

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 make permanent its \$21.25 monthly per port fee for subscribers who receive Nasdaq Level 1 service through automated voice response services.³ These services provide callers with automated voice access to real-time Nasdaq pricing information. The monthly \$21.25 fee has been in effect as a pilot fee for over 11 years and was originally based on a formulation of a \$5.00 premium above the combined \$16.25 Level 1/Last Sale rate in effect at that time. This fee has not increased despite a subsequent increase of Level 1/Last Sale rates to the current \$20.00 per month level. Given the continued usage of voice-based quote access services,⁴ Nasdaq believes that the charge for such services should not be made a permanent part of its fee structure.

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5)⁵ and 15A(b)(6)⁶ of the Act in that the proposal is designed to provide for the equitable allocation of reasonable fees among members and other persons using any facility or system which the Association operates or controls and is not designed to permit unfair discrimination between customers, issues, brokers or dealers.

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

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

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

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

Within 35 days of the publication of this notice in the **Federal Register** or within such long period (i) as the Commission may designate up to 90 days of such date if it finds such long 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 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 proposal 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 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-98-73 and should be submitted by November 10, 1998.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-28109 Filed 10-19-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40541; File No. SR-PHLX-98-04]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending Rule 783, Report of Financial Arrangements and Floor Procedure Advice F-11, Splitting Orders

October 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on April 27, 1998, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") 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 Exchange. On October 2, 1998, the PHLX submitted 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.

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

The Exchange proposes to amend its financial arrangements rule, Rule 783, to require that members, member organizations, foreign currency options ("FCO") participants, participant organizations and general partners or voting stockholders thereof report to the Exchange financial arrangements for amounts greater than \$5,000. In addition, the Exchange proposes to amend Options Floor Procedure Advice ("Advice") F-11⁴ regarding the Splitting of Orders by adding that dually and financially affiliated Registered Option Traders ("ROTs") will be treated

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from Nandita Yagnik, Esquire, PHLX, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, SEC dated September 30, 1998. In Amendment No. 1, the PHLX added a requirement that members, member organizations, participants and participant organizations disclose loans and financial arrangements with non-members.

⁴ The PHLX's minor rule violation enforcement and reporting plan ("minor rule plan"), codified in PHLX Rule 970, contains floor procedure advices with accompanying fine schedules. Rule 19d-1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d-1(c)(1) under the Act requires prompt filing with the Commission of any final disciplinary action. However, minor rule violation not exceeding \$2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

³ A vendor's voice port count is defined as the maximum number of callers capable of accessing Nasdaq data at any given time. For example, if a vendor's voice port count is 100 (i.e., capable of handling a maximum of 100 callers at any given time) then the fee accessed would be \$2,125 (\$21.25 × 100). Conference call on October 6, 1998, between Thomas P. Moran, Senior Attorney, Office of General Counsel, Nasdaq, and Mignon McLemore, Attorney and Robert B. Long, Division of Market Regulation, Commission.

⁴ There are currently 7,629 voice ports in service.

⁵ 15 U.S.C. 78o-3(b)(5).

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 17 CFR 200.30-3(a)(12).

as one interest in the trading crowd. The fine schedule for failing to report dual or financial affiliations is also proposed to be increased from \$100.00 to \$500.00 for the first offense; \$250.00 to \$1,000.00 for the second offense; and from \$500.00 to a sanction discretionary with the Business Conduct Committee for the third offense and thereafter. A corresponding change to the minor rule plan is also proposed. The proposed rule language is attached as Exhibit A.

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 PHLX 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. The PHLX 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

Currently, PHLX Rule 783 requires that members and member organizations report to the Exchange the obtaining and making of a loan over \$2,500, including loans to non-members. Paragraph (b) provides exceptions for certain member-to-member loans. The Exchange proposes to amend Rule 783 to require that all members, member organizations, FCO participants and participant organization as well as general partners or voting stockholders thereof, report financial arrangements with other members, member organizations, FCO participants and participant organizations, general partners or voting stockholders or persons associated therewith, or non-members.

Included in the proposed definition of financial arrangements is any consideration over \$5,000 that constitutes a loan, gift, salary or bonus; the direct financing of a member or participant organization (except clearing arrangements);⁵ any direct equity investment or profit sharing arrangement; and the guarantee of a trading account (except a clearing arrangement). Proposed exceptions to the rule are outlined in proposed

paragraph (c) of PHLX Rule 783. The amended rule would not apply to stock loan arrangements⁶ or transactions between members affiliated with the same member organization or participants affiliated with the same participant organization or transaction in publicly traded securities of a member organization. All parties involved in the financial arrangement are required to notify the Exchange of eligible financial arrangements within ten (10) business days of the effective date of such arrangements. In the event of termination of the financial arrangement, the parties involved must similarly notify the Exchange of the termination. Thus, the purpose of the proposal is to revise Rule 783 to focus on prompt and complete reporting of financial arrangements of members.

In addition, the PHLX proposes to amend Advice F-11 such that dually affiliated and financially affiliated ROTs would be treated as one interest for the purpose of splitting an order in the trading crowd. Currently, Advice F-11 requires ROTs of the same firm when bidding or offering at the same price and for the same option to be treated as one interest for the purpose of splitting an order in the trading crowd. Advice F-11 prevents one firm from garnering all of the executions in a particular option. The proposal would extend the Advice to dually and financially affiliated ROTs further ensuring fairness in the order splitting process. Advice F-11 defines "dually affiliated" as those ROTs required to report pursuant to Exchange Rule 793;⁷ and "financially affiliated" as those ROTs required to report pursuant to Exchange Rule 783. The Exchange also proposes to increase fines for failure to report dual or financial affiliations from \$100.00 to \$500.00 for the first offense; from \$250.00 to \$1,000.00 for the second offense; and from \$500.00 to a sanction discretionary with the Business Conduct Committee for the third offense and thereafter.

⁶ A stock loan arrangement shall mean an agreement for the lending and borrowing of securities and shall include a securities contract or other agreement, including related terms, for the transfer of securities against the transfer of funds, securities, or other collateral, with simultaneous agreement by the transferee to transfer to the transferor against the transfer of funds, securities, or other collateral upon notice, at date certain, upon demand, the same or substituted securities.

⁷ PHLX Rule 793 requires persons who are general or limited partners, or an officer, director, stockholder or associated person of more than one member or participant organization or who are affiliated in any manner with a non-member, or non-participant organization which is engaged in the securities business, to disclose this affiliation in writing and to have such affiliation approved in writing by the member or participant organization.

In summary, requiring disclosure of financial arrangements between members and participant organizations is intended to increase the ability of the Exchange to monitor the financial status of its own membership. In addition, notification is intended to facilitate monitoring by the Exchange and to prevent the splitting of orders in the trading crowd between members who are either dually or financially affiliated.

Thus, the PHLX believes that the proposed rule change is consistent with Section 6 of the Act and more specifically with Section 6(b)(5) in that it promotes just and equitable principles of trade and protects investors and the public interest by revising the Exchange's financial arrangement rule and strengthening the trade splitting provision.

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

The PHLX does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

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

Within 35 days of the 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 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 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

⁵ Clearing arrangements are defined as those arrangements in which a company acts as an intermediary in making payments, deliveries or both in connection with transactions in securities, or who provides facilities for comparison of data respecting the terms of settlement of securities.

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 will also be available for inspection and copying at the PHLX's principal offices. All submissions should refer to File No. SR-PHLX-98-04 and should be submitted by November 10, 1998.

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

Margaret H. McFarland,
Deputy Secretary.

Exhibit A

Additions are italicized, deletions are bracketed.

Report of Financial Arrangements

Rule 783. (a) *Financial Arrangements*—Each member, member organization, participant, participant organization, general partner or voting shareholder therein shall report to the Exchange, forthwith [upon the obtaining or the making thereof;

(a) Each loan in the amount of \$2,500 or more (whether of cash or securities) obtained by such member, member organization, general partner or voting shareholder:] *in a form prescribed by the Exchange, any financial arrangement entered into, either directly or indirectly, with another member or member organization, participant or participant organization or general partner, voting shareholder, or any associated person thereof or a non-member. For the purposes of*

this rule, a financial arrangement shall be defined as:

1. *the direct financing of a member or participant organization's dealings upon the Exchange with the exception of clearing arrangements;*

2. *any direct equity investment or profit sharing arrangement;*

3. *any consideration over the amount of \$5,000 that constitutes a gift, loan, salary, or bonus; and*

4. *the guarantee of a trading account with the exception of clearing arrangements.*

(b) *The disclosure of such financial arrangements shall be the responsibility of all members involved. The member or participant organization shall submit to the Exchange notification of the initiation or termination of such financial arrangements within ten (10) business days of the effective date of such arrangements. The notice of termination will constitute the end of the financial arrangement.*

[Exceptions

(b) Each loan in the amount of \$2,500 or more (whether in cash or securities) to any member, member organization, general partner or voting stockholder made by a member, member organization, general partner or voting stockholder, provided however, that no report shall be required with respect to:

(1) Any loan fully secured by readily marketable collateral so long as such loan remains secured;

(2) Any loan of securities made by the borrower for the purpose of effecting delivery against a sale where money payment equivalent to the market value of the securities is made to the lender and such contract is marked approximately to the market;

(3) Any loan on a life insurance policy which is not in excess of the cash surrender value of such policy;

(4) Any loan obtained from a bank, trust company, monied corporation, or fiduciary on the security of real estate;

(5) Any loan transaction between members, general partners, or voting stockholders in the same member organizations.]

(c) *Nothing in this rule would require the reporting of agreements for the lending and borrowing of securities, financial arrangements between members affiliated with the same member organization or participants affiliated with the same participant organization or transactions in publicly traded securities of a member organization.*

Supplementary Material

.01 *As used herein, an agreement for the lending and borrowing of securities shall mean a securities contract or other agreement, including related terms, for the transfer of securities against the transfer of funds, securities or other collateral, with a simultaneous agreement by the transferee to transfer to the transferor against the transfer of funds, securities, or other collateral, upon notice, at a date certain, upon demand, the same or substituted securities.*

F-11 Splitting Orders

ROTs of the same firm, *dually affiliated or financially affiliated* ROTs, when bidding or offering at the same price for the same option, are to be treated as one interest for purpose of splitting an order in the trading crowd.

For the purposes of this Advice, dually affiliated ROTs are ROTs required to report dual affiliations pursuant to Rule 793 and financially affiliated ROTs are ROTs required to report financial arrangements pursuant to Rule 783.

FINE SCHEDULE

Implemented on a one year running calendar basis

F-11

| | | |
|--------------------------------------|------------|---------------------------------------------------------------------------|
| 1st Occurrence | [\$100.00] | \$500.00 |
| 2nd Occurrence | [\$250.00] | \$1,000.000 Sanction is Discretionary with the Business Conduct Committee |
| 3rd Occurrence | [\$500.00] | |
| [4th Occurrence and thereafter | | Sanction is Discretionary with the Business Conduct Committee] |

[FR Doc. 98-28001 Filed 10-19-98; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Air Ketchum, Idaho, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 98-10-14, Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Air Ketchum, Idaho, Inc., is fit, willing, and able to provide scheduled passenger operations as a commuter air carrier.
RESPONSES: All interested persons wishing to respond to the Department of

Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, X-56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 28, 1998.

FOR FURTHER INFORMATION CONTACT: Galvin Coimbre, Air Carrier Fitness

⁸ 17 CFR 200.30-3(a)(12).