

the Act to impose such an anticompetitive burden upon it.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**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 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 as to which the ISE consents), the Commission shall by order approve this proposed rule change or 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, NW., Washington, DC 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 the filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE-00-10 and should be submitted by November 17, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>1</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43469; File No. SR-NASD-00-60]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Delay the Implementation Date of Changes to Riskless Principal Trade Reporting Rules**

October 20, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 18, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, The Nasdaq Stock Markets, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Item I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A)(i) of the Act,<sup>3</sup> and Rule 19b-4(f)(1)<sup>4</sup> thereunder, which renders the proposal 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**

Nasdaq proposes to delay until February 1, 2001, the implementation date of the riskless principal trade reporting rule changes announced in SR-NASD-98-59,<sup>5</sup> SR-NASD-98-08,<sup>6</sup> SR-NASD-00-52,<sup>7</sup> and the interpretations thereto filed in SR-

NASD-99-39,<sup>8</sup> SR-NASD-99-52,<sup>9</sup> SR-NASD-00-06,<sup>10</sup> and SR-NASD-00-44.<sup>11</sup>

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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*

On March 24, 1999 and July 8, 1999, the Commission approved proposals to amend the NASD trade reporting rules relating to riskless principal transactions in Nasdaq National Market, Nasdaq SmallCap Market, Nasdaq convertible debt, and non-Nasdaq over-the-counter ("OTC") equity securities, and exchange-listed securities traded in the Nasdaq InterMarket ("Riskless Principal Trade Reporting Rules").<sup>12</sup> Under the new Riskless Principal Trade Reporting Rules, a "riskless" principal transaction is one where an NASD member, after having received an order to buy (sell) a security, purchases (sells) the security as principal at the same price to satisfy the order to buy (sell). The Rules require a firm to report a riskless principal trade as one transaction.

In the Order approving SR-NASD-98-59, the Commission asked Nasdaq to submit an interpretation providing examples of how mark-ups, mark-downs, and other fees would be excluded for purposes of the amended riskless principal rules.<sup>13</sup> As requested, on August 5, 1999, Nasdaq filed with the Commission SR-NASD-99-39,<sup>14</sup> attached to which was *Notice to Members 99-65*, which gave examples of how mark-ups and other fees will be

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>5</sup> 17 CFR 240.19b-4(f)(1).

<sup>6</sup> Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999).

<sup>7</sup> Securities Exchange Act Release No. 41606 (July 8, 1999), 64 FR 38226 (July 15, 1999).

<sup>8</sup> Securities Exchange Act Release No. 43303 (September 19, 2000), 65 FR 57853 (September 26, 2000).

<sup>9</sup> Securities Exchange Act Release No. 41731 (August 11, 1999), 64 FR 44983 (August 18, 1999).

<sup>10</sup> Securities Exchange Act Release No. 41974 (October 4, 1999), 64 FR 55508 (October 13, 1999).

<sup>11</sup> Securities Exchange Act Release No. 41494 (March 3, 2000), 65 FR 13069 (March 10, 2000).

<sup>12</sup> Securities Exchange Act Release No. 43103 (August 1, 2000), 65 FR 48774 (August 9, 2000).

<sup>13</sup> See footnotes 5 and 6, *supra*.

<sup>14</sup> Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999) at footnote 15.

<sup>15</sup> See footnote 8, *supra*.

excluded for purposes of the Riskless Principal Trade Reporting Rules. SR-NASD-99-39<sup>15</sup> and *Notice to Members 99-65* were filed as an interpretation to NASD Rules 4632, 4642, 4652, and 6620.

*Notices to Members 99-65* (discussing the trade reporting rules for riskless principal transactions in Nasdaq and OTC securities) and *99-66* (discussing, among other things, the trading reporting rules for the Nasdaq InterMarket) were published in August 1999. The *Notices* announced that the Riskless Principal Trade Reporting Rules would go into effect on September 30, 1999.

Shortly after publication of *Notices to Members 99-65* and *99-66*, a number of firms represented that they were unable to prepare their systems for compliance with the new Riskless Principal Trade Reporting Rules by the September 30, 1999 deadline, due (in large part) to Year 2000 ("Y2K") remediation and testing requirements. In response, Nasdaq filed a proposed interpretation to NASD Rules 4632, 4642, 4652, and 6620, the purpose of which was to delay the implementation date of the new Riskless Principal Trade Reporting Rules until March 1, 2000.<sup>16</sup>

Subsequently, a number of NASD member firms requested a further extension of the implementation date of the Riskless Principal Trade Reporting Rules.<sup>17</sup> The firms stated that the approach described in *Notices to Members 99-65* and *99-66* for riskless principal trade reporting raised significant issues that needed to be addressed in greater detail through, for example, interpretive guidance. The firms requested an extension of the implementation date until September 1, 2000 to provide time to resolve the issues posed and to program systems. On February 23, 2000, and then again on July 28, 2000, Nasdaq filed a proposed interpretation to NASD Rules 4632, 4642, 4652, and 6620 to delay the implementation date of the new Riskless Principal Trade Reporting Rules until September 1, 2000 and November 1, 2000, respectively.<sup>18</sup>

Nasdaq is now requesting a further extension of the implementation date

until February 1, 2001. Nasdaq believes the extension is necessary to allow Nasdaq and the firms the time to complete the programming and testing of systems that is necessary to implement the new Rules and to devise solutions to the interpretive questions that have arisen recently with respect to the implementation of the Rules. Nasdaq believes that a delay in the implementation of the Riskless Principal Trade Reporting Rules is reasonable in light of the efforts required to implement the programming changes required by the rule change and the complex issues that have been raised.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>19</sup> in that it is 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.

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

Nasdaq believes that the proposed rule change will not 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**

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,<sup>20</sup> and rule 19b-4(f)(1)<sup>21</sup> thereunder, in that it constitutes a stated policy and interpretation with respect to the enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.

#### **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, NW, Washington, DC 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 NASD. All submissions should refer to file number SR-NASD-00-60 and should be submitted by November 17, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43467; File No. SR-Phlx-00-32]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending Rule 748, Supervision**

October 20, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 31, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with 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. On October 11, 2000, the Exchange submitted Amendment No. 1 to the proposed rule

<sup>15</sup> *Id.*

<sup>16</sup> See footnote 9, *supra*.

<sup>17</sup> See letter to Belinda Blaine, Associate Director, SEC, dated February 18, 2000 from Automated Securities Clearance, Ltd. and the following NASD member firms: Bernard L. Madoff Securities; CIBC World Markets; Credit Suisse First Boston; Deutsche Banc Alex. Brown; Donaldson, Lufkin & Jenrette; Goldman Sachs & Co.; Jeffries & Company, Inc.; Lehman Bros.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Morgan Stanley Dean Witter; and Salomon Smith Barney Inc.

<sup>18</sup> See footnotes 10 and 11, *supra*.

<sup>19</sup> 15 U.S.C. 78o-3(b)(6).

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>21</sup> 17 CFR 240.19b-4(f)(1).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.