

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

EMCC's input charges for bonds and warrants are set on a sliding scale based upon the time the trade is input into EMCC's system. The last input time frame is currently 11 a.m. (New York time) of SD-2 (or T + 1) and occurs after EMCC performs the calculation of final margin payments on that day. EMCC would prefer that trades received on SD-2 be received in time to be included in the margin calculation for that day so that they can be guaranteed sooner and thus provide more certainty to members. The risk system cut-off time for calculation of final margin is 8 a.m. (New York time) on SD-2, therefore EMCC is setting the cut-off time for incremental fee purposes at 8 a.m. as well. This change has become effective on January 1, 2001.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to EMCC because it provides for the equitable allocation of dues, fees and other charges among EMCC's participants.

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

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

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

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act and Rule 19b-4(f)(2) thereunder because the proposed rule change is changing a due, fee, or charge imposed by the self-regulatory organization. At any time within sixty days of the filing of such 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 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR-EMCC-00-9 and should be submitted by March 14, 2001.

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

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43958; File No. SR-NASD-01-03]

**Self-Regulatory Organizations: Notice of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Elimination of the Interval Delay Between Executions for Initial Public Offerings and Secondary Offerings in the Nasdaq National Market Execution System**

February 13, 2001.

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 January 5, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc.

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

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

("Nasdaq"), 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 Nasdaq. On January 31, 2001, the NASD, through Nasdaq, filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

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

Nasdaq is filing a proposed rule change, on a six-month pilot basis, to eliminate the interval delay between executions against the same market maker at the same price level during the first day of trading of the securities of initial public offerings ("IPOs") and secondary offerings in the Nasdaq National Market Execution System ("NNMS" or "SuperSOES"). Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*.

\* \* \* \* \*

**4710. Participant Obligations in NNMS**

- (a) No Change.  
(b) Market Makers

(1) An NNMS Market Maker in an NNMS Security shall be subject to the following requirements:

- (A) No change.  
(B) No change.  
(C) No change.

(D) (1) Except as provided in subparagraphs (2) and (3) below, after the NNMS system has executed an order against a market maker's displayed quote and reserve size (if applicable), that market maker shall not be required to execute another order at its bid or offer in the same security until 5 seconds has elapsed from the time the order was executed, as measured by the time of execution in the Nasdaq system.

(2) For securities included in the Nasdaq 100 Index, after the NNMS system has executed an order against a market maker's displayed quote and reserve size (if applicable), that market maker shall not be required to execute another order at its bid or offer in the same security until 2 seconds has

<sup>3</sup> See Letter from Thomas P. Moran, Assistant General Counsel, Nasdaq, to Jack Drogin, Assistant Director, Division of Market Regulation, Commission, dated January 30, 2001 (Amendment No. 1). In Amendment No. 1, the Nasdaq added a footnote to proposed NASD Rule 4710(b)(1)(D)(3) requiring the lead underwriter of a secondary offering to submit a written request to the Nasdaq Market Operations Department for immediate processing of executions in secondary offerings. See *infra* note 4.

elapsed from the time the order was executed, as measured by the time of execution in the Nasdaq system.

(3) For both the first day of trading of the securities of initial public offerings and the first day of trading of the securities of secondary offerings,<sup>4</sup> after the NNMS system has executed an order against a market maker's displayed quote and reserve size (if applicable), that market maker shall be required to execute another order at its posted bid or offer in that same security as soon as the NNMS system delivers another order to that market maker's quote. After the first day of trading, subsequent multiple executions against the same market maker's quote at the same price level in such securities shall be processed pursuant to subparagraph (D)(2) of this rule if the security is included in the Nasdaq 100 Index, or if not included in that index, multiple executions against the same market maker's quote at the same price level in such securities shall be processed pursuant to subparagraph (D)(1) of this rule.

(c) through (e). No Change.

\* \* \* \* \*

## 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 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. 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

#### 1. Purpose

Currently, the rules governing the Nasdaq Small Order Execution System establish a delay of 17 seconds (15 seconds for quote management and two seconds for system processing) between executions against the same market maker in the same security at the same

<sup>4</sup> In order to obtain immediate processing of executions in secondary offerings, the lead underwriter of the secondary offering shall communicate its request in writing to the Nasdaq Market Operations Department no later than the business day immediately prior to the start of the trading in the secondary offering. Failure to do so may result in the secondary offering being processed pursuant to the interval delay time frames applicable to the currently trading shares of the issuer. See Amendment No. 1, *supra* note 3.

price level. With the launch of SuperSOES, this delay will be reduced to five seconds (plus two seconds system processing time) for the vast majority of Nasdaq NMS securities. Due to market participants' concerns that significant order flow could potentially produce queuing within the system, Nasdaq recently filed a rule change with the Commission to further reduce the interval delay between executions in Nasdaq securities to two seconds.<sup>5</sup>

Recently, Nasdaq market participants have also raised similar queuing concerns in the context of the rapid flow of orders accompanying IPOs as well as secondary offerings. Accordingly, Nasdaq is making the instant proposal to reduce from five seconds to zero seconds (plus system processing time) the delay between round-lot executions against the same market participant in the same security for the first day of trading of all SuperSOES-eligible IPOs and secondary offerings. This means that a market maker will be available for round-lot executions as quickly as the system can transmit instructions between the execution and quote-update engines, an operation that generally requires from one to one and one half seconds.

Under the proposal, Nasdaq will eliminate, during the first day of trading of IPOs and secondary offerings, the NNMS interval delay between executions taking place against the same market maker at the same price level. This proposed rule change will permit orders in these offerings to be processed on the first day of trading as fast as the SuperSOES system will allow. After the first day of trading, the NNMS interval delay between executions against the same market maker at the same price level for these securities would revert, and be determined, like all other NNMS-eligible securities, by whether or not the securities are part of the Nasdaq 100 Index ("Nasdaq 100"). If a security is a part of the Nasdaq 100, the NNMS interval delay between executions against the same market maker at the same price level on subsequent trading days would be two seconds. If a security is not a Nasdaq 100 security, the NNMS interval delay between executions against the same market maker at the same price level on subsequent trading days would be five seconds. Nasdaq proposes to eliminate the NNMS interval delay for the first day of trading of IPOs and secondary offerings on a six-month pilot basis to commence

<sup>5</sup> See Securities Exchange Act Release No. 43720 (December 13, 2000), 65 FR 79909 (December 20, 2000) (notice of filing and immediate effectiveness of File No. SR-NASD-00-67).

when the SuperSOES system becomes operational. During that time, Nasdaq will monitor the performance of the system under the proposed parameters to determine whether the proposed measures adequately address the concerns expressed by market participants.

In addition, Nasdaq proposes to continue, for the time being, its current practice of using the same interval delay between multiple round-lot executions against the same market participant for odd-lot executions of that same security. For example, if the interval delay in a particular security were five seconds, the interval delay after an odd-lot execution would also be five seconds. Nasdaq will closely monitor odd-lot order entry activity in NNMS to ensure that such activity does not adversely impact market quality.

Nasdaq believes that reducing the interval delay between executions of the first day of trading of NNMS-eligible IPOs and secondary offerings will ensure that customer orders for those securities are processed in the most expeditious manner possible. In turn, such processing will improve market function and aid in the crucial price discovery process.

#### 2. Statutory Basis

Based on the above, Nasdaq believes that the proposed rule change, as amended, is consistent with section 15A(b)(6)<sup>6</sup> of the Act, in that the proposed rule change is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in processing information with respect to and facilitating transactions in securities, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

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

Nasdaq 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

No written comments were solicited or received with respect to the proposed rule change.

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

### 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 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, as amended, 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 No. SR-NASD-01-03 and should be submitted by March 14, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43952; File No. SR-Phlx-00-13]

### Self-Regulatory Organizations; Order Granting Approval of the Proposed Rule Change, as Amended, by the Philadelphia Stock Exchange, Inc. Relating to Timing Guidelines for Application in Disciplinary Hearings

February 12, 2001.

#### I. Introduction

On July 13, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") 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> a proposed rule change amending Phlx Rule 960.5(a), (b), (c), and (d) to provide timing guidelines for certain procedures conducted pursuant to Phlx Rule 960.5. On August 23, 2000, the Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On November 9, 2000, the Phlx filed Amendment No. 2 to the proposed rule change.<sup>4</sup> On November 22, 2000, the Phlx filed Amendment No. 3 to the proposed rule change.<sup>5</sup> On December 13, 2000, the Phlx filed Amendment No. 4 to the proposed rule change.<sup>6</sup> Notice of the proposal, as amended, was published in the **Federal Register** on December 28, 2000.<sup>7</sup> The Commission received no comments on the proposal. On January 11, 2001, the Phlx filed Amendment No. 5 to the proposed rule change.<sup>8</sup> This

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

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

<sup>3</sup> See Letter from Charles Falgie, Director of Enforcement/Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission (Aug. 22, 2000) ("Amendment No. 1"). In Amendment No. 1, the Phlx corrected its rule language and clarified which language of the rule text was to be added and deleted. The Phlx also added a paragraph describing that the proposal would allow the Chair of the Business Conduct Committee ("Committee") to designate another person to oversee the Chairperson's duties pursuant to Phlx rules.

The Phlx indicated that the designee would be a Business Conduct Committee member. Telephone conversation between Charles Falgie, Director of Enforcement/Counsel, Phlx, and Melinda Diller, Attorney, Division, Commission (Sept. 1, 2000).

<sup>4</sup> See Letter from Charles Falgie, Director of Enforcement/Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission (Nov. 8, 2000) ("Amendment No. 2"). In Amendment No. 2, the Phlx changed the text of the rule language and revised time limits and the manner in which a Respondent's request for a hearing is handled.

<sup>5</sup> See Letter from Charles Falgie, Director of Enforcement/Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission (Nov. 20, 2000) ("Amendment No. 3"). In Amendment No. 3, the Phlx "marked" the filing and the text of the rule

order approves the proposal, as amended.

#### II. Description of the Proposal

The Phlx proposes to amend Phlx Rule 960.5 to provide timing guidelines for certain procedures relating to disciplinary hearings. Revised Rule 960.5 proposes to adopt a timing guideline of 120 days for the Chair of the Committee to schedule a hearing date after a hearing has been requested in the written Answer filed by a Respondent in response to a Statement of Charges.<sup>9</sup> The Phlx also proposes a five business day timing guideline<sup>10</sup> for the Chair of the Committee, or its designee, to schedule a hearing date and name a Hearing Panel after receiving a request from Counsel for the Exchange. If the request for a hearing comes from the Respondent, Counsel for the Exchange must request that a hearing date be set and a Hearing Panel be named within ten business days of receiving Respondent's request.<sup>11</sup> Evidence and witness lists must be exchanged between the parties, as well as provided to the members of the

language to indicate the changes made in Amendment No. 2, which were not properly indicated.

<sup>6</sup> See Letter from Charles Falgie, Director of Enforcement/Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission (Dec. 13, 2000) ("Amendment No. 4"). In Amendment No. 4, the Phlx made a few technical corrections to the text of the proposed rule.

<sup>7</sup> See Securities Exchange Act Release No. 43757 (December 20, 2000), 65 FR 82432.

<sup>8</sup> See Letter from Charles Falgie, Director of Enforcement/Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission (Jan. 11, 2001) ("Amendment No. 5"). In Amendment No. 5, the Phlx made a few more technical corrections to the text of the proposed rule. The Phlx also clarified that it inadvertently indicated the addition of the term "its" and the deletion of the term "their" between the terms "Respondent" and "in" in the first sentence under proposed Rule 960.5(a)(1). Telephone conversation between Charles Falgie, Director of Enforcement/Counsel, Phlx, and Sapna C. Patel, Attorney, Division, Commission (Jan. 12, 2001). Because Amendment No. 5 only makes minor technical corrections to the proposed rule text, the Commission is not required to solicit comments on it.

<sup>9</sup> See also Chicago Board Options Exchange, Rule 17.8. Offers of Settlement, Interpretations and Policies .02 (discussing a similar timing guideline for scheduling a hearing date).

<sup>10</sup> See Amendment No. 2, *supra* note 4; see also Amendment No. 3, *supra* note 5. The Phlx confirmed that Amendment No. 3 incorrectly indicates that the time periods for scheduling the hearing date and for providing a transcript of the hearing to the Hearing Panel members and the Respondents were initially ten days and later amended to five days. However, these time periods have, and will remain, five days throughout the filing. Telephone conversation between Charles Falgie, Director of Enforcement/Counsel, Phlx, and Sapna C. Patel, Law Clerk, Division, Commission (Nov. 27, 2000).

<sup>11</sup> See Amendment No. 2, *supra* note 4; see also Amendment No. 3, *supra* note 5.

<sup>7</sup> 17 CFR 200.30-3(a)(12).