

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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-00-24 and should be submitted by September 15, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange believes the accelerated implementation of the amended SuperMAX Plus algorithm will insure to the benefit of investors by providing a greater number of investors with an enhanced opportunity for price improvement, and has therefore requested that the Commission grant accelerated approval of the proposed rule change. After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange,¹⁰ and that accelerated approval is appropriate.

Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act¹¹ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

The Commission believes that the proposed SuperMax Plus price improvement algorithm will provide investors with enhanced investment opportunities because price improvement from the ITS BBO will be available regardless of the last primary market sale price in both Dual Trading System issues and Nasdaq NM securities. The Commission notes that while SuperMax Plus is a voluntary program that specialists choose to participate in, providing a greater number of investors an opportunity to achieve price improvement is compatible with the views expressed in

the Order Handling Release.¹² Because price improvement should encourage small investor participation in the securities market without sacrificing investor protection and the public interest, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It Is Therefore Ordered, pursuant to Section 19(b)(2)¹³ of the Act that the proposed rule change (SR-CHX-00-24) be, and hereby is, approved.

For Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43176; File No. SR-NASD-00-17]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Minimum Quotation Size Requirements for OTC Equity Securities

August 18, 2000.

I. Introduction

On April 10, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, a proposed rule change that would modify the minimum quotation sizes for securities quoted on the OTC Bulletin Board ("OTCBB"), or any other inter-dealer quotation system that permits quotation updates on a real-time basis, at a price exceeding \$200 per share. The proposal was published for comment in the **Federal Register** on June 7, 2000.³ The Commission received no comments on the proposal. This order approves Nasdaq's proposed rule change.

¹² See Securities Exchange Release No. 37619A (September 6, 1996), FR 48290 (September 12, 1996).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 42852 (May 30, 2000), 65 FR 36191.

II. Description of the Proposal

Currently, NASD Rule 6750 provides that every member firm that functions as a market maker in over-the counter ("OTC") equity securities must honor its quotations for those securities in certain minimum sizes. Quotes for OTC securities priced over \$200 per share must be firm for blocks of 50 shares or more.⁴ Nasdaq has stated that this rule has had an undesired and detrimental effect on the transparency and liquidity of certain highly priced or thinly traded securities.

Rule 6750 was originally approved by the Commission in 1993⁵ during the early stages of the OTCBB service. Prior to implementation of the rule, all priced quotations on the OTCBB were required to be firm for blocks of 100 shares or more. This approach soon proved unworkable for lower priced securities for which a quote of 100 shares could represent an insignificant aggregate dollar value commitment to the market.

To remedy this situation, the NASD implemented the minimum quotation size rule for securities priced at \$200 per share and below on a "graduated" or "tiered" basis.⁶ For securities quoted at 50 cents per share or less, the market maker quoting such security is now required to honor that quotation for a minimum of 5000 shares. This approach was extended up to \$200 per share, with different minimum quotation sizes at 2500, 500, 200, and 100 shares. For all quotations exceeding \$200 per share, the minimum quote size was determined to be 50 shares.

However, the presence of the highly priced securities on the OTC market was not considered when Rule 6750 was originally proposed.⁷ A situation has resulted in which market makers have been unwilling to enter priced quotations for highly priced and thinly traded securities for fear of incurring potentially significant liability to their proprietary accounts. Nasdaq states that, to alleviate the risk of posting a firm quote for 50 of these shares, market

⁴ However, Rule 6750 also provides that certain Nasdaq officers may modify the minimum quotation size for OTC securities with a price greater than \$200 per share.

⁵ See Securities Exchange Act Release No. 32570 (July 1, 1993), 58 FR 36725 (July 8, 1993).

⁶ This requirement applies only to market makers entering priced quotations. Market makers are permitted to enter unpriced indications of interest into the OTCBB, see NASD Rule 6520, which are not held to the minimum quotation size standard.

⁷ For example, since January 2000, 246 OTC equity securities have traded in excess of \$200 per share, and five of these securities have traded in excess of \$10,000 per share. Telephone conversation between Scott W. Anderson, Attorney, Nasdaq, and Michael Gaw, Attorney-Adviser, Commission, on August 17, 2000.

¹⁰ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation.

¹¹ 15 U.S.C. 78f(b)(5).

makers do not enter firm quotations but instead post only indications of interest for these securities.

In light of these problems, Nasdaq recently amended Rule 6750 to allow certain Nasdaq officers to modify the minimum quotation size for OTC securities with a price greater than \$200 per share.⁸ Nasdaq has now proposed to amend Rule 6750 again to establish four additional tier sizes for OTC securities quoted at prices in excess of \$200 per share and to delete the provision granting certain Nasdaq officers discretionary authority to modify the minimum quotation sizes, as this authority will no longer be necessary. Under the proposal, the minimum quote size for shares priced between \$200.01 and \$500 will be 25 shares; between \$500.01 and \$1000, ten shares; between \$1000.01 and \$2500, five shares; and from \$2500.01 upwards, one share.⁹

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to the NASD.¹⁰ In particular, the Commission believes that the proposal is consistent with Sections 15A(b)(6) and 15A(b)(9) of the Act.¹¹ Section 15A(b)(6) requires, among other things, 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; 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. Section 15A(b)(9) requires that the rules of the association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission supports the NASD's efforts to create a more competitive market and to foster enhanced price discovery of the OTC markets. Currently, Rule 6750 requires quotations for OTC equity securities with prices in excess of \$200 per share to be firm for at least 50 shares (unless an exemption is granted). As a result, market makers often decline to post firm quotes for

these highly priced securities. While posting an indication of interest is permitted on the OTCBB, the Commission believes that it is appropriate for Nasdaq to encourage the entry of firm quotations. Decreasing the minimum quote size for highly priced OTC equity securities should encourage market makers to post priced quotes for these securities. A larger number of firm quotes should help to improve price discovery and transparency in this marketplace. Accordingly, the Commission believes the proposed rule is consistent with the purposes of the Act.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NMAD-00-17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43169; File No. SR-Phlx-00-76]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Extending the Pilot Program for Rule 98, Emergency Committee, Until November 17, 2000

August 17, 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 August 14, 2000, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon

filing with the Commission. 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 is proposing to extend the pilot period for Rule 98, Emergency Committee, until November 17, 2000. No changes to the existing rule language are being proposed.

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 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 Exchange 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

On December 23, 1999, the Commission approved amendments to Exchange Rule 98, Emergency Committee (the "Committee"), which updated the composition of the Committee to reflect the current governance structure of the Exchange, on a 120-day pilot basis.⁵ The Commission approved the amendments to Exchange Rule 98 on a pilot basis in order to allow the Exchange to examine the operation of the Committee to ensure that the Committee is not dominated by any one Exchange interest (e.g., On-Floor or Off-Floor interests). The Commission requested that the Exchange report back to the Commission on its views as to whether the Committee structure ensures that all Exchange interests are fairly represented by the Committee. The Commission approved an extension of the pilot program for an additional 120 days on June 5, 2000.⁶ On July 14, 2000, the Exchange filed a proposed rule change to approve the amendments to Rule 98

⁸ See Securities Exchange Act Release No. 41907 (September 23, 1999), 64 FR 52817 (September 30, 1999).

⁹ Nasdaq has stated that the proposed tier sizes are consistent with those in the original rule in that they require firm quotations for OTC equity securities to represent trading interest of approximately \$5000 to \$20,000.

¹⁰ In approving this rule, the Commission has considered its impact on efficiency, competition, and capital function. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78o-3(b)(6) and (b)(9).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 300.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Securities Exchange Act Release No. 42272 (December 23, 1999), 65 FR 153 (January 3, 2000) (SR-Phlx-99-42).

⁶ Securities Exchange Act Release No. 42898 (June 5, 2000), 65 FR 36879 (June 12, 2000) (SR-Phlx-00-41).