

More importantly, the Commission is interested in exploring whether broader market structure initiatives can address the commenters' concerns regarding order interaction and the effects of referencing on the NMS in general, and on order execution quality in particular. In this regard, the Commission recently proposed rules that attempt to address, among other things, the order interaction and best execution issues presented by referencing of order flow.²⁹ Extension of the BSE pilot will allow the Commission an opportunity to study the implications of these proposals for the BSE's competing specialist pilot.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that accelerated approval of the proposal to extend the pilot is appropriate in order to avoid an unnecessary interruption to the pilot while the Commission conducts its market structure rulemaking and continues to collect data. Moreover, the Commission received only minimal comment on the BSE proposal to adopt the pilot on a permanent basis, making it unlikely that additional comment would be submitted regarding the extension. The Commission also believes that accelerated approval of the clarifying language to the limit or order execution rule is appropriate. The rule, which merely clarifies the existing practice, was previously published for public comment for the full statutory period³⁰ and no comments were received on the proposal.

Finally, the Commission believes that accelerated approval of the proposed expansion of the program to four Competing Specialists that may compete in up to 100 securities is appropriate. Expansion of the program will provide the Commission with additional data upon which to decide whether the program should be permanently approved. In addition, the Commission published the BSE's request for permanent approval, which contained no restrictions on the number of specialist or the number of stocks in which they could compete, for the full

Specialists to enter their own quotes into the system and to enable orders to be automatically routed to the specialist with priority under the rules. During the pilot extension, the Commission expects the BSE to continue developing these system enhancements, and expects progress to be made toward implementation of direct quote entry capability and systematic routing of orders.

²⁹ See Securities Exchange Act Release No. 36310 (September 29, 1995).

³⁰ See *supra* note 4.

statutory period.³¹ Only one comment letter that criticized the proposal was received.³² The Commission will consider that comment when deciding either to approve the BSE's request to make the competing specialist program permanent.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2),³³ that the proposed rule change to extend the BSE's competing specialist program as amended, through March 29, 1996, is hereby approved on an accelerated basis.

By the Commission.

Jonathan G. Katz,

Secretary.

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[Release No. 34-36321; File No. SR-NASD-95-36]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Schedule B to the NASD By-Laws

September 29, 1995.

On August 22, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") 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 The proposed rule change amends Schedule B to the NASD By-Laws³ to delete informational text on the number of members of the NASD Board of Governors ("Board") elected from each district.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 36153, August 25, 1995) and by publication in the Federal Register (60 FR 45506, August 31, 1995). No comment letters were received. This order grants accelerated approval to the proposed rule change.

Article VII, Section 4(b) of the By-Laws requires that each district shall

³¹ See Securities Exchange Act Release No. 35404 (February 22, 1995), 60 FR 10882 (February 28, 1995).

³² See Gavin Letter, *supra* note 6.

³³ 15 U.S.C. 78s(b)(2) (1988)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NASD Manual, Schedules to the By-Laws, Schedule B (CCH) ¶ 1772.

elect one Board member, authorizes the Board to determine which districts, if any, shall elect more than one Governor, and—in general—authorizes the Board to make appropriate changes in the number or boundaries of the districts or the number of Governors elected by each district to provide fair representation of members and districts. Pursuant to Article VII, Section 4(b), a total of 15 current members have been elected by the districts.

Schedule B currently provides that two members shall be elected from two of the districts and three members shall be elected from one of the districts. The NASD has stated that inclusion of the text regarding district representation on the Board in Schedule B to the NASD By-Laws was intended to be informational only. The NASD also has stated that it believes that the informational language in Schedule B to the NASD By-Laws specifying the number of Governors from each district unnecessarily limits the ability of the Board to act under Section 4(b) to make changes in the composition of the Board.

The NASD's proposal also may assist the NASD in adopting certain recommendations recently made by the NASD Select Committee on Structure and Governance ("Select Committee"). The Select Committee recently issued a report ("Committee Report") recommending changes in the NASD's existing governance structure.⁴ The Committee Report recommended, among other things, that the NASD increase public representation on its governing bodies, reform its disciplinary procedures and act to regulate broker-dealers and their personnel separately from regulation of the over-the-counter market, including The Nasdaq Stock Market ("Nasdaq").⁵ The NASD Board has agreed in principle to increase its public representation as recommended in the Committee Report.

Therefore, the NASD proposed to amend Schedule B to the NASD By-Laws to delete provisions that specify the number of members of the Board currently approved to be elected from each district in order to ensure that the Board has flexibility to act with respect to the composition of the Board of Governors.

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(4) of the Act.⁶ Section 15A(b)(4) requires that

⁴ NASD, Report of The NASD Select Committee on Structure and Governance to the NASD Board of Directors (September 19, 1995).

⁵ See *id.* at C-21-22.

⁶ 15 U.S.C. 78o-3.

NASD rules provide for the fair representation of its members in the selection of its directors and administration of its affairs, as well as for the inclusion of Board members who represent issuers and investors. The proposed rule change satisfies both the basic requirements of Section 15A(b)(4) and the provision's overall objective in seeking to ensure effective public representation on the governing boards of the NASD.⁷ The proposed rule change also diminishes the ability of one segment of the NASD membership to dominate the NASD Board, thereby enhancing the ability of the NASD Board to act in the best interests of the public and the NASD membership as a whole.⁸ The Commission, therefore, concludes that the proposed amendments to Schedule B are consistent with Section 15A(b)(4) of the Act.

The NASD has requested that the Commission approve the proposed rule change on or before September 30, 1995, which is prior to the 30th day following publication of notice of the filing of such Amendments in the Federal Register, in order that the new rule may be effective with respect to the NASD's election procedures which commence on October 1, 1995 with respect to Board membership in 1996.

Pursuant to section 19(b)(2) of the Act,⁹ the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after publication in the Federal Register. The proposed rule change will permit the NASD to reduce the proportionate

representation of industry-affiliated Governors on the NASD Board, thereby increasing the proportionate representation of public Governors on the NASD Board. The Commission also believes it is important to enhance the representation of other NASD constituencies on the NASD Board. Because the Commission believes that the proposed rule change will enhance the opportunities of various NASD constituencies to play a meaningful role in NASD affairs, the Commission believes that the rule filing should be approved without delay.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that SR-NASD-95-36 be, and hereby is, approved effective immediately.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,
Secretary.

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[Release No. 34-36319; File No. SR-Phlx-95-72]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Extending the Circuit Breaker Pilot Program

September 29, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 18, 1995, 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 self-regulatory organization. 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 extend the effectiveness of its circuit breaker pilot program, which appears in Phlx Rule 133, until October 31, 1996. Generally, Rule 133 provides for a one hour trading halt if the Dow Jones Industrial Average ("DJIA") declines 250 or more points from its previous day's closing level, and, thereafter, a two hour trading halt

if the DJIA declines 400 points from the previous day's closing level.

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 self-regulatory organization 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 self-regulatory organization 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

The purpose of this proposal is to extend the Exchange's circuit breaker pilot program for a one-year period, in order to afford the Exchange and the Commission additional time to evaluate the effectiveness of the pilot program. The Exchange's circuit breaker rule provides an important safety mechanism in conjunction with the circuit breaker rules of other self-regulatory organizations ("SROs"). The Commission approved the Exchange's circuit breaker proposal on a temporary basis in 1988.² Thereafter, the Exchange's circuit breaker pilot program was extended six times, most recently until October 31, 1995.³

The Exchange believes that its proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest, by providing a reasonable means to retard a rapid, one-day market decline that can have a destabilizing effect on the nation's financial markets and the participants in these markets.

² Securities Exchange Act Release No. 26386 (December 22, 1988), 53 FR 52904.

³ Securities Exchange Act Release Nos. 27370 (October 23, 1989), 54 FR 43881; 28580 (October 25, 1990), 55 FR 45895; 29868 (October 28, 1991), 56 FR 56535; 26942 (November 6, 1992), 57 FR 53157; 33120 (October 29, 1993), 58 FR 59503; and 34900 (October 26, 1994), 59 FR 54932.

⁷ The Commission has previously addressed issues of proportional representation on the boards of directors of national securities exchanges. Section 6(b)(3) of the Act imposes the same requirements on national securities exchanges as Section 15A(b)(4) imposes on the NASD. The Commission disapproved a proposal by the Chicago Board Options Exchange ("CBOE") (Securities Exchange Act Release No. 22058 (May 21, 1985), 50 FR 23090) which would have increased the minimum number of On-Floor Directors. The Commission noted that domination by the floor membership of the CBOE Board and a resulting decrease in the proportion of retail firm and public governors on the Board would have seriously weakened the ability of the Board to carry out the purposes of the Act and enforce compliance with Exchange and Commission rules, as required by Section 6(b)(1). In addition, the Commission stated that the numerical domination by one faction of the CBOE membership, in contravention of Section 6(b)(3) of the Act, might make it difficult for the Board to act in the best interests of the public or the CBOE as a whole and could impede efforts by the Board to vigorously enforce Commission or Exchange rules not favored by the floor membership. The Commission also viewed the proposal as being inconsistent with Section 6(b)(5) which requires the rules of an exchange to be designed to protect investors and their public interest.

⁸ Cf. *id.*

⁹ 15 U.S.C. 78s(b)(2).

¹ 15 U.S.C. 78s(b)(1) (1988).