Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 19b–5 provides a temporary exemption from the rule-filing requirements of Section 19(b) of the Securities Exchange Act of 1934 (''Act'') to self-regulatory organizations (''SROs'') wishing to establish and operate pilot trading systems. Rule 19b–5 permits an SRO to develop a pilot trading system and to begin operation of such system shortly after submitting an initial report on Form PILOT to the Commission. During operation of the pilot trading system, the SRO must submit quarterly reports of the system's operation to the Commission, as well as timely amendments describing any material changes to the system. After two years of operating such pilot trading system under the exemption afforded by Rule 19b–5, the SRO must submit a rule filing pursuant to Section 19(b)(2) of the Act in order to obtain permanent approval of the pilot trading system from the Commission.

The collection of information is designed to allow the Commission to maintain an accurate record of all new pilot trading systems operated by SROs and to determine whether an SRO has properly availed itself of the exemption afforded by Rule 19b–5.

The respondents to the collection of information are SROs, as defined by the Act, including national securities exchanges and national securities associations.

Ten respondents file an average total of 6 initial reports, 24 quarterly reports, and 12 amendments per year, with an estimated total annual response burden of 252 hours. At an average hourly cost of $51.71, the aggregate related cost of compliance with Rule 19b–5 for all respondents is $13,032 per year (252 burden hours multiplied by $51.71/hour=$13,032).

Although Rule 19b–5 does not in itself impose recordkeeping burdens on SROs, it relies on existing requirements imposed by Rule 17a–1 under the Act to require SROs to retain all the rules and procedures relating to each pilot trading system operating pursuant to Rule 19b–5 and to make such records available for Commission inspection for a period of not less than five years, the first two years in an easily accessible place.

Compliance with Rule 19b–5 is mandatory. Information received in response to Rule 19b–5 shall be available only for examination by the Commission, other agencies of the federal government, state securities authorities and SROs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (b) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: June 4, 2001.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44390; File No. SR–NASD–00–33]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend NASD Rule 3340 To Prohibit Publication of Quotations or Indications of Interest in a Security During a Trading Halt

June 5, 2001.

I. Introduction

On June 7, 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 (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] On August 2, 2000, NASD Regulation amended the proposal.[3] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on October 3, 2000.[4] The Commission received one comment letter regarding the proposal.[5] This order approves the proposed rule change.

II. Description of the Proposal

NASD Regulation proposes to amend NASD Rule 3340 to expressly prohibit members from publishing quotations in a security during a trading halt.

According to NASD Regulation, the purpose of the rule change is to expressly prohibit members from publishing quotations or indications of interest in a security during a trading halt. Currently, NASD Rule 3340 prohibits members from effecting a transaction in a security during a trading halt, but does not expressly state that members are prohibited from publishing quotations or indications of interest.[6] However, NASD Rules 3310 [7]

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

[2] 17 CFR 240.19b–4.

[3] *See* August 2, 2000 letter from Kathleen A. O'Mara, Assistant General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), SEC (''Amendment No. 1''). In Amendment No. 1, NASD Regulation broadened the scope of the proposed rule change.

[4] *See* Securities Exchange Act Release No. 43346 (September 26, 2000), 65 FR 59036.

[5] *See* October 30, 2000 letter from Cameron Smith, General Counsel, Island ECN, Inc. to Jonathan Katz, Secretary, SEC (''Island Letter'').

[6] The Commission may impose trading suspensions in the United States securities markets under Section 12(k) of the Act. *See* 15 U.S.C. 781(k).

NASD Rule 4120 provides that Nasdaq may halt trading: (1) In the over-the-counter market of a security listed on Nasdaq to permit the dissemination of material news; or (2) in the over-the-counter market of a security listed on a national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news; or (3) by (i) Consolidated Quotation System (''CQS'') market makers in a CQS security because of an order imbalance or influx (''operational trade halt''); or (ii) Nasdaq market makers in a security listed on Nasdaq, when the security is a derivative or component of a CQS security and a national securities exchange imposes an operational trading halt in that CQS security; or (4) in an American Depositary Receipt (''ADR'') or other security listed on Nasdaq, when the Nasdaq-listed security or the security underlying the ADR is listed on or registered with a national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons; or (5) in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to: (i) Material news; (ii) the issuer's ability to meet Nasdaq listing qualification requirements, as set forth in NASD Rule 4300 and 4400 Series; or (iii) any other information which is necessary to protect investors and the public interest. *See also* Securities Exchange Act Release No. 42806 (May 22, 2000), 65 FR 34518 (May 30, 2000) (SR–NASD–99–33), which establishes Nasdaq's trade and quote halt authority in certain specific circumstances in securities included in the OTC Bulletin Board Service (''OTCBB''), and *Notice to Members 99–69* soliciting comments on whether NASD Regulation should have authority to halt trading in non-Nasdaq, non-OTCBB, over-the-counter securities under certain circumstances.

[7] NASD Rule 3310 states that: [n]o member shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or

and 3320,[8] respectively, state that members are required to enter only bona fide quotations and honor such quotations if presented with an order. Thus, if during a trading halt, a member that is publishing a quotation for a security is presented with a liability order for such security, the member would be faced with the choice of either honoring its quote and violating the rule prohibiting transactions in a security during a trading halt, or complying with the trading halt rule but violating the Firm Quote Rule.

In addition, the entry of quotations or indications of interest while there is a trading halt in a security could be potentially misleading. To prevent this from happening, NASD Regulation is proposing that NASD Rule 3340 be amended to expressly state that members are prohibited from publishing quotations or indications of interest during a trading halt.

III. Summary of Comments

The Commission received one comment letter regarding the proposal.[9] The commenter expressed concern that the proposal would cause the market to abruptly open once a trading halt is lifted without allowing a time period for market participants to enter new quotes.[10] The commenter also stated that the proposal did not provide instruction on what would happen to quotes that were in the system before a trading halt was imposed, and whether market participants would have a chance to refresh their quotes when a trading halt is lifted.[11]

The commenter suggested an alternative method of resuming trading after a trading halt, whereby participants would be allowed a five-minute period to open their quotes. If a quote were refreshed during that period, the quote would then be considered open, and subject to the Firm Quote Rule. Any remaining quotes would remain closed. If, after the five-minute period, any market participants failed to update their quotes, the quotes would be refreshed at the price established before the trading halt was imposed. If the pre-halt price would lock or cross the market, the quote would be subject to an excused withdrawal.[12]

The commenter also suggested that Nasdaq should be required to make system changes to prevent the entry of orders in SelectNet during a trading halt, rather than requiring each of the Nasdaq market participants to make the changes in their own systems.[13]

Finally, the commenter suggested that Nasdaq develop official and automated methodology to alert members about the imposition of trading halts, citing examples of two occasions where incorrect or delayed messages regarding the status of trading halts were posted on the Nasdaq News Frame.[14]

In response to the comment letter,[15] NASD Regulation stated that the proposed rule change would not alter the method by which trading is resumed when a trading halt is lifted.[16] NASD Regulation stated that Nasdaq MarketWatch provides notice of trading halts to members through the Nasdaq workstation. Simultaneously, all quotes for the security at issue are eliminated from the Nasdaq workstation interactive area. Nasdaq MarketWatch updates the status of a trading halt, and notifies members of the exact time the trading halt will be lifted. MarketWatch also notifies members that they may begin entering quotations in anticipation of the end of a trading halt (the ''grace period''). Quotations during the grace period are designated as closed by displaying a ''g'' symbol next to each quotation. The quotations remain closed until the trading halt is lifted, at which time the ''g'' symbol is removed, and quotations become firm.[17]

Regarding the commenter's suggestion that Nasdaq modify SelectNet to prevent the entry of orders in SelectNet during a trading halt, NASD Regulation stated it is a member's responsibility to ensure compliance with NASD rules.[18] While modifying SelectNet may be appropriate as a supplemental measure, NASD Regulation believes there must be fundamental prohibition of the conduct addressed by the proposed rule change.[19] NASD Regulation indicated it has forwarded the commenter's suggestion to Nasdaq, along with the commenter's request that Nasdaq develop official and automated methodology to alert members to the imposition of a trading halt.[20]

IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letter, NASD Regulation's response to the comment letter, and the entire record herein, and finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations applicable to the Association. In particular, the Commission finds that the proposal is consistent with the requirements of Sections 15A(b)(6),[21] 15A(b)(11),[22] and 11A(a)(1)(C)[23] of the Act.

Section 15A(b)(6)[24] requires that the rules of a registered national securities association 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 securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission finds the proposal is consistent with these requirements.

The Commission further finds the proposed rule is consistent with Section 15A(b)(11),[25] which requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission also finds the proposed rule is consistent with the goals expressed in Section

communication of any kind which purports * * * to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security * * *.

NASD Rule IM–3310 states, among other things, that: [i]t would be inconsistent with the above provisions for a member, for itself or for any other person, to publish or circulate or to cause to be published or circulated, by any means whatsoever, any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation, is not fictitious and is not published or circulated or caused to be published or circulated for any fraudulent, deceptive or manipulative purpose. IM–3310 also provides: [f]or the purposes of this interpretation, the term ''quotation'' shall include any bid or offer or any formula, such as ''bid wanted'' or ''offer wanted,'' designed to induce any person to make or submit any bid or offer.

[8] NASD Rule 3320 (''Firm Quote Rule'') states that: [n]o member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

[9] *See* footnote 5, supra.

[10] Island Letter, page 2.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *See* May 10, 2001 letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, SEC (''NASD Regulation Letter'').

[16] *Id.* at page 2.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] 15 U.S.C. 78o–3(b)(6).

[22] 15 U.S.C. 78o–3(b)(11).

[23] 15 U.S.C. 78k–1(a)(1)(C).

[24] 15 U.S.C. 78o–3(b)(6).

[25] 15 U.S.C. 78o–3(b)(11).

11A(a)(1)(C),[26] which grants the Commission the authority to require rules designed to ensure appropriate protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.

The Commission has reviewed carefully the commenter's letter, and is not persuaded by the commenter's assertions. NASD Regulation has stated that the proposed rule change will not affect the process by which trading resumes after a trading halt is lifted for Nasdaq National Market Securities and Nasdaq SmallCap securities, and has explained in detail those procedures.[27] Additionally, NASD Regulation has stated it would not consider the entry of closed quotations into Nasdaq for these types of securities a violation of NASD Rule 3340, provided the quotations were entered in conformity with Nasdaq's resumption process.[28] The Commission also agrees that the responsibility to ensure compliance with NASD rules rests with the NASD's members, and that the proposal is important because it delineates the prohibition of specific conduct during trading halts.[29]

V. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change, as amended, is consistent with the Act, in general, and in particular with Sections 15A(b)(6),[30] 15A(b)(11),[31] and 11A(a)(1)(c)[32] of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–NASD–00–33), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

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[26] 15 U.S.C. 78k–1(a)(1)(C).

[27] *See* NASD Regulation Letter, page 2.

[28] *Id.*

[29] In approving this proposal, the Commission has considered the proposed rule's impact on efficiently, competition and capital formation. 15 U.S.C. 78c(f). Additionally, the Commission notes that the Association's definition of ''quotation'' under the proposal differs from the definition of ''quotation'' under Exchange Act Rule 15c2–11. 17 CFR 240.15c2–11. The Association's definition of ''quotation'' will have no impact whatsoever on the definition of ''quotation'' under Exchange Act Rule 15c2–11.

[30] 15 U.S.C. 78o–3(b)(6).

[31] 15 U.S.C. 78o–3(b)(11).

[32] 15 U.S.C. 78k–1(a)(1)(C).

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44381; File No. SR–Phlx–2001–57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Waiving Equity Transaction Value Charges for PACE Orders

June 1, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on May 21, 2001, 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 Phlx. 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 proposes to waive equity transaction value charges for orders that are electronically routed to the Exchange through PACE.[3] The proposed waiver of fees will be implemented on June 1, 2001.

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 Phlx 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 Phlx 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 waive equity transaction value charges for orders that are electronically routed to the Exchange through PACE.[4] Presently, orders routed to the Exchange through PACE are charged an equity transaction value charge, which is subject to a discount schedule based on the total value of monthly transactions.[5] Accordingly, all related PACE trade discounts and credits would no longer apply.

The proposed amendment is designed to promote the Exchange's reputation as a cost-effective trading forum for PACE customers and traders transacting equity business. Furthermore, the Exchange believes that the proposed amendment should encourage electronic order flow to the Exchange, which in turn should promote a more liquid equities market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and with Section 6(b)(4),[7] in particular, by providing for the equitable allocation of reasonable dues, fees and other charges among participants. Eliminating certain charges for PACE transactions (1) alleviates a financial burden on PACE users and thus encourages the transaction of equities by the investing public, and (2) promotes competition among the various exchanges.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

[2] 17 CFR 240.19b–4.

[3] PACE is the acronym for the Exchange's Automated Communication and Execution System. It is the Exchange's order routing, delivery, execution and reporting system for its equity trading floor. *See* Exchange Rule 229.

[4] Specialists would continue to be subject to the PACE Specialist Charge of $.20 per specialist trade against PACE executions (excluding PACE trades on the opening). Telephone conversation between Diana Tenenbaum, Counsel, Phlx, and Sonia Patton, Attorney, Division of Market Regulation, Commission (May 29, 2001).

[5] If the monthly transaction value of a particular customer is between $0–$25 million, a rate of $0.14 for every $1,000 of value will be charged. The rate decreases as the amount of the monthly transaction value increases. PACE users receive trade discounts based on trade size.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).