

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-NMASD-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).

on a permanent basis.⁷ In that filing, the Exchange also submitted its report back to the Commission addressing the representation of Exchange interests on the Committee. The Commission has requested that the Exchange file the instant proposed rule change to extend the current pilot program through November 17, 2000 in order to allow the Commission and the Exchange time to assess the Exchange's report and the operation of the Committee in general.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act⁸ which requires that the rules of an Exchange be designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

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

The Exchange 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

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6)¹⁰ thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. At any time within 60

days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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.

The Commission finds that it is appropriate to accelerate the effective date of the proposed rule change and to permit the proposed rule change to become immediately effective because the proposal simply extends a previously approved pilot program until November 17, 2000. The Commission also finds it appropriate to waive the 5-day pre-filing requirement. By extending the pilot program, the Commission will enable the Committee to be in place and operational in the event of any extraordinary market conditions or emergencies at the Exchange, and will afford the Commission and the Exchange the opportunity to assess the Exchange's report concerning the representation of all interests on the Emergency Committee.¹¹

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. 20549-0609. 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 Exchange. All submissions should refer to the File No. SR-Phlx-00-76 and should be submitted by September 15, 2000.

¹¹ For purposes only of accelerating the operative date of this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43177; File No. SR-PHLX-00-77]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to a Payment for Order Flow Fee

August 18, 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 11, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or the "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 Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The Phlx proposes to adopt a payment for order flow fee of a \$1.00 per contract to be imposed on transactions by Phlx specialists and Registered Options Traders ("ROTs") in the Top 120 Options on the Phlx.³ It would not apply to ROT-to-ROT or specialist-to-ROT transactions. The proposed fee will be effective as of August 1, 2000.⁴

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded on all U.S. options markets for the period January 1, 2000 through June 30, 2000, based on volume information provided by The Options Clearing Corporation. The Phlx will determine the Top 120 Options every six months, with the next measuring period commencing June 1, 2000 and ending on November 30, 2000. The proposed fee does not apply to index or currency options.

⁴ This fee is not eligible for the monthly credit of up to \$1,000 to be applied against certain fees, dues and charges and other amounts that certain members owe to the Exchange. See Securities Exchange Act Release No. 42791 (May 16, 2000); 65 FR 33606 (May 24, 2000).

⁷ SR-Phlx-00-63, filed with the Commission on July 14, 2000.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).