

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45379A; File Nos. SR-NASD-2001-64 and SR-NASD-2001-68]

### Self Regulatory Organizations; Order Granting Approval of Proposed Rule Changes by the National Association of Securities Dealers, Inc., To Adjust the Fees Charged to NASD Non-Members for the Use of the Nasdaq National Market Execution System and the SelectNet Service

January 31, 2002.

#### Correction

In FR Document No. 02-2962, beginning on page 5867 for Thursday February 7, 2002, the first sentence of Section V. on page 5868 was incorrectly stated. The sentence should read as follows:

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>1</sup> that proposed rule change File No. SR-NASD-2001-64 be and hereby is approved and that proposed rule change File No. SR-NASD-2001-68 be and hereby is approved on a pilot basis through October 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>2</sup>

Dated: February 11, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45425; File No. SR-Phlx-2002-07]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Fees Applicable to Competing Specialists

February 8, 2002.

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 January 8, 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, 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 Phlx proposes to amend its schedule of dues, fees and charges to establish clearly that the Exchange's fees, credits, discounts and other charges that are based upon an equity specialist's activity apply to competing specialists. The Exchange proposes to add language to its fee schedule to make clear that such fees, credits, discounts and other charges apply to competing specialists.

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

#### 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 establish clearly that any fees and charges (as well as any credits and discounts) on the Exchange's schedule of dues, fees and other charges that are based upon an equity specialist's activity apply to competing specialists. On December 21, 2001, the Commission approved a proposed rule change to adopt rules designed to facilitate the establishment of a competing specialist program on the Exchange.<sup>3</sup> The new rules provide for the approval by the Exchange's Equity Allocation, Evaluation and Securities Committee of applications by qualified specialist units to act as competing specialists in one or more equity securities. The Exchange contemplates commencing a competing specialist

program in the near future. Under that program, equity securities traded on the Exchange may have both a primary specialist (contemplated to be the Exchange's current sole specialist in the security) and one or more competing specialists. At this time, the Exchange is proposing to apply all specialist fees and charges (as well as any applicable credits or discounts) to Exchange specialists, whether primary or competing.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,<sup>4</sup> in general, and section 6(b)(4) of the Act,<sup>5</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

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

##### 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 rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder. 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, NW,

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

<sup>5</sup> See Securities Exchange Act Release No. 45183, 67 FR 118 (January 2, 2002) (SR-Phlx-2001-97).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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

<sup>9</sup> 17 CFR 240.19b-4(f)(2).