

correspondence with the public.<sup>3</sup> The Supervision Amendments become effective on September 19, 2000. Among other things, they provide for maintaining records of written supervisory procedures and correspondence relating to a municipal securities representative's municipal securities activities.

Under current MSRB Rule G-8(f), a non-bank dealer is deemed to be in compliance with its recordkeeping obligations under MSRB Rule G-8 if it is in compliance with the SEC's recordkeeping rule,<sup>4</sup> provided that the dealer must still maintain certain types of records identified in MSRB Rule G-8 that are specifically required under Board rules and are unique to the municipal securities market. The technical amendment to MSRB Rule G-8(f) set forth in this filing requires a non-bank dealer relying on Exchange Act Rule 17a-3 for the maintenance of its books and records to nonetheless maintain the records of supervisory procedures and correspondence required by the recent amendments.

Second, the amendment proposed to MSRB Rule G-15(d)(ii)(B)(2)(d) makes a paragraph reference consistent with the Board's general usage of such references throughout the rules.

## 2. Basis

The Board believes the proposed rule change is consistent with 15B(b)(3)(C) <sup>5</sup> of the Exchange Act, which requires, in pertinent part, that the Board's rules:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change is consistent with the Exchange Act because it ensures that existing rule provisions are accurate, understandable and consistent.

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

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act because it would apply equally to all brokers,

dealers and municipal securities dealers.

## C. Self-Regulatory Organization's Statement of 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

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the Commission for its review at least five business days prior to the filing date; and (iv) does not become operative until September 19, 2000,<sup>6</sup> which is more than thirty days after the date of its filing, the Board has submitted this proposed rule change to become effective pursuant to Section 19(b)(3)(A) <sup>7</sup> of the Exchange Act and Rule 19b-4(e)(6) <sup>8</sup> thereunder. In particular, the Board believes the proposed rule change qualifies as a "non-controversial filing" because the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

## 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 the filing will also be available for inspection and copying at the Board's principal offices. All

submissions should refer to File No. SR-MSRB-00-9 and should be submitted by August 25, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43082; File No. SR-NASD-00-43]

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending Section 4.2 of the NASD Regulation, Inc. Bylaws Relating to the Size of the NASD Regulation, Inc. Board

July 27, 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 21, 2000, the National Association of Securities Dealers, Inc. ("NASD") 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 the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The purpose of the proposed rule change is to change Section 4.2 of the NASD Regulation, Inc. ("NASD Regulation") By-laws relating to the size of the NASD Regulation Board to conform to a recently approved parallel change to the Nasdaq Stock Market, Inc. ("Nasdaq") By-laws. Proposed new language is italicized; proposed deletions are bracketed.

## ARTICLE IV

## BOARD OF DIRECTORS

\* \* \* \* \*

## Number of Directors

Sec. 4.2 The Board shall consist of no fewer than five and no more than ten Directors, the exact number to be determined by resolution adopted by the stockholder of

<sup>3</sup> See Securities Exchange Act Release, No. 42538, 65 FR 15675 (March 23, 2000).

<sup>4</sup> Exchange Act Rule 17a-3, 17 CFR 240.17a-3.

<sup>5</sup> 15 U.S.C. 780-4(b)(2)(C).

<sup>6</sup> This date coincides with the effective date of the Supervision Amendments.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(e)(6).

<sup>9</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.

NASD Regulation from time to time. [Notwithstanding the preceding sentence, the number of Directors shall equal the number of directors on the Nasdaq Board.] Any new Director position created as a result of an increase in the size of the Board shall be filled pursuant to Section 4.4.

## 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 NASD 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 NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

The purpose of the proposed rule change is to make a conforming and technical amendment to the NASD Regulation By-Laws relating to the size of the NASD Regulation Board. On June 26, 2000, the Commission approved amendments to the Nasdaq By-Laws to facilitate the Restructuring Plan ("Restructuring") approved by NASD members on April 14, 2000.<sup>3</sup> The Restructuring involves broadening the ownership of Nasdaq through a two-phase private placement of common stock and warrants to NASD members, Nasdaq issuers, institutional investors, and strategic partners. Among other things, the amendments to the Nasdaq By-Laws deleted a requirement that the number of directors on the Nasdaq Board be equal to the number of directors on the NASD Regulation Board, and added a new requirement authorizing the non-NASD shareholders of Nasdaq to nominate at least four directors of to the Nasdaq Board.<sup>4</sup>

The linkage between the sizes of the NASD Regulation and Nasdaq Boards was first proposed by the NASD and approved by the Commission in 1997.<sup>5</sup> The Board size linkage was part of a broader set of amendments designed to create an interlocking Board structure for the NASD, Nasdaq, and NASD Regulation, and provide for more

streamlined corporate governance. At that time, Nasdaq and NASD Regulation were both 100 percent owned by the NASD. The linkage in the Board sizes were not required by the Undertakings entered into by the NASD and the Commission on August 8, 1996.<sup>6</sup>

The purpose of the proposed rule change is to conform a provision of the NASD Regulation By-Laws to a recently approved parallel provision in the Nasdaq By-Laws, which deleted a requirement that the NASD Regulation Board have the same number of directors as the Nasdaq Board. With the Restructuring underway, the equivalence in Board size no longer serves a corporate governance purpose. Furthermore, no purpose would be served by requiring NASD Regulation to increase the size of its Board when the Nasdaq Board adds four new non-NASD directors in the near future. Therefore, the NASD proposes to delete the Board size equivalence requirement from the NASD Regulation By-Laws, thereby making the Nasdaq and NASD Regulation By-Laws consistent on this issue, and completely delinking the Nasdaq and NASD Regulation Board sizes.

#### 2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest. The proposed rule change simply makes the NASD Regulation and Nasdaq By-Laws consistent by not requiring the Boards of each corporation to have the same number of directors.

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

CBOE 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 NASD has neither solicited nor received written comments on the proposed rule change.

## 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)(i) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>9</sup> as a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange.

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 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-00-43 and should be submitted by August 25, 2000.

<sup>3</sup> Securities Exchange Act Release No. 42983 (June 26, 2000 65 FR 41116 (July 3, 2000)).

<sup>4</sup> *Id.*

<sup>5</sup> Securities Exchange Act Release No. 39326 (November 14, 1997), 62 FR 62385 (November 21, 1997).

<sup>6</sup> Securities Exchange Act Release No. 37538 (August 8, 1996), 62 SEC Docket 1346, Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3-9056.

<sup>7</sup> 15 U.S.C. 78o-3(b)(96).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43081; File No. SR-Phlx-00-53]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Permanent Approval of a Pilot Program Regarding Fees for Computer Equipment Services, Repairs or Replacements, and Relocation of Computer Equipment

July 27, 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 June 22, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") 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 the Exchange.<sup>3</sup> 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 Phlx request permanent approval of its pilot program which, requires all members on the options and equity trading floors to pay a fee for (1) computer equipment services, repairs, or replacements and (2) member-requested relocation of computer

equipment.<sup>4</sup> The current pilot program is in effect from April 1, 2000 through June 30, 2000.<sup>5</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, 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

The purpose of the proposed rule change is to request permanent approval of Phlx's current three-month pilot program that amends Phlx's fee schedule for (1) computer equipment services, repairs, or replacements and (2) member-requested relocation of computer equipment.

First, pursuant to the current pilot program, the Phlx's schedule of dues, fees, and charges was amended to impose a fee on all members on the options and equity floors for computer equipment services, repairs, or replacements on the trading floors. Specifically, the Phlx charges \$100 for every service call plus \$75 an hour,<sup>6</sup> with a minimum of two hours charged per service call.<sup>7</sup> The Exchange staff anticipates that the majority of computer services, repairs, or replacements will continue to be completed within two hours. Currently, notwithstanding the pilot program, members are not bill for computer services, repairs, or replacements when new or refurbished equipment fails in the normal and customary manner of usage within 30 days of installation. In addition, members are not charged for repairing system-wide problems,

rebooting central processing units, and adjusting cables or replacing certain extension cables.

These changes are intended to defray the cost of servicing, repairing, or replacing computer equipment on the options and equity trading floors, as well as to encourage care in using computer equipment.<sup>8</sup> The Exchange receives approximately 90 percent of calls on a routine basis to repair, replace, or otherwise service keyboards, track balls, printers, and other computer equipment from options or equity floor members' work stations.

Second, the Exchange has amended its schedule of dues, fees, and charges to impose a fee for member-requested relocation of a member's work station or any piece of their computer equipment on the options or equity trading floors. Under the current pilot program, the Exchange imposes a \$100 service fee plus \$75 per hour per person moving the equipment, with a minimum of two hours charged for each relocation request.<sup>9</sup>

The post/equipment relocation fee should assist in defraying the costs associated with the moving of computer equipment. Member/participant-requested relocations on the trading floors can be very time-consuming and costly because nearly all relocations take place after hours or on the weekends.

Exchange staff and trading floor members are required to complete a pre-printed form prior to requesting repair or relocation service. A notice describing the equipment repair procedures was sent to all floor members prior to the implementation of the original three-month pilot program that was in effect from January 1, 2000 through March 31, 2000. Another notice will be sent to members and participants to inform them that these fees will be implemented on a permanent basis to members on the equity and options trading floors.

The Exchange staff has had the opportunity to review the procedures relating to computer equipment services, repairs, replacements, and relocations, which include instructions to members and Exchange staff as to where the service request forms will be located, directions as to how to

<sup>10</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.

<sup>3</sup> The Phlx originally submitted the proposal on June 22, 2000. On July 19, 2000 the Phlx submitted a letter from Cynthia Hoekstra, Attorney, Phlx, to Jack Drogin, Assistant Director, Division of Market Regulation ("Division"), Commission, amending the filing ("Amendment No. 1"). In Amendment No. 1, the Phlx withdrew the portion of the filing extending the fees for computer equipment services, repairs or replacements, and member-requested relocation to the Exchange's Foreign Currency Option trading floor. Amendment No. 1 also requests that the permanent approval of the pilot program be retroactive to the date of the original filing on June 22, 2000. Because of the substantive nature of Amendment No. 1, the Commission deems the filing date to be July 19, 2000, the date Amendment No. 1 was filed.

<sup>4</sup> A fee will not be charged for new installation of computer equipment.

<sup>5</sup> See Securities Exchange Act Release No. 42654 (April 10, 2000), 65 FR 20500 (April 17, 2000).

<sup>6</sup> The computer equipment services, repairs, or replacements fee is charged per service call and per hour but not per person, unlike the computer relocation request fee. Telephone conversation between Cynthia Hoekstra, Attorney, Phlx, and Marla Chidsey, Attorney Division, Commission on July 6, 2000.

<sup>7</sup> Some component of this amount may reflect Pennsylvania sales tax.

<sup>8</sup> This proposed fee will apply to all such requests with no distinction between intentional abuse or normal wear and tear due to the difficulties associated with categorizing the types or repairs.

<sup>9</sup> For example, if two individuals take two hours to relocate a work station, the member will be charged \$100 for the service call, plus \$300 for moving the equipment (\$75 four (two people x two hours)). Again, some component of this amount may reflect Pennsylvania sales tax.