

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44321; File No. SR-NASD-2001-31]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealer, Inc. Relating to SelectNet Fees

May 18, 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 4, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to retroactively extend from April 2, 2001, until March 31, 2002, or through the date of implementation ("Implementation Date") of the Nasdaq National Market Execution System ("NNMS"), whichever is sooner, the pilot program under NASD Rule 7010(i), "SelectNet Service," which provides reduced fees for members who enter directed

SelectNet orders.⁴ The current pilot program expired on March 31, 2001.⁵

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 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 III 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

NASD Rule 7010(i) contains a pilot program that provides reduced SelectNet fees for members who enter directed orders in SelectNet. The pilot program, which went into effect in 1998,⁶ was extended most recently through May 31, 2001.⁷ Nasdaq proposes to retroactively apply the SelectNet pricing structure provided under the pilot program for the period from April 2, 2001, until March 31, 2002, or the Implementation Date, whichever is sooner.⁸ Nasdaq notes that it explained the reasons for the SelectNet fee structure provided under the pilot program in its 1998 Notice.

⁴ On January 14, 2000, the Commission approved rule changes that: (1) establish the NNMS, a new platform for the trading of Nasdaq National Market ("NNM") securities; (2) modify the rules governing the use of SelectNet for trading NNM issues; and (3) leave unchanged the trading of Nasdaq SmallCap securities on the Nasdaq's Small Order Execution System ("SOES"). See Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) (order approving File No. SR-NASD-99-11). Nasdaq has already established the fees to be assessed for use of the NNMS and SelectNet after the NNMS begins operating. See Securities Exchange Act Release No. 43001 (June 30, 2000), 65 FR 42741 (July 11, 2000) (notice of filing and immediate effectiveness of File No. SR-NASD-00-41) ("June 30 Notice").

⁵ See June 30 Notice, *supra* note 4. In its proposal, Nasdaq requests retroactive application of the fees provided under the pilot program, dating to the expiration of the pilot on March 31, 2001.

⁶ See Securities Exchange Act Release No. 39641 (February 10, 1998), 63 FR 8241 (February 18, 1998) (File No. SR-NASD-98-06) ("1998 Notice"). The pilot program was originally implemented for a 90-day trial period, commencing the day the proposal was published in the *Federal Register*.

⁷ See June 30 Notice, *supra* note 4.

⁸ Nasdaq expects the Implementation Date to occur on July 9, 2001. Telephone conversation between Jeffrey S. Davis, Assistant General Counsel, Office of the General Counsel, Nasdaq, and Yvonne Fraticelli, Special Counsel, Division, Commission, on May 9, 2001.

Since then, Nasdaq states that SelectNet usage has continued at elevated levels. As such, Nasdaq believes that an extension of the reduced SelectNet fees through the Implementation Date is warranted.

Under the proposed extension of the pilot program, SelectNet fees will continue to be assessed in the following manner: (1) \$1.00 will be charged for each of the first 50,000 SelectNet orders entered and directed to one particular market participant that is subsequently executed in whole or in part, \$.70 for the next 50,000 directed orders executed that same month, and \$.20 for all remaining directed orders executed that month; (2) no fee will be charged to a member who receives and executes a directed SelectNet order; (3) the existing \$2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; and (4) a \$.025 fee will remain in effect for any member who cancels a SelectNet order.

Beginning on the Implementation Date, Nasdaq will assess SelectNet fees in the following manner:⁹ (1) \$.90 will be charged for each SelectNet order entered and directed to one particular market participant that is subsequently executed in whole or in part; (2) no fee will be charged to a member who receives and executes a directed SelectNet order; (3) the existing \$2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; (4) market participants will be assessed \$.70 per order for the first 25,000 orders executed monthly, \$.50 per order for the next 25,000 orders executed monthly, and \$.10 for each remaining liability order executed monthly; and (5) a \$.025 fee will remain in effect for any member who cancels a SelectNet order.

Nasdaq will also charge the same fees for trades of Nasdaq SmallCap and NNM securities commencing on the Implementation Date.¹⁰ To accomplish this, Nasdaq will reduce the fees charged for trades of SmallCap securities through SOES. Beginning on the Implementation Date, fees for NNMS trades of NNM securities and SOES trades of SmallCap securities will be assessed in the following manner: (1) A fee of \$.50 per order executed for the first 150,000 orders executed under 2000 shares, monthly; (2) a fee of \$.30 for each remaining executed order of less than 2000 shares, monthly; (3) a fee of \$.90 per order for all orders over 2000

⁹ As noted above, Nasdaq established these fees in a previous proposal. See June 30 Notice, *supra* note 4.

¹⁰ As noted above, Nasdaq established these fees in a previous proposal. See June 30 Notice, *supra* note 4.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The current proposal replaces File No. SR-NASD-2001-25, which NASD filed on April 2, 2001, and withdrew on April 23, 2001. See letter from Jeffrey S. Davis, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 20, 2001.

shares; and (4) no fee will be charged to a member who receives an execution in SOES or NNMS.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with section 15A(b)(5)¹¹ of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

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

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received on the proposed rule change.

III. 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., 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 No. SR-NASD-2001-31 and should be submitted by June 14, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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 association, and, in particular, the requirements of section 15A of the Act.¹² Specifically the Commission finds that the proposal is consistent with section 15A(b)(5) of the Act, which requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees and charges among members and issuers and other persons using any facility or system which the association operates or controls.¹³

The Commission notes that the pilot program provided in NASD Rule 7010(i), which establishes reduced fees for members who enter directed SelectNet orders, was implemented in February 1998¹⁴ and was most recently extended through March 31, 2001.¹⁵

The Commission finds that it is consistent with the Act to permit retroactive application of the pilot program from the expiration of the current pilot program and to extend the pilot program through March 31, 2002, or the Implementation Date, whichever is sooner, to allow market participants to continue to receive the benefit of the reduced Select Net fees provided under the pilot program.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**.¹⁶ Specifically, the Commission notes that accelerated approval of the proposal will allow the pilot program to continue without interruption. Accordingly, the Commission finds that it is consistent with sections 15A(b)(5)¹⁷ and 19(b)¹⁸ of the Act to approve the proposal on an accelerated basis.

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-NASD-2001-31), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44311; File No. SR-Phlx-2001-52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Interim Intermarket Linkage Program

May 16, 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 14, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b-4 under the Act, proposes to adopt a rule authorizing implementation of "interim linkages" with the other options exchanges.³

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 Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at

²⁰ 17 CFR 200.30-2(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On January 30, 2001, the Commission approved similar proposals submitted by the Chicago Board Options Exchange, Inc. ("CBOE") and the International Securities Exchange LLC ("ISE"). See Securities Exchange Act Release No. 43904 (January 30, 2001), 66 FR 9112 (February 6, 2001). On February 20, 2001, the Commission issued a notice of filing and immediate effectiveness of a similar proposal submitted by the Pacific Exchange, Inc. ("PCX"). See Securities Exchange Act Release No. 43986 (February 20, 2001), 66 FR 12578 (February 27, 2001).

¹² 15 U.S.C. 78o-3.

¹³ 15 U.S.C. 78o-3(b)(5).

¹⁴ See 1998 Notice, *supra* note 6.

¹⁵ See June 30 Notice, *supra* note 4.

¹⁶ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

¹⁷ 15 U.S.C. 78o-3(b)(5).

¹⁸ 15 U.S.C. 78s(b).

¹⁹ 15 U.S.C. 78s(b)(2).

¹¹ 15 U.S.C. 78o-3(b)(5).