available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2002–94 and should be submitted by August 15, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18842 Filed 7–24–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46234; File No. SR–NASD–2002–73]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq Testing Facility Fees, and Adding the Ability to Test Computer-to-Computer Interface, Application Programming Interface, and Market Data Vendor Feeds Over Dedicated Circuits

July 19, 2002.

On June 4, 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''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–thereunder,[2] a proposed rule change to apply the same schedule of fees in SR–NASD–2002–72[3] to non-member subscribers that use a dedicated circuit or circuits to test their communication interfaces and/or market data vendor feeds with Nasdaq's central processing facilities. The fees consist of monthly fees and one-time installation fees, and would be charged in addition to the hourly fees currently charged. The proposed rule change was published for notice and comment in the **Federal Register** on June 18, 2002.[4] The Commission received no comments on the proposed rule change.

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 association[5] and, in particular, the requirements of section 15A(b)(5),[6] which requires the rules of a national securities association to provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility which the association operates or controls. The Commission finds the proposed rule change is consistent with section 15A(b)(5) because the same fees will be charged to member and non-member subscribers that choose to test their communication systems interfaces with Nasdaq's central processing facilities over a dedicated circuit or circuits. The Commission accepts Nasdaq's representation that the fees are reasonable because the fees have been calculated to recover Nasdaq's actual costs of installation and maintenance of the dedicated circuit(s).

It is therefore ordered, pursuant to section 19(b)(2) of the Act[7], that the proposed rule change (SR–NASD–2001–73) be, and it hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18843 Filed 7–24–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46214; File No. SR–Phlx–2001–63]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing of and Order Granting Accelerated Approval to Amendment No. 3 Relating to New Product Allocations

July 16, 2002.

I. Introduction

On June 18, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 relating to new product allocations. On February 28, 2002, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On April 5, 2002, the Phlx submitted Amendment No. 2 to the proposed rule change.[4] On May 2, 2002, notice of the proposed rule change and Amendment Nos. 1 and 2 thereto was published in the **Federal Register**.[5] The Commission received no comments on the proposed rule change, as amended by Amendment Nos. 1 and 2. On June 25, 2002, the Phlx filed Amendment No. 3 to the proposed rule change with the Commission.[6] This order approves the proposed rule change, as amended, and grants accelerated approval to Amendment No. 3. The Commission is also soliciting comments on Amendment No. 3 from interested persons.

II. Description of Proposal

The Phlx proposes to amend Phlx Rule 511(b), Allocations, to permit the Equity Allocation, Evaluation and Securities Committee and the Options Allocation, Evaluation and Securities Committee (collectively ''Committees'') to allocate a new product[7] to an eligible

[18] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 46065 (June 12, 2002), 67 FR 41556 (June 18, 2002).

[4] Securities Exchange Act Release No. 46066 (June 12, 2002), 67 FR 41554.

[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. 78o–3(b)(5).

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

[8] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Linda C. Christie, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 26, 2002 (''Amendment No. 1'').

[4] *See* letter from Linda C. Christie, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 4, 2002 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 45824 (April 25, 2002), 67 FR 22144.

[6] *See* letter from Linda S. Christie, Counsel, Phlx, to Kelly McCormick-Riley, Senior Special Council, Division, Commission, dated June 25, 2002 (''Amendment No. 3''). In Amendment No. 3, the Phlx clarified that the three types of business transactions enumerated in proposed Phlx Rule 511(b)(ii) are not the type of business transactions contemplated under Phlx Rule 1023. The Phlx explained that for purposes of its proposed Rule 511(b)(ii), its Rule 1023 shall be deemed to prohibit only business transactions which are material in value either to the issuer or the specialist, would provide access to material non-public information relating to the issuer, or would provide access to material non-public information relating to the issuer, or would give rise to a control relationship between the issuer and the specialist unit. The receipt of routine business services, goods, materials, insurance, on terms that would be generally available shall not be deemed a business transaction for the purposes of Phlx Rule 1023. The Phlx further elaborated that license agreements, trademarks, tradenames and intellectual property are routine business services that are generally available through an issuer and that these types of transactions do not give rise to the possibility of the specialist unit being controlled an issuer. The Phlx also represented that the transactions contemplated in proposed Phlx Rule 511(b)(ii) do not provide access to non-public information relating to the issuer. Rather, these types of business agreements between the parties are routine in nature and are not deemed prohibited transactions per Phlx Rule 1023.

[7] Phlx proposes to define a new product for purposes of Phlx Rule 511(b)(i) as anything other

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