock. The Series B Preferred will have variable voting rights such that the number of votes entitled to be cast by the holder of the Series B Preferred shall equal that number of votes that, together with votes otherwise entitled to be cast by the holder of the Series B Preferred at such meeting, whether by virtue of share ownership, proxies, voting trust arrangements or otherwise, entitle the

holder to exercise one vote more than one-half of all votes entitled to be cast. These voting rights will terminate automatically upon Nasdaq commencing operation as a national securities exchange.

The Series A and B Preferred have no effect on the voting trust that governs the warrants to purchase Nasdaq common stock that were sold by the NASD in two private placements that closed in June 2000 and January 2001.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Sections 15A(b)(2) and (6) of the Act,⁵ which require, among other things, that the Association be so organized and have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance with the provisions of the Act, and that the Association's rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the issuance of this preferred stock will result in no substantive change in its current relationship to the NASD; as under the current ownership structure, the NASD will continue to control Nasdaq until exchange registration.

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

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

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

The foregoing proposed rule change is concerned solely with the administration of the self-regulatory organization and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and subparagraph (f)(3) of Rule 19b-4⁷ thereunder. At any time within 60 days of the filing of such 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 at 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-2002-36 and should be submitted by April 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45622; File No. SR-Phlx-2002-14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Modified Capitalization Weighting Methodology for Index Options

March 21, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,²

⁵ 15 U.S.C. 78o-3(b)(2) and (6).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(3).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78f(b)(3).