available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2002–94 and should be submitted by August 15, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18842 Filed 7–24–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46234; File No. SR–NASD–2002–73]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq Testing Facility Fees, and Adding the Ability to Test Computer-to-Computer Interface, Application Programming Interface, and Market Data Vendor Feeds Over Dedicated Circuits

July 19, 2002.

On June 4, 2002, 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–thereunder,[2] a proposed rule change to apply the same schedule of fees in SR–NASD–2002–72[3] to non-member subscribers that use a dedicated circuit or circuits to test their communication interfaces and/or market data vendor feeds with Nasdaq's central processing facilities. The fees consist of monthly fees and one-time installation fees, and would be charged in addition to the hourly fees currently charged. The proposed rule change was published for notice and comment in the **Federal Register** on June 18, 2002.[4] The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[5] and, in particular, the requirements of section 15A(b)(5),[6] which requires the rules of a national securities association to provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility which the association operates or controls. The Commission finds the proposed rule change is consistent with section 15A(b)(5) because the same fees will be charged to member and non-member subscribers that choose to test their communication systems interfaces with Nasdaq's central processing facilities over a dedicated circuit or circuits. The Commission accepts Nasdaq's representation that the fees are reasonable because the fees have been calculated to recover Nasdaq's actual costs of installation and maintenance of the dedicated circuit(s).

It is therefore ordered, pursuant to section 19(b)(2) of the Act[7], that the proposed rule change (SR–NASD–2001–73) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18843 Filed 7–24–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46214; File No. SR–Phlx–2001–63]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing of and Order Granting Accelerated Approval to Amendment No. 3 Relating to New Product Allocations

July 16, 2002.

I. Introduction

On June 18, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') 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-4 thereunder,[2] a proposed rule change relating to new product allocations. On February 28, 2002, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On April 5, 2002, the Phlx submitted Amendment No. 2 to the proposed rule change.[4] On May 2, 2002, notice of the proposed rule change and Amendment Nos. 1 and 2 thereto was published in the **Federal Register**.[5] The Commission received no comments on the proposed rule change, as amended by Amendment Nos. 1 and 2. On June 25, 2002, the Phlx filed Amendment No. 3 to the proposed rule change with the Commission.[6] This order approves the proposed rule change, as amended, and grants accelerated approval to Amendment No. 3. The Commission is also soliciting comments on Amendment No. 3 from interested persons.

II. Description of Proposal

The Phlx proposes to amend Phlx Rule 511(b), Allocations, to permit the Equity Allocation, Evaluation and Securities Committee and the Options Allocation, Evaluation and Securities Committee (collectively ''Committees'') to allocate a new product[7] to an eligible

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 46065 (June 12, 2002), 67 FR 41556 (June 18, 2002).

[4] Securities Exchange Act Release No. 46066 (June 12, 2002), 67 FR 41554.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Linda C. Christie, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 26, 2002 (''Amendment No. 1'').

[4] *See* letter from Linda C. Christie, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 4, 2002 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 45824 (April 25, 2002), 67 FR 22144.

[6] *See* letter from Linda S. Christie, Counsel, Phlx, to Kelly McCormick-Riley, Senior Special Council, Division, Commission, dated June 25, 2002 (''Amendment No. 3''). In Amendment No. 3, the Phlx clarified that the three types of business transactions enumerated in proposed Phlx Rule 511(b)(ii) are not the type of business transactions contemplated under Phlx Rule 1023. The Phlx explained that for purposes of its proposed Rule 511(b)(ii), its Rule 1023 shall be deemed to prohibit only business transactions which are material in value either to the issuer or the specialist, would provide access to material non-public information relating to the issuer, or would provide access to material non-public information relating to the issuer, or would give rise to a control relationship between the issuer and the specialist unit. The receipt of routine business services, goods, materials, insurance, on terms that would be generally available shall not be deemed a business transaction for the purposes of Phlx Rule 1023. The Phlx further elaborated that license agreements, trademarks, tradenames and intellectual property are routine business services that are generally available through an issuer and that these types of transactions do not give rise to the possibility of the specialist unit being controlled an issuer. The Phlx also represented that the transactions contemplated in proposed Phlx Rule 511(b)(ii) do not provide access to non-public information relating to the issuer. Rather, these types of business agreements between the parties are routine in nature and are not deemed prohibited transactions per Phlx Rule 1023.

[7] Phlx proposes to define a new product for purposes of Phlx Rule 511(b)(i) as anything other

Continued

specialist unit that develops such new product or is instrumental in developing or bringing such new product to the Exchange without soliciting applications from any other specialist units. Currently, Phlx Rule 506(a) requires, among other things, that the Committees solicit applications from all eligible specialist units when allocating an equity or options book. Specialists will continue to be required to satisfy all eligibility requirements.[8]

The proposal would also permit the Committees, as a condition to allocating a book for any equity, option, or futures product that involves the licensing or other acquisition of an index, trademark, tradename, patent or other intellectual property, to: (1) Require a specialist unit to indemnify the Exchange and/or any third party against any potential liabilities associated with the product; (2) require a specialist unit to agree to pay the Exchange and/or any third party any amounts related to the product or use of the product; and (3) enter into any necessary agreements or undertakings with the Exchange and/or third party concerning the intellectual property, however, no such agreement or undertaking may confer any ownership or proprietary rights upon the specialist unit with respect to the intellectual property or the book.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with the requirements of sections 6(b)(4) and (5) of the Act [9] that the rules of an exchange, among other things, provide for the equitable allocation of reasonable fees, dues, and other charges among its members and issuers and other persons using its facilities, and be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.[10]

The Commission believes that the proposal to permit the Committees to allocate a new product to an eligible specialist unit that develops a new product or is instrumental in developing or bringing a new product to the Exchange without soliciting new applications from other specialist units will permit the Exchange to fulfill its obligation to protect investors and the public interest because specialist units will continue to be required to satisfy the existing specialist appointment criteria set forth in Phlx Rule 501. The proposal provides the Committees with the ability to consider a specialist's willingness to expend capital and other resources in developing and bringing new products to the Phlx. Further, the Commission notes that the Committees are not required to view the fact that an eligible specialist unit develops a new product or is instrumental in developing or bringing a new product to the Exchange as a conclusive factor in its allocation determination. The proposal merely provides the Committees with the discretion to consider such additional factors.

The Commission also believes that the proposal to permit the Committees to require certain indemnifications and agreements regarding payment and intellectual property is reasonable and should provide for the equitable allocation of charges incurred by the Exchange associated with the trading of new products. Further, the Commission believes that passing on these related costs should assist the Phlx in defraying some of the costs and may provide for a more effective utilization of Exchange resources.

The Commission also finds good cause for accelerating approval of Amendment No. 3 because it merely clarifies that the three types of business transactions enumerated in proposed Phlx Rule 511(b)(ii) are not business transactions contemplated under Phlx Rule 1023. Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5) of the Act,[11] and section 19(b)(2) of the Act [12] to accelerate approval of Amendment No. 3 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 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 Phlx. All submissions should refer to File No. SR–Phlx–2001–63 and should be submitted by August 15, 2002.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change, as amended, (File No. SR–Phlx–2001–63) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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than common stock of an operating company, or options or futures on common stock of an operating company or straight debt of an operating company.

[8] *See, e.g.,* Phlx Rules 501, 506, and 511.

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3422]

State ofF Indiana; Amendment #3

In accordance with a notice received from the Federal Emergency Management Agency, dated July 15, 2002, the above numbered declaration is hereby amended to include Dearborn and Orange Counties in the State of Indiana as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring April 28, 2002 through June 7, 2002.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Franklin and Ohio Counties in Indiana; Boone County in Kentucky; and Butler and Hamilton Counties in Ohio. All other contiguous counties have been previously declared.

The economic injury number assigned to Ohio is 9Q6100.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is August 12, 2002, and for economic injury the deadline is March 13, 2003.