

particular, the requirements of Section 6 of the Act.<sup>8</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act<sup>9</sup> in that the proposal 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

OATS was designed to provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an order at the first point of contact between the broker-dealer and the customer or counterparty and further documenting the life of the order through the process of execution. One of the principle objectives of OATS is customer protection through the transparency of the executions of customer orders. The Commission does not believe that the proposed rule change would impact this objective since, by definition, Proprietary Trading Firms do not handle customer orders. Further, the Commission notes that Nasdaq believes that the current requirement for Proprietary Trading Firms to transmit all order data information is onerous and is not offset by an equivalent regulatory benefit. In addition, the Commission notes that this approach parallels the approach undertaken by the New York Stock Exchange ("NYSE") in NYSE Rule 132C, which requires NYSE members, upon request, to transmit order tracking data to the NYSE.<sup>10</sup>

The Commission therefore believes that it is consistent with the Act to permit Proprietary Trading Firms to submit OATS data to Nasdaq only upon request.

#### V. Accelerated Approval

The Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the thirtieth day after publishing notice of Amendment No. 2 in the **Federal Register** pursuant to Section 19(b)(2) of the Act.<sup>11</sup> In

Amendment No. 2, Nasdaq clarified that the proposed exception from the daily OATS transmissions requirements for Proprietary Trading Firms would not extend to persons associated with Proprietary Trading Firms. The Commission believes that this is a clarifying change to the scope of the proposed rule change and raises no significant regulatory issues. The Commission therefore finds good cause exists to accelerate approval of the proposed change, as modified by Amendment Nos. 1 and 2, pursuant to Section 19(b)(2) of the Act.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NASDAQ-2007-037), as modified by Amendments No. 1 and 2, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-14356 Filed 7-24-07; 8:45 am]

**BILLING CODE 8010-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56103; File No. SR-NASD-2007-039]

#### Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay Implementation of Certain Changes to the Manning Rule

July 19, 2007.

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 June 20, 2007, the National Association of Securities Dealers, Inc. ("NASD") 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 substantially prepared by NASD. NASD filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective

the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>217</sup> CFR 240.19b-4.

<sup>315</sup> U.S.C. 78s(b)(3)(A).

<sup>417</sup> CFR 240.19b-4(f)(6).

upon filing with the Commission. 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

NASD is proposing to delay implementation of certain NASD rule changes approved in SR-NASD-2005-146 until November 26, 2007.<sup>5</sup> There are no new changes to the text of NASD rules. The text of the proposed rule change is available at NASD, <http://www.nasd.com>, and the Commission's Public Reference Room.

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

In its filing with the Commission, NASD 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. NASD 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

On February 26, 2007, the Commission approved SR-NASD-2005-146, which, among other clarifying and conforming changes, proposed amendments to NASD IM-2110-2<sup>6</sup> to (1) expand the scope to apply to OTC Equity Securities;<sup>7</sup> (2) modify the minimum price-improvement standards for securities trading in decimals; (3) adopt on a permanent basis the pilot price-improvement standards for

<sup>5</sup> See Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 9810 (March 5, 2007) (order approving SR-NASD-2005-146).

<sup>6</sup> Currently, NASD IM-2110-2 generally prohibits a member from trading for its own account in an exchange-listed security at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or better. As part of SR-NASD-2005-146, NASD replaced the term "exchange-listed security" with the term "NMS stock," which is defined as any NMS security other than an option. See Rule 600(b)(47) of Regulation NMS. Although the replacement of the term would not become effective until the November 26, 2007 final implementation date, as stated in SR-NASD-2005-146, NASD IM-2110-2 does not apply to options.

<sup>7</sup> See NASD Rule 6610(d) (definition of "OTC Equity Security").

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See Securities Exchange Act Release No. 47689 (April 17, 2003), 68 FR 20200 (April 24, 2003) (Order approving SR-NYSE-99-51).

<sup>11</sup> 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change prior to the thirtieth day after

securities trading in decimals; and (4) delete certain unnecessary text relating to the minimum price-improvement required for securities trading in fractions. On April 27, 2007, NASD published Notice to Members 07-19, which announced the Commission's approval of SR-NASD-2005-146 and established July 26, 2007 as the effective date of the rule changes in SR-NASD-2005-146.<sup>8</sup>

Following Commission approval of SR-NASD-2005-146 and the publication of the Notice to Members, several firms have requested that the effective date of the approved rule changes be delayed to allow firms additional time to make necessary systems changes in light of other competing technological demands required by implementation of Regulation NMS. In addition, some broker-dealers raised concerns regarding the application of the approved minimum price-improvement standards. NASD staff is currently revisiting the amended price-improvement standards in light of these concerns. If, based on this review, NASD concludes that further rulemaking is warranted, NASD will file a separate rule change with the Commission.

Therefore, to provide adequate time to firms to make technological changes given competing technological demands from Regulation NMS, and to consider and potentially act upon the concerns regarding the minimum price-improvement standards, NASD is proposing that the effective date of certain NASD rule changes approved in SR-NASD-2005-146 as described herein be delayed until November 26, 2007. Specifically, NASD is proposing to delay the approved rule changes in SR-NASD-2005-146 that relate solely to the expansion of the scope of NASD IM-2110-2 to OTC Equity Securities and the related deletion of NASD Rule 6541. Accordingly, the requirements in NASD Rule 6541 would continue to apply to OTCBB securities until NASD IM-2110-2 is implemented for OTC Equity Securities.

In addition, the amendments in SR-NASD-2005-146 also make changes to the minimum price-improvement standards in NASD IM-2110-2, which, as approved, would apply uniformly to both OTC Equity Securities and NMS stocks. NASD is delaying these changes as well, with one exception: For customer limit orders in exchange-listed securities priced less than \$1.00 that are at or inside the best inside market, the

minimum amount of price improvement required is the lesser of \$0.01 or one-half (½) of the current inside spread. This provision will go into effect on July 26, 2007, as currently scheduled.

All other changes unrelated to the expansion to OTC Equity Securities, including the deletion of certain unnecessary text relating to the minimum price-improvement required for securities trading in fractions and the adoption on a permanent basis of the pilot price-improvement standards for securities trading in decimals that were approved pursuant to SR-NASD-2005-146 will become effective as scheduled on July 26, 2007.

NASD has filed the proposed rule change for immediate effectiveness. NASD proposes to implement the proposed rule change as described herein.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>9</sup> which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will improve the treatment of customer limit orders and promote investor protection.

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

NASD 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<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> 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.

In accordance with Rule 19b-4,<sup>12</sup> NASD submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

## 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. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2007-039 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2007-039. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, 100 F Street, NE., Washington,

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4.

<sup>8</sup> See NASD Notice to Members 07-19 (April 2007) (announcing the effective date of the rule changes in SR-NASD-2005-146).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2007-039 and should be submitted on or before August 15, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56101; File No. SR-Phlx-2007-50]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Extending the Specialist Option Transaction Charge Credit Pilot Program

July 19, 2007.

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 June 22, 2007, 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 substantially prepared by the Exchange. Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act <sup>3</sup> and Rule 19b-4(f)(2) thereunder, <sup>4</sup> which renders the proposal effective upon filing with the Commission. 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

Phlx proposes to extend for a one-year period, until July 31, 2008, its current pilot program that provides for an option transaction charge credit of \$0.21 per contract for Exchange options specialist units <sup>5</sup> that incur Phlx option transaction charges when a customer order is delivered to the limit order book via the Exchange’s Options Floor Broker Management System (“FBMS”) <sup>6</sup> and is then sent to an away market and executed via the Intermarket Option Linkage (“Linkage”) under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Plan”) <sup>7</sup> as a Principal Acting as Agent Order (“P/A Order”). <sup>8</sup> The pilot program in effect is currently scheduled to expire on July 31, 2007. <sup>9</sup> The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.phlx.com>.

### 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,

<sup>5</sup> The terms “specialist” and “specialist unit” are used interchangeably herein.

<sup>6</sup> The FBMS is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. See Phlx Rule 1080, Commentary .06.

<sup>7</sup> See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Phlx as a participant in the Plan).

<sup>8</sup> A P/A order is an order for the principal account of a specialist (or equivalent entity on another participant exchange that is authorized to represent public customer orders), reflecting the terms of a related unexecuted public customer order for which the specialist is acting as agent. See Phlx Rule 1083(k)(i).

<sup>9</sup> See Securities Exchange Act Release No. 54257 (August 1, 2006), 71 FR 45089 (August 8, 2006) (SR-Phlx-2006-46). This proposal is scheduled to be in effect for the same time period as fees for Linkage Principal Orders (“P Orders”) and P/A Orders. See Securities Exchange Act Release No. 54233 (July 27, 2006), 71 FR 44070 (August 3, 2006) (SR-Phlx-2006-44). The Exchange intends to file a separate proposed rule change to extend, for a one-year period through July 31, 2008, the pilot relating to transaction fees applicable to the execution of P/A Orders and P Orders sent to the Exchange via Linkage under the Plan.

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 Exchange has substantially 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

Currently, the Exchange provides an option transaction charge credit of \$0.21 per contract for Exchange options specialist units that incur Phlx option transaction charges when a customer order is delivered to the limit order book via FBMS and is then sent to an away market and executed via Linkage under the Plan as a P/A Order.

The purpose of this proposal is to continue to alleviate the potential economic burden of multiple transaction charges imposed on Exchange specialist units by establishing a credit for Exchange option transaction charges incurred by an Exchange specialist unit when a customer limit order placed on the limit order book by a Floor Broker <sup>10</sup> results in an execution of a P/A Order that is sent to another exchange via Linkage. The Exchange believes that continuing to give an options transaction charge credit of \$0.21 per contract should encourage the use of Linkage and should allow the Exchange to remain competitive with other exchanges with respect to the assessment of Linkage-related fees. <sup>11</sup>

This proposal is to remain in effect as a pilot program until July 31, 2008. <sup>12</sup>

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act <sup>13</sup> in general, and Section 6(b)(4) of the Act <sup>14</sup> in

<sup>10</sup> A Floor Broker who wishes to place a limit order on the limit orderbook must submit such a limit order electronically through the FBMS. See Exchange Rule 1063, Commentary .01. See also Phlx Rule 1080, Commentary .02(b).

<sup>11</sup> See Securities Exchange Act Release No. 53866 (May 25, 2006), 71 FR 31237 (June 1, 2006) (SR-CBOE-2006-44) (rebate of certain transaction fees to Designated Primary Market Makers related to the execution of outbound P Orders and P/A Orders). See also Footnote 8 and Section 21 of the CBOE Fees Schedule.

<sup>12</sup> This proposal is in connection with an existing pilot program for Linkage P and P/A Orders and is scheduled to be in effect for the same time period as the pilot program for Linkage P and P/A Orders. See *supra* at note 9.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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