

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44091; File No. SR-NASD-00-69]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a New Registration Category: Limited Representative—Private Securities Offerings**

March 21, 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 November 28, 2000, the National Association of Securities Dealers, Inc. (“NASD” or “Association”), through its wholly-owned subsidiary, NASD Regulation, Inc. (“NASD Regulation”), 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 NASD Regulation. NASD Regulation filed Amendment No. 1 to the proposed rule change on February 28, 2001.<sup>3</sup> Amendment No. 1 replaces the proposed rule change in its entirety. On March 14, 2001, NASD Regulation filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD Regulation is proposing to amend Rule 1032 of the NASD to implement Section 203 the Gramm-Leach-Bliley Act of 1999 (“GLBA”),<sup>5</sup> which becomes effective on May 12, 2001. The proposed rule change creates a limited registration category for an associated person of a member whose investment banking and securities business is limited solely to effecting sales of private securities offerings.

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

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

<sup>3</sup> See letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (“Division”), Commission, dated February 28, 2001 (“Amendment No. 1”). Amendment No. 1 was filed to address SEC staff comments and to make certain clarifications.

<sup>4</sup> See letter from Gary L. Goldsholle, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated March 14, 2001 (“Amendment No. 2”). Amendment No. 2 was filed to address additional SEC staff comments and to make further clarifications.

<sup>5</sup> Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, 113 Stat. 1338 (1999).

Section 203 also states that any bank employee who during the six-month period prior to the enactment of GLBA engaged in effecting such sales shall be deemed qualified in such limited registration category without having to complete an examination. NASD Regulation also is making clerical changes to Rule 1032, essentially replacing the word “described” for the word “prescribed.” Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

1032. Categories of Representative Registration

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(b) Limited Representative—Investment Company and Variable Contracts Products

\* \* \* \* \*

(2) A person qualified solely as a Limited Representative—Investment Company and Variable Contracts Products shall not be qualified to function as a representative in any area not [pr]described in paragraph (b)(1)(A) hereof.

(c) Limited Representative—Direct Participation Programs

\* \* \* \* \*

(2) A person qualified solely as a Limited Representative—Direct Participation Programs shall not be qualified to function in any area not [pr]described in [by] subparagraph (1) hereof.

\* \* \* \* \*

(d) Limited Representative—Options

\* \* \* \* \*

(3) A person registered as a Limited Representative—Options shall not be qualified to function in any area not [pr]described in [by] subparagraph (1) hereof.

(e) Limited Representative—Corporate Securities

\* \* \* \* \*

A person qualified solely as a Limited Representative—Corporate Securities shall not be qualified to function in any area not [pr]described in [by] subparagraph (1) hereof.

(g) Limited Representative—Government Securities

\* \* \* \* \*

(2) A person registered solely as a Limited Representative—Government Securities shall not be qualified to function in any area not [pr]described in [by] subparagraph (1)(A) hereof.

(h) Limited Representative—Private Securities Offerings

(1) Each person associated with a member who is included within the definition of a representative as defined in Rule 1031 may register with the Association as a Limited Representative—Private Securities Offerings if:

(A) such person’s activities in the investment banking and securities business involve effecting sales as part of a primary offering of securities not involving a public offering, pursuant to Section 3(b), 4(2) or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, provided, however, that such person shall not effect sales of municipal or government securities, or equity interests in or the debt of direct participation programs as defined in Rule 1022(e)(2); and

(B) subject to subparagraph (2) hereof, such person passes an appropriate qualification examination for Limited Representative—Private Securities Offerings.

(2) The Association shall, upon such evidence as the Association determines to be appropriate, deem any person who while employed by a bank, engaged in effecting sales of private securities offerings as described in subparagraph (1)(A) hereof, during the period from May 12, 1999 to November 12, 1999, as qualified to register as a Limited Representative—Private Securities Offerings without the need to pass the qualification examination required by subparagraph (1)(B) hereof.

(3) A person registered as a Limited Representative—Private Securities Offerings shall not be qualified to function in any area not described in subparagraph (1)(A) hereof.

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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 implement Section 203 of GLBA. Section 203 adds new subsection (j) to Section 15A of the Act, which requires that the NASD, as a registered securities association, create a limited registration category for any associated person of a member whose investment banking and securities business is limited solely to effecting sales of private securities offerings. Section 203 also states that any bank employee who during the six-month period prior to the enactment of GLBA (*i.e.*, from May 12, 1999 to November 12, 1999) engaged in effecting such sales shall not be required to pass a qualification examination in order to be deemed qualified in the limited registration category. Section 203 becomes effective on May 12, 2001.

GLBA also establishes functional regulation, meaning that each industry segment of a multi-industry organization will be regulated by the agency charged by law with the regulation of that industry. In connection with functional regulation, GLBA eliminates the long-standing general exclusion for banks from the definitions of "broker" and "dealer" under the Act and instead provides exclusions for certain bank activities. With respect to private placement activity, GLBA permits private placements to be effected in a bank (that is not a broker or dealer) where (a) the bank is not affiliated with any broker or dealer, the aggregate dollar amount of any private placement offering (excluding government or municipal securities) does not exceed 25% of the bank's capital. A bank that meets these conditions will be eligible to engage in private placement activities without having to register its personnel with the NASD. Notwithstanding this exclusion, many banks will be required to effect private securities offerings in a registered broker/dealer. For banks that are not excluded from the definition of "broker," employees that effect sales of private securities offerings will be required to become associated persons of a registered broker/dealer, and as such, will be subject to NASD qualification examination and other requirements.

As part of the effort to facilitate a smooth transition of private placement activities from banks to broker/dealers, GLBA creates a new limited registration category for persons engaging solely in sales of private securities offerings. As

noted above, while certain banks will still be permitted to engage in private securities offerings, many others will be required to effect these sales in a registered broker/dealer with appropriately registered personnel.

The proposed rule change effectuates the provisions of Section 203 by establishing a new registration category for persons engaged solely in sales of private securities offerings through a registered broker/dealer. Applicants seeking to register with the NASD under this limited registration category must meet the eligibility criteria for associated persons of a member in the NASD By-Laws and pass the necessary qualification examination. However, consistent with GLBA, the proposed rule change provides that any person who engaged in sales of private securities offerings as an employee of a bank during the period from May 12, 1999 to November 12, 1999, is not required to complete the qualification examination. An applicant seeking exemption from the qualification examination pursuant to this provision will be required to provide such evidence as NASD Regulation determines to be appropriate, demonstrating that he or she was engaged in effecting sales of private securities offerings at the bank during the period from May 12, 1999 to November 12, 1999.

The new limited registration category permits a person to effect sales of private securities offerings. However, the new limited registration category does not permit a person to effect sales of municipal or government securities or equity interests in or the debt of direct participation programs ("DPP securities"). Although sales of municipal securities and DPP securities may involve private securities offerings, NASD Regulation does not believe that the limited registration category should allow persons to sell such securities. Persons who effect sales of municipal securities, including bank employees, currently are required to be qualified in accordance with the rules of the Municipal Securities Rulemaking Board ("MSRB"). MSRB rules, among other things, require that persons pass a specific qualification examination. NASD Regulation does not believe that the new limited registration category was intended to create a subcategory of persons that are eligible to engage in certain offerings of municipal securities without meeting the specific qualification requirements of the MSRB.

Based upon conversations with SEC staff, NASD Regulation has included language in the proposed rule change to exclude from the scope of the limited

registration category the ability to effect sales of private placements of government securities. With respect to government securities, NASD Regulation already offers a limited registration category for persons involved in the solicitation, purchase or sale of government Securities.<sup>6</sup> Moreover, although neither NASD Regulation nor the SEC staff currently is aware of any private offerings of government securities, the SEC staff believes that it is important to exclude government securities from the limited registration category, similar to the exclusion for municipal securities given the manner in which these products are addressed in the GLBA.

The new limited registration category also does not qualify a person to engage in offerings of DPP securities. In general, DPP securities are specialized programs that provide for flow-through tax consequences. Persons who wish to effect sales of DPP securities are required to register as a general securities representative or under a limited registration category for DPP securities.<sup>7</sup> Based upon conversations with banking industry representatives, NASD Regulation does not believe that unregistered bank employees generally effect sales of DPP securities. In view of the highly specialized nature of DPP securities, the existence of a limited registration category for such securities, and the general lack of experience in such securities by unregistered bank personnel, NASD Regulation does not believe that the new limited registration category should qualify an associated person to sell DPP securities. Moreover, by eliminating DPP securities from the scope of the new limited registration category, the qualification examination will not be burdened with questions on these highly specialized products. However, with respect to current bank employees who may be eligible to register under the new limited registration category without taking the qualification examination pursuant to paragraph (h)(2) of the proposed rule change, NASD Regulation staff has exemptive authority under NASD Rule 1070 and under such authority will consider on a case-by-case basis, whether a bank employee with experience in DPP securities registering with a broker/dealer should be authorized to effect sales of DPP securities without having to complete the general securities representative or specific DPP securities limited qualification examination.

<sup>6</sup> See NASD Rule 1032(g).

<sup>7</sup> See NASD Rule 1032(c).

Finally, NASD Regulation emphasizes that the new limited registration category permits persons only to effect sales of private placement securities as part of a primary offering. As such, persons registered in this category will not be permitted to effect resales of or secondary market transactions in private placement securities. Any person wishing to effect resales of or secondary market transactions in private placement securities will be required to register as a General Securities Representative, or, where appropriate, as a Limited Representative—Corporate Securities.

NASD Regulation is making the proposed rule change to effectuate the provisions of Section 203 of GLBA. NASD Regulation staff is currently in the process of developing the qualification examination and will file the study outline and specifications under separate cover.

NASD Regulation also is making several clerical changes to Rule 1032, replacing the word “described” for the word “prescribed.” This change more accurately reflects the intended meaning of the affected paragraphs.

## 2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</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 also is necessary to implement Section 203 of GLBA.

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

NASD Regulation 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, 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

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 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 also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR-NASD-00-69 and should be submitted by April 18, 2001.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-7595 Filed 3-27-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44088; File No. SR-Phlx-01-21]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Primary Trading Session Hours for Equities Whose Primary Market Is Not the Exchange

March 20, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”)<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on March 16, 2001, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the 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. 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 Exchange proposes to amend Phlx Rule 101 to establish the Primary Trading Session hours of securities whose primary market is not the Exchange. Under the proposal, the first trading session (“Primary Trading Session”) would be conducted on the floor of the Exchange during the same hours the security is trading on its primary market, if the Exchange is not the primary market for such security, provided, however, that if the primary market for such security is PCX Equities, Inc., the Primary Trading Session for such security shall end no later than 4 p.m. Eastern Time.

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

#### Rule 101—Hours of Business

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#### Supplementary Material:

\* \* \* \* \*

.02 Equity Trading Hours. *Unless otherwise announced by the Exchange:*  
*(i) The first trading session (the “Primary Trading Session”) will be conducted on the floor of the Exchange (1) during the same hours the security is traded on its primary market, if the Exchange is not the primary market for such security, provided, however, if the primary market for such security is PCX Equities, Inc.,<sup>3</sup> the Primary Trading Session for that security shall end no later than 4 p.m. Eastern time; or (2) from 9:30 a.m. to 4 p.m. Eastern time, Monday through Friday, if the Exchange is the primary market for such security.*  
 [Trading in any equity security on the Exchange’s equity trading floor—

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

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

<sup>3</sup> In the original proposed rule text, Phlx identified this entity as the “Pacific Stock Exchange.” The final rule text will, as shown here, use the term “PCX Equities, Inc.” Telephone conversation between Diana Tenenbaum, Counsel, Phlx, and Michael Gaw, Special Counsel, Division of Market Regulation, Commission, on March 19, 2001. Conforming changes have been made to the draft **Federal Register** notice provided by Phlx.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 17 CFR 200.30-3(a)(12).