

15A(b)(6)¹⁶ of the Act, which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

As the Commission has noted in the context of another self-regulatory organization's fees, the Act "prohibits 'unfair discrimination,' simpliciter * * *"¹⁷ Nasdaq believes that the proposed fee structure distinguishes among market participants in order to reward those who do the most to finance market innovations such as SuperSOES and who contribute the most to the liquidity and efficient operations of Nasdaq's market, while imposing higher fees on market participants that receive the benefits of posting quotations on Nasdaq systems but pay relatively little to support the operation of those systems. Thus, the economic incentives embodied by the new fee structure are designed to promote behavior that benefits both the market structure that Nasdaq offers to investors and Nasdaq as a business. As another self-regulatory organization noted when it established a credit available only to certain of its market participants, "measures * * * designed to promote and encourage certain behaviors and/or discourage others * * * [are] an appropriate, nondiscriminatory business strategy."¹⁸

Moreover, Nasdaq believes that the level of fees charged to market participants under the proposal is reasonable. Nasdaq anticipates that overall fees for the NNMS, SelectNet, and SOES, net of the liquidity provider rebate and the market data revenue sharing credit, will be comparable to overall fees for the NNMS, SelectNet, and SOES under Nasdaq's recently implemented pricing changes. Such fees are, in turn, estimated to be slightly lower than overall fees for SelectNet and SOES prior to the introduction of the NNMS.

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.

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 rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (f) of Rule 19b-4, thereunder because it establishes or changes a due, fee or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, 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.

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 NASD. All submissions should refer to file number SR-NASD-2001-71 and should be submitted by November 7, 2001.¹⁹

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

Margaret H. McFarland,

Deputy Secretary.

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¹⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44917; File No. SR-NFA-2001-02]

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Futures Association Clarifying the Interpretive Notice Regarding Obligations to Customers and Other Market Participants

October 10, 2001.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and rule 19b-7 under the exchange Act,² notice is hereby given that on September 18, 2001, the National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by NFA. The text of the proposed rule change is available for inspection and copying at the places specified in Item IV below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

On August 29, 2001, pursuant to Section 17(j) of the Commodity Exchange Act ("CEA"),³ NFA requested that the Commodity Futures Trading Commission ("CFTC") make a determination that review of the proposed rule change submitted by NFA to the CFTC is not necessary. The CFTC made such a determination on September 7, 2001.

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

The Commodity Futures Modernization Act of 2000 ("CFMA") amended Section 15A of the Exchange Act to add a new subsection (k),⁴ which makes NFA a national securities association for the limited purpose of regulating the activities of NFA Members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.⁵ The proposed rule change clarifies that certain provisions of the "Interpretive Notice Regarding Obligations to Customers and Other Market Participants" ("Interpretive Notice") apply only to these NFA

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ 7 U.S.C. 21(j).

⁴ 15 U.S.C. 78o-3(k).

⁵ 15 U.S.C. 78o-(b)(11).

¹⁶ 15 U.S.C. 78o-3(b)(6).

¹⁷ Securities Exchange Act Release No. 37250 (May 29, 1996), 61 FR 28629 (June 5, 1996) (SR-CBOE-96-23) (quoting *Timpinaro v. SEC*, 2 F.3d 453, 456 (D.C. Cir. 1993)).

¹⁸ Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR-Phlx-2001-49).

Members.⁶ The text of the proposed rule change is available at the Office of the Secretary, NFA, and at the Commission.

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

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

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

1. Purpose

The Interpretive Notice contains provisions: (1) Prohibiting trading ahead of research reports; (2) prohibiting trading based on knowledge of an imminent block transaction, with an exception for hedging counterparty risk under approved exchange block rules; and (3) requiring a sound basis for evaluating the facts regarding a particular security futures product. The proposed rule change clarifies that these requirements only apply to NFA Members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.⁷

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Exchange Act.⁸

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

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act and the CEA, as they were amended by the CFMA. In fact, the NFA believes that the proposed rule change will level the playing field between broker-dealers that are dual members of NFA and the National Association of Securities Dealers ("NASD") and broker-dealers that are only members of NFA by assuring that dual members are not subject to duplicative regulation.

⁶ The instant proposed rule change amends the text of the Interpretive Notice that was contained in File No. SR-NFA-2001-01. See Securities Exchange Act Release No. 44823 (September 20, 2001), 66 FR 49439 (September 27, 2001).

⁷ 15 U.S.C. 78o(b)(11).

⁸ 15 U.S.C. 78o-3(k).

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

NFA worked with industry representatives in developing the rule change. NFA did not, however, publish the rule change to its membership for comment. NFA did not receive comment letters concerning the rule change.

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

The proposed rule change has become effective on September 7, 2001.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Exchange Act.⁹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Exchange Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. 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 these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's Internet website (<http://www.sec.gov>). All submissions should refer to File No. SR-NFA-2001-02 and should be submitted by November 7, 2001.

⁹ 15 U.S.C. 78s(b)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-4920; File No. SR-PHLX-00-75]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc. Relating to Changes to TheStreet.com Internet Index

October 11, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 30, 2000, the Philadelphia Stock Exchange, Inc. ("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 PHLX. The PHLX filed Amendment Nos. 1 and 2 to the proposal on September 14, 2001,³ and

¹⁰ 17 CFR 200.30-3(a)(75).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, PHLX, to Yvonne Fraticelli, Special Counsel, Division of Market Regulation ("Division"), Commission, dated September 12, 2001 ("Amendment No. 1"). In Amendment No. 1, the PHLX: (1) Indicated that the PHLX generally will announce new share amounts on the Wednesday prior to the effective date of a rebalancing; (2) indicated that the PHLX, in consultation with TheStreet.com, Inc. ("TheStreet.com") has established policies and procedures to administer The Street.com Internet Index ("the Index"); (3) stated that the announcement of share amount changes prior to a rebalancing will allow investors to adjust hedging positions in a more cost effective manner; (4) clarified how the proposed changes will enhance the Index and facilitate the development of new products based on the Index; (5) clarified that the share amounts of replacement issues and additional Index components will be determined based on the closing price four business days prior to the date on which the divisor is adjusted; (6) indicated that announcing changes in share amounts of replacement stocks prior to their implementation will allow investors to adjust hedging positions in a more cost effective manner; (7) indicated that the PHLX will not trade options on the existing Index and the revised Index simultaneously; and (8) described the PHLX's policies and procedures to prevent potential misuse by PHLX staff of material, non-public information in connection with the maintenance of the Index.