alter the original proposal, which was subject to a full notice and comment period, and addresses the issues raised by commenters, the Commission finds that granting accelerated approval to Amendment No. 1 is consistent with Section 19(b)(2) of the Act.[25]

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–ISE–00–01), including Amendment No. 1, is approved, and that PMM five contract preference proposal contained in Amendment No. 1 is approved as a one-year pilot to expire on May 22, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

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[25] 15 U.S.C. 78f(b)(2).

[26] *Id.*

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42806; File No. SR–NASD–99–33]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Relating to the Establishment of Trade and Quote Halt Authority for the National Association of Securities Dealers, Inc.'s Over-the-Counter Bulletin Board Service

May 22, 2000.

I. Introduction

On July 14, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') 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 to establish trade and quote halt authority for the NASD's over-the-counter Bulletin Board Service (''OTCBB'').

The proposed rule change, including Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on January 25, 2000.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The OTCBB is an NASD system which, pursuant to delegated authority, Nasdaq is responsible for operating. In the proposed rule change, the NASD and Nasdaq propose to expand Nasdaq's authority so that Nasdaq may impose quotation and trading halts in OTCBB securities when: (1) The OTCBB security or the securities underlying the OTCBB American Depository Receipt (''ADR'') is dually listed or registered and a foreign regulatory authority or market halts trading in the security; (2) the OTCBB security is a derivative or component of a security listed on Nasdaq, a domestic exchange, or foreign exchange/market (*e.g.,* a convertible security or warrant) and Nasdaq, the exchange, or foreign exchange/market halts trading in the underlying security; or (3) the OTCBB issues does not timely provide the NASD with information required by Rule 10b–17 under the Act.[4]

Currently, NASD Rule 4120 authorizes Nasdaq to impose trading halts in Nasdaq-listed securities and securities listed on a national securities exchange and traded in the third market. There are, however, no rules that grant Nasdaq authority to impose trading or quotation halts in OTCBB securities, Additionally, unlike the Nasdaq market, there is no listing agreement between Nasdaq and OTCBB issuers, and thus Nasdaq does not have the ability to compel such issuers to disclose information to Nasdaq. Accordingly, it is difficult for Nasdaq to unilaterally impose trade and quote halts in an OTCBB security because, in most cases, information from the issuer is necessary before the NASD can assess the situation and determine if a halt and/or resumption of trading is appropriate.[5] In light of the foregoing, the NASD and Nasdaq are proposing to vest Nasdaq with trade and quote halt authority as described below.

Foreign Regulatory Authority Halts. First, the NASD and Nasdaq are proposing to impose trading and quotation halts in OTCBB eligible securities [6] when a foreign market or regulatory authority has imposed a trade halt in the security in its open market for regulatory reasons. This authority would permit Nasdaq to impose a trade and quotation halt on an OTCBB security or OTCBB ADRs when a foreign market on which the OTCBB security is also traded, or a regulatory authority that has oversight authority for the OTCBB security, halts trading in the security or the security underlying the ADR for ''regulatory'' reasons. (Nasdaq currently has similar trading-halt authority for Nasdaq-listed securities.) [7] Under the proposal, upon receipt of information from a foreign securities market on which the OTCBB security or the security underlying the OTCBB ADR is listed or registered or from a regulatory authority overseeing such issuer, exchange, or market, Nasdaq's Stockwatch section will evaluate the information (generally, a trade-halt order issued by the foreign market or regulatory authority) and determine whether a trade and quotation halt in the OTCBB security is appropriate. Nasdaq will impose such a halt only when the foreign market or regulatory authority has imposed its halt because of potential fraudulent conduct or other public interest concerns. Nasdaq will not impose a halt if the foreign entity's halt is based on the dissemination of material news, an issuer's failure to meet regulatory filing requirements imposed by a foreign market or regulatory authority, or for operational reasons (*e.g.,* order imbalance in the foreign market). [8]

For this and the proposed halts described below, an OTCBB halt would be lifted if Nasdaq determines that the basis of the halt no longer exists or upon the passage of five trading days, which ever occurs first. [9] If quoting and trading

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42345 (January 18, 2000), 65 FR 4002.

[4] 17 CFR 240.10b–17. For a description of the rule, *see* text accompanying notes 12 and 13 *infra.*

[5] Under Section 12(k) of the Act, the Commission may impose trading suspensions in the U.S. securities markets. *See* 15 U.S.C. 78*l*(k). Additionally, NASD Rule 3340 prohibits members from trading any security as to which a trading suspension is in effect. When the Commission suspends trading in an OTCBB security, Nasdaq announces the trading ban via the NEWS frame on the Nasdaq Workstation II and prohibits trading and quotations on the OTCBB.

[6] NASD Rules 6530 and 6540 impose certain regulatory filing requirements for securities to be included in the OTCBB.

[7] *See* NASD Rule 4120(a)(4).

[8] The NASD and Nasdaq do not proposed to halt for material news because Nasdaq does not have a formal listing agreement with OTCBB issuers, and thus cannot compel the full disclosure and dissemination of material news. The NASD and Nasdaq do not propose to halt trading if an issuer fails to meet filing or disclosure requirements imposed by a foreign regulatory authority or market, because Nasdaq would, in essence, be importing filing obligations of a foreign regulatory authority on OTCBB issuers when such requirements may not currently exist in the United States for such issuers. Lastly, the NASD and Nasdaq are not proposing to halt trading based on a foreign exchange's operational halt, such as an order imbalance, because Nasdaq generally does not halt for operational reasons.

[9] Of course, if an issuer failed to meet the eligibility requirements contained in NASD Rules

in a security stock is halted for five or more consecutive business days and then the halt is lifted, at the time the halt is lifted, market makers will be required to fulfill their obligation under Rule 15c2–11 under the Act prior to initiating a priced or unpriced quotation in the security. [10] Nasdaq will notify market participants and the public of halts through the NASD Regulation and Nasdaq Websites (*e.g.,* OTCBB.com, Nasdaqtrader.com, NASDR.com), as well as the Nasdaq NEWS frame on the Nasdaq Workstation II.

Halts in Derivative Securities. Nasdaq currently has the authority to halt trading in a Nasdaq-listed derivative security when a national securities exchange or Nasdaq halts trading in the underlying equity security that is listed on the exchange or Nasdaq.[11] Halt authority only extends to derivatives listed on Nasdaq, and does not extend to derivatives quoted in the OTCBB. Thus, for example, Nasdaq or an exchange may halt trading in a security, but trading may continue in the OTCBB derivative security. Since the trading price of the OTCBB derivative is dependent on the price of the underlying listed security, it is difficult to accurately price the derivative security when there is no current pricing information on the underlying security. Such difficulty in pricing may lead to disorderly markets and investor confusion. Accordingly, the NASD and Nasdaq are proposing to halt trading and quotations in OTCBB securities when the OTCBB security is a derivative or component of a security listed on a domestic exchange, foreign market/exchange, or Nasdaq and the exchange or foreign market/exchange or Nasdaq imposes a trading halt in the underlying listed security.

OTCBB Halts for Failure to Comply with Rule 10b–17 under the Act. Finally, the NASD and Nasdaq are proposing to halt quotations and trading in an OTCBB security if the issuer fails to comply with the requirements of Rule 10B–17 under the Act regarding Untimely Announcements of Record Dates.[12] Rule 10b–17 requires issuers to give the NASD, in a timely fashion, information relating to: (1) A dividend or other distribution in cash or in kind; (2) a stock split or reverse split; and (3) a rights or other subscription offering. Under Rule 10b–17, the issuer is required to provide this information to the NASD no later than 10 prior to the record date or, in case of a rights subscription or other offering if such 10 days advance notice is not practical, on or before the record date.[13]

For both Nasdaq-listed and OTCBB securities, Nasdaq publishes the record date of the action and the ex-date in its ''Daily List'' on the Nasdaq Websites. This provides information to broker-dealers, clearing agencies, and the public regarding the record date and settlement date of such trades. For Nasdaq-listed securities, if an issuer does not provide the information in a timely manner, Nasdaq may request the Rule 10b–17 information from the issuer and halt trading pending receipt of such information.[14] Nasdaq may then issue a Uniform Practice Code (''UPC'') notice informing members of the status of the record date and underlying event in order to clarify any confusion in the marketplace regarding the price or settlement of these trades.

While OTCBB issuers are also required to give the NASD information required by Rule 10b–17 in a timely manner, Nasdaq does not currently have the authority to institute a trading halt in an OTCBB security when this information has not been timely provided. Under the proposed rule change, the NASD and Nasdaq will have the authority to halt trading and quotations in an OTCBB security when the issuer fails to give the NASD notice of the inforamtion specified in Rule 10b–17.

Finally, the NASD and Nasdaq are proposing to amend the Plan Of Allocation And Delegation Of Functions by NASD To Subsidiaries to clarify that the Stockwatch section of Nasdaq would have authority to effectuate OTCBB halts.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission believes that the proposed rule is consistent with the requirements of Sections 11A(c)(1)(A),[15] 11A(c)(1)(B),[16] 15A(b)(6) [17] and 15A(b)(11) [18] of the Act.

The Commission believes that the proposed rule change is consistent with the goals expressed in Sections 11A(c)(1)(A) [19] and 11A(c)(1)(B) [20] of the Act, which give the Commission the authority to promulgate rules designed to prevent the use, distribution or publication of fraudulent, deceptive, or manipulative information with respect to quotations, and to assure that those responsible for disseminating securities information obtain such information on fair and reasonable terms. The Commission believes that allowing Nasdaq to halt quotation and trading in OTCBB securities when there is a threat that quotations may be inaccurate because of fraudulent conduct discovered by foreign regulatory authorities, will further the goals of those sections. The Commission finds that the proposed rule will help prevent the dissemination of quotations that are based on fraudulent information and will help ensure that quotes in the OTCBB are accurate.

Further, the Commission finds the proposed rule is consistent with the Section 15A(b)(6) [21] requirements that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, the Commission finds the proposed rule is consistent with Section 15A(b)(11),[22] which requires that the rules of the association be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

Proposed Rule 6545 will enhance Nasdaq's authority to initiate trade and quotation halts in OTCBB securities based on regulatory halts imposed by foreign securities exchanges or foreign regulatory authorities. The Rule will allow Nasdaq to halt trading and quotations in OTCBB securities when a foreign securities exchange or foreign regulatory authority has imposed a halt because of potential fraudulent conduct or other public interest concerns. The Commission believes that granting

6530 and 6540, the security would be removed from the OTCBB.

[10] That is, the Nasdaq directs all members to cease quoting a security for five or more consecutive business days, pursuant to NASD Rule 6740 and Rule 15c2–11, members will be required a file a Form 211 prior to the resumption of quotations in the OTCBB. See 17 CFR 240.15c–11. The Commission issued for comment a reproposal of amendments to Rule 15c2–11. *See* Securities Exchange Act Release No. 41110 (February 25, 1999), 64 FR 11124 (March 8, 1999). The NASD and Nasdaq will monitor developments regarding Rule 15c2–11 and plan to make any necessary changes to conform the rules proposed in this filing with and changes to Rules 15c2–11.

[11] *See* NASD Rule 4120(a)(3)(ii).

[12] *See* 17 CFR 240.10b–17.

[13] *Id.*

[14] *See* NASD Rule 4120(a)(5).

[15] 15 U.S.C. 78k–1(c)(1)(A).

[16] 15 U.S.C. 78k–1(c)(1)(B).

[17] 15 U.S.C. 78*o*–3(b)(6).

[18] 15 U.S.C. 78*o*–3(b)(11).

[19] 15 U.S.C. 78k–1(c)(1)(A).

[20] 15 U.S.C. 78k–1(c)(1)(B).

[21] 15 U.S.C. 78*o*–3(b)(6).

[22] 15 U.S.C. 78*o*–3(b)(11).

Nasdaq this authority will help prevent fraudulent practices and protect investors in accordance with Section 15A(b)(6) of the Act.[23] Moreover, this authority will help ensure that Nasdaq disseminates fair and accurate quotes, and that the dissemination of quotes is done in an orderly manner pursuant to the requirements of Section 15A(b)(11) of the Act.[24]

The Commission believes the proposed rule will benefit investors because it will grant Nasdaq the authority to halt trading and quotations in OTCBB securities when the OTCBB security is a derivative or component of a security listed on a domestic exchange, foreign exchange or Nasdaq and the domestic exchange, foreign exchange or Nasdaq imposes a trading halt in the underlying listed security. This will help assure accurate pricing of OTCBB derivatives and components, as the price of these securities is derived from the price of the underlying security. Market makers will be unable to quote or trade an OTCBB derivative or component when no accurate pricing information on the underlying security is available.

In addition, without this rule in place, the purpose of a trade halt in the underlying security could be frustrated. For example, if Nasdaq imposed a trade halt on a Nasdaq security in order to allow for dissemination of material news regarding the issuer, but quoting and trading of a derivative of that security continued on the OTCBB, the goal of the original halt would not be fully accomplished. Rather, before the material news could be fully absorbed by the public, trading based on incomplete or inaccurate information would take place. The NASD's new rule will prevent this.

Finally, the proposed rule will authorize Nasdaq to halt trading in an OTCBB security when there is a failure to timely provide the NASD with information mandated by Rule 10b–17 under the Act, which if not timely disseminated could have an impact on the pricing and trading of OTCBB issues. Thus, the Commission finds that the proposed rule is designed to protect investors and to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6) and 15(b)(11).[25]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[26] that the proposed rule change (SR–NASD–99–33) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

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[23] 15 U.S.C. 78*o*–3(b)(6).

[24] 15 U.S.C. 78*o*–3(b)(11).

[25] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2)

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42805; File No. SR–PHLX–00–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Reduce the Value of the Over-the-Counter Prime Index (''OTX'')

May 22, 2000.

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 31, 2000, the Philadelphia Stock Exchange, (''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. The proposed rule change has been filed by the Phlx as a ''non-controversial'' rule change under Rule 19b–4(f)(6)[3] of the Act. 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 Phlx, pursuant to Rule 19b–4 of the Act,[4] proposes to reduce the value of its Over-The-Counter prime Index (''Index'') option (''OTX'') to one-fourth its present value by quadrupling the base market divisor used to calculate the Index. In addition, the position and exercise limits applicable to OTX will be quadrupled until the last expiration then trading. The Index is a price weighted, A.M. settled index composed of fifteen stocks which are considered to be the ''most active'' stocks traded on the Nasdaq market.

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

In its filing with the Commission, 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. 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

1. Purpose

The purpose of this proposed rule change, as discussed more fully below, is to attract additional liquidity to OTX.

a. Background. The Exchange began trading OTX in 1998.[5] As of March 21, 2000, the index value was 714 and the near-month in-the-money call premium was $57.75 per contract. The Exchange proposes to conduct a ''four-for-one split''of the Index, such that the value would be reduced to one-quarter of the current value. The number of OTX contracts will be quadrupled, such that for each OTX contract currently held, the holder would receive four contracts at the reduced value with a strike price one quarter of the original strike price. For instance, the holder of an OTX 800 call will receive four OTX 200 calls. In addition to the strike price being reduced by one-quarter, the position and exercise limits applicable to OTX will be quadrupled, from 25,000 contracts to 100,000 contracts until the last expiration then trading. The result would be an index value of 178.50 and a near-month at-the-money call premium of $14.44. This procedure is similar to the one employed respecting equity options where the underlying security is subject to a four-for-one stock split. The trading symbol will remain as OTX.

In conjunction with the split, the Exchange will list strike prices surrounding the new, lower index

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

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 17 CFR 240.19b–4

[5] *See* Securities Exchange Act Release No. 40058 (June 2, 1998), 63 FR 31543 (June 9, 1998).