For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21960 Filed 8–27–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46390; File No. SR–ISE–2002–18]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the International Securities Exchange LLC Relating to the Execution of Complex Orders Involving Options and Single Stock Futures

August 21, 2002.

I. Introduction

On June 27, 2002, the International Securities Exchange, Inc. (''ISE'' 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 to adopt rules and procedures governing the execution of complex orders involving options and single stock futures. The proposed rule change was published for comment in the **Federal Register** on July 17, 2002.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The proposed rule change would permit Exchange members to enter option-stock future complex orders. As is the case with stock-option complex orders, the option leg of the transaction would have priority over non-customer orders at the same price. The Exchange would execute the option leg of the trade and the parties then would seek to execute the stock futures leg on an appropriate exchange. Because the stock futures products may not be fungible between markets, the member would be required to specify the market of execution for the stock futures leg of the complex order. In addition, as with stock-option complex orders, if the parties are unable to execute the stock futures leg of the transaction due to a change in market conditions, the Exchange would cancel the option leg of the transaction at the request of a party to the trade. The proposed rule change would become part of the complex order pilot program, which the Commission has approved to operate through October 18, 2002.[4]

III. Discussion

After careful review, 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.[5] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[6] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In general, the Commission believes that rules permitting the execution of complex orders serve to reduce the risk of incomplete or inadequate executions, while increasing efficiency and competitive pricing. At the same time, they protect the priority of orders of public customers by permitting the legs of complex orders to trade ahead of bids and offers established in a market place only under specific restrictions. The rule change authorizes the execution of complex orders involving options and single stock futures pursuant to procedures that are virtually identical procedures for complex orders involving options and stocks. The Commission believes that these types of orders are of a similar degree of complexity to those approved in the past for special priority rules, and it is therefore appropriate to afford them the same treatment.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–ISE–2002–18) is approved.

[13] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46181 (July 11, 2002), 67 FR 47010.

[4] *See* Securities Exchange Act Release No. 44955 (October 18, 2001), 66 FR 53819 (October 24, 2001) (File No. SR–ISE–2001–18).

[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. 78f(b)(5).

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

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21958 Filed 8–27–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46398; File No. SR–NASD–2002–114]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Availability of Nasdaq Services and Facilities Until 6:30 PM Eastern Time After the Introduction of Nasdaq's SuperMontage System

August 22, 2002.

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 August 19, 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'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] 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

Nasdaq filed this proposed rule change setting forth the operation of Nasdaq's current after-hours pilot program extending the availability of several Nasdaq services and facilities until 6:30 PM[6] after the introduction of Nasdaq's SuperMontage system. Although the proposed rule change is

[8] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The NASD provided the Commission with notice of its intent to file the proposed rule change on May 24, 2002. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii). Nasdaq asked the Commission to waive the 30-day operative delay.

[6] All references to time are Eastern Time.

effective upon filing with the Commission, Nasdaq will implement the rule change within 30 days after successful completion of SuperMontage user acceptance testing. The text of the proposed rule change is below. Proposed additions are in italics.

4701. Definitions

(a) through (ii) No Change.

(jj) The term ''End-of-Day'' shall mean, for orders so designated, that if after entry into the NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential execution and/or display until market close (4 p.m. Eastern Time), and thereafter for potential execution until 6:30 p.m. Eastern Time, after which it shall be returned to the entering party.

* * * * *

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) through (E) No Change.

(b) Directed Orders A participant may enter a Directed Order into the NNMS to access a specific Attributable Quote/Order displayed in the Nasdaq Quotation Montage, subject to the following conditions and requirements:

(1) Unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders, a Directed Order must be a Non-Liability Order, and as such, at the time of entry must be designated as:

(A) an ''All-or-None'' order (''AON'') that is at least one normal unit of trading (e.g. 100 shares) in excess of the Attributable Quote/Order of the Quoting Market Participant to which the order is directed; or

(B) a ''Minimum Acceptable Quantity'' order (''MAQ''), with a MAQ value of at least one normal unit of trading in excess of Attributable Quote/Order of the Quoting Market Participant to which the order is directed. Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.

(2) A Directed Order may have a time in force of 3 to 99 minutes, or may be designated as a ''Day'' order, *or an ''End-of-Day'' order.*

(3) Directed Orders shall be processed pursuant to Rule 4710(c).

(c) through (f) No Change

* * * * *

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

In October of 1999, the Commission approved a pilot program that made available certain Nasdaq systems and facilities until 6:30 PM. Under the pilot, Nasdaq provides, until 6:30 PM, the following services: (1) SelectNet Service (''SelectNet''); (2) Automated Confirmation Transaction Service (''ACT''); (3) Nasdaq Quotation Dissemination Service (''NQDS''); and (4) Nasdaq Trade Dissemination Service (''NTDS''). The posting of quotations and/or trading of securities by NASD members during the period of time after Nasdaq's normal market close and before 6:30 PM was, and remains, voluntary. Since its original approval, this pilot program has been extended numerous times and has operated continuously.[7] Nasdaq intends to continue to provide its facilities for voluntary after-hours trading after the introduction of SuperMontage.

After Nasdaq launches SuperMontage, market participants who elect to conduct business after the 4 PM Nasdaq market close will do so in same manner as they do today. Quotes entered after hours will continue to be disseminated by Nasdaq via NQDS,[8] and Nasdaq's ACT system will continue to accept trade reports up to 6:30 PM. Nasdaq will also continue to disseminate transactions report to the public via the consolidated Securities Information Processor (''SIP''). The pilot will continue to operate under the same terms and conditions set forth in the Commission's previous approval order,[9] including the continued mandating of 90-second trade reporting until 6:30 PM. The only changes to the pilot will be ones of terminology. Currently, after-hours market participants use SelectNet to communicate with each other. In the SuperMontage environment, this after-hours service will be provided using the Directed Order functionality of the SuperMontage system, a functionality that relies extensively on the current SelectNet technology. While the SelectNet system name will no longer be used, market participants that wish to communicate with each other after-hours using a Nasdaq system will use directed orders that operate exactly the same way and provide the same features that after-hours SelectNet orders do today. Similarly, today's SelectNet allows a market participant to enter an order designated as an ''E'' indicating that the entering party wishes it to remain in effect after the 4 PM market close, until 6:30 PM, when all Nasdaq systems close.[10] In the SuperMontage environment, such orders will be re-designated as ''End-of-Day'' (''EOD'') orders, but will provide exactly the same functionality as an extended-hours ''E'' order in today's SelectNet. The Directed Order process will remain, like its SelectNet predecessor, the sole Nasdaq-provided system for participating in after-hours trading.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[11] in general and with section 15A(b)(6) of the Act,[12] in particular, in that it is 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.

[7] Nasdaq's after-hour pilot is scheduled to terminate on September 1, 2002. *See* Securities Exchange Act Release No. 45503 (March 5, 2002), 67 FR 10955 (March 11, 2002)(SR–NASD–2002–29).

[8] The best bid and best offer in a particular security will be sent to the consolidated Securities Information Processor (''SIP'') for full public dissemination.

[9] *See* Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999)(SR–NASD–99–57).

[10] End-of-Day orders may be entered throughout the day starting at 7:30 AM until the close of all Nasdaq systems at 6:30 PM. Once entered, such orders shall be continuously available for execution by those receiving them until 6:30 PM, unless cancelled prior to that time by the entering party. Orders not executed by the 6:30 PM system-close time will be cancelled by the system, and a notification of that cancellation will be sent to the entering party. As such, no EOD order will carry over to the next trading day.

[11] 15 U.S.C. 78o–3.

[12] 15 U.S.C. 78o–3(6).

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

Nasdaq 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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] 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.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq to implement the change in terminology immediately, thereby ensuring that the proper terminology is in place for the launch of SuperMontage. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 NASD. All submissions should refer to file number SR–NASD–2002–114 and should be submitted by September 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21955 Filed 8–27–02; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46383; File No.SR–Phlx–2002–41]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Capital Funding Fee Late Charge

August 20, 2002.

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 July 16, 2002, 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, and II 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 amend the amount of the late charge that is imposed by the Exchange as set forth in Phlx Rule 51, *Enforcement of Capital Funding Fee.*[3] Currently, the late charge is set at a monthly rate of 1 percent (simple interest) for each thirty-day period or fraction thereof, calculated on a daily basis, commencing with the twenty-first day. The Exchange now proposes to increase the amount of the late charge from 1 percent to 1.5 percent. In addition, the Exchange proposes to extend the invoice due date for the capital funding fee from twenty days to thirty days. Thus, the proposed rule change would require the capital funding fee to be paid within thirty days from the invoice date, with the new monthly late charge of 1.5 percent commencing on the thirty-first day. All other provisions of Phlx Rule 51 would remain the same.

The text of the proposed rule change is set forth below. New text is italicized; deleted text is bracketed.

Rule 51. Enforcement of Capital Funding Fee

Notice and Late Charges

(a) The Exchange shall issue invoices to each owner (for purposes of this Rule, an ''Obligor'') providing notice of the obligation to pay the capital funding fee within *thirty* [twenty] days from the invoice date. If an Obligor fails to pay the Exchange the capital funding fee by the due date, the Exchange shall provide a written Late Notice of such failure (the ''Late Notice'') and, subject to subsection (b), impose a late charge at a monthly rate of 1.5 [1] percent (simple interest) for each thirty-day period or fraction thereof, calculated on a daily basis, commencing with the *thirty-first* [twenty-first] day.

* * * * *

The Exchange proposes that if approved, changes to Phlx Rule 51 would become operative on September 1, 2002.[4] Accordingly, proposed changes to Phlx Rule 51 would apply to all capital funding fee account receivable balances due to the Exchange on or after that date. For example, delinquent balances due to the Exchange in August 2002 at a rate of 1

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44872 (September 28, 2001), 66 FR 51084 (October 5, 2001)(SR–Phlx–99–52). The capital funding fee is currently a $1,500 fee imposed monthly on owners of Phlx memberships.

[4] Telephone conversation between Cynthia K. Hoekstra, Counsel, Phlx, and Steven G. Johnston, Special Counsel, Division of Market Regulation, Commission, July 30, 2002 (clarifying the Exchange's proposal to delay the operative date of proposed changes to Phlx Rule 51 until September 1, 2002).