By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–35712; File No. SR–NASD–95–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Corporate Financing Underwriting Terms and Arrangements

May 12, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') 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 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

The NASD is herewith filing a proposed rule change to Article III, Section 44 of the Rules of Fair Practice. Proposed new language is italicized; proposed deletions are in brackets.

THE CORPORATE FINANCING RULE

Underwriting Terms and Arrangements

Sec. 44

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(c) Underwriting Compensation and Arrangements

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(6) Unreasonable Terms and Arrangements

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(B) Without limiting the foregoing, the following terms and arrangements, when proposed in connection with the distribution of a public offering of securities, shall be unfair and unreasonable:

(i)–(x) (Unchanged)

(xi) for a member or person associated with a member to accept, directly or indirectly, any non-cash sales incentive item including, but not limited to, travel bonuses, prizes and awards, from an issuer or affiliate thereof in excess of [$50] *$100* per person per issuer annually. Notwithstanding the foregoing, a member may provide non-cash sales incentive items to its associated persons provided that no issuer, or an affiliate thereof, including specifically an affiliate of the member, directly or indirectly participates in or contributes to providing such non-cash sales incentive; or

(xii) (Unchanged)

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. The NASD 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

Subsection 44(c)(6)(B)(xi) of the Corporate Financing Rule (the ''Rule'') currently prohibits NASD members from receiving non-cash sales incentives from an issuer or its affiliates valued in excess of $50 per person per issuer annually. Such non-cash sales incentives are typically de minimis in nature, such as small souvenir or gift items, provided by issuers to a member or associated persons of a member. The NASD is proposing an amendment to the Rule to raise the permissible level of non-cash sales incentives to $100 per person, annually.

The NASD believes that a dollar amount of $100 is still relatively low and will neither compromise the intent, nor reduce the ability, of the rule to prevent fraudulent acts and practices that might arise in connection with the giving of gifts or payments by issuers and their affiliates as non-cash compensation to members or persons associated with members.

Additionally, the amendment would make the value-limitation provisions of the Rule consistent with similar provisions in Article III, Sections 10 and 34 of the Rules of Fair Practice, with proposed amendments to Sections 26 and 29 now pending SEC approval, and with Rule 350(a) of the New York Stock Exchange (''NYSE''). The amendment to the Rule would provide regulatory consistency and simplify compliance for member firms that are also members of the NYSE.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[1] which require that the rules of the association be designed to prevent fraudulent and manipulative acts and promote just and equitable principles of trade in that the proposed rule change allows for an increase in the dollar limit to a level that is still reasonably de minimis and provides for regulatory consistency with other rules of the NASD and the NYSE.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD 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

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 Security, Securities and Exchange Commission, 450 Fifth Street NW., 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

[1] 15 U.S.C. 78*o-3*.

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 June 8, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–35710; File No. SR–Phlx–95–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Extension of Market Marker Margin Treatment to Certain Market Marker Orders Entered From Off the Trading Floor

May 12, 1995.

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 1, 1995, Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') 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 the Exchange. The Exchange subsequently filed Amendment No. 1 on April 3, 1995.[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, pursuant to Rule 19b–4 of the Act, proposes to amend Phlx Rule 1014, Commentary .01, to extend market maker margin treatment to opening orders entered by Phlx Registered Options Traders (''ROTs'') from off the Exchange floor, provided that the greater of 1,000 contracts or 80% of ROT's total transactions on the Exchange in a calendar quarter are executed in person, and not through the use of orders. Phlx ROTs would also be required to execute at least 75% of their quarterly contract volume in assigned options.[4] In addition, the proposal requires that all off-floor orders for which an ROT receives market maker treatment be consistent with such ROT's duty to maintain fair and orderly markets, and, in general, be effected for the purposes of hedging, reducing risk of, or rebalancing open positions of the ROT.

Corresponding amendments to five Floor Procedure Advices (''Advices''), which are administered pursuant to the Exchange's minor rule violation enforcement and reporting plan,[5] are also proposed: B–3, Trading Requirements; B–4, Phlx ROTs Entering Orders from On-Floor and Off-Floor for Execution of the Exchange; B–8, Use of Floor Brokers; B–12, Phlx ROTs and Specialist Entering Orders for Execution on Other Exchanges in Multiply Traded Options; and C–3, Handling Orders of Phlx ROTs and Other Registered Options Market Makers.

First, a new paragraph (b) to Advice B–3, with a separate fine schedule for violations, would contain the heightened trading requirement to receive limited market maker margin treatment for off-floor orders. Violations of Advice B–3(b) would not be subject to a minor rule plan citation and fine, but would be reviewed directly by the Exchange's Business Conduct Committee pursuant to Phlx Rule 960 governing disciplinary proceedings.

In addition, an exception from the general prohibition against placing off-floor orders in market maker accounts would be added to Advice B–4 to permit the proposed treatment for off-floor orders. In order to incorporate this proposal into the Floor Procedure Advice handbook, Advice B–4 would generally parallel the proposed provision in Commentary .01. In addition, Advice B–4 would require an ROT to disclose to a Floor Broker, among other things, that he is entering an off-floor order for his market maker account. Entering an off-floor order in violation of the proposed new paragraph in Advice B–4 would be subject to full disciplinary proceedings and reviewed by the Exchange's Business Conduct Committee.

Advice B–8 is proposed to be amended by limiting its application to the use of floor brokers while an ROT is on the trading floor. Otherwise, an ROT entering an order from off-floor could not comply with the requirement to initial the order ticket.

Advice B–12 governs Phlx traders entering orders in multiply traded options onto another exchange, currently requiring such orders to be entered while the trader is on the Phlx floor. Because off-floor orders for a market maker account will become permissible, Advice B–12 is proposed to be amended to permit the entry of off-floor orders for execution on another exchange in multiply traded options. Such orders, entered pursuant to Rule 1014, Commentary .01, must otherwise comply with the requirements of Advice B–12, including ''clearing the Phlx crowd.''

Lastly, Advice C–3 would be amended to require Floor Brokers to mark an order ticket with the letter ''P'' if an ROT indicates that an off-floor order is to be entered into his market maker account. Fines for violations of Advice C–3 would be administered pursuant to the Exchange's minor rule plan. This proposal would apply to ROTs on both the options floor (equity options and index options) as well as the foreign currency options floor. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

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 Exchange included statements concerning the purpose of and basis for

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposes to require Phlx ROTs to execute at least 75% of their quarterly trades in-assigned options for purposes of receiving market maker margin treatment for off-floor orders. The Exchange originally proposed to require an ROT to trade at least 50% of his quarterly contract volume in-assigned options. In addition, Amendment No. 1 states that Phlx proposes to delete the fine schedules under the minor rule plan originally proposed to address violations of the heightened trading requirements, because violations of this program are to be reviewed directly by the Business Conduct Committee and are not to be treated as minor rule plan violations. Finally, Phlx proposes to clarify that the phrase ''may exempt one or more classes of options from this calculation'' in Commentary .01 to Phlx Rule 1014, is intended to mean that certain options may not be eligible for off-floor market maker treatment, consistent with the approved provisions of the other exchanges. *See* Letter from Gerald O'Connell, First Vice President, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission , dated March 29, 1995 (''Amendment No. 1'').

[4] *See* Amendment No. 1, *supra* note 3.

[5] 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) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary actions. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate reporting. Although the Exchange is proposing to amend several advices, only Advice C–3 will contain a minor rule plan fine; hence, the Exchange hereby proposes to amend its minor rule plan by incorporating the proposed changes to Advice C–3.