

amended to reflect the new participant; and (iii) paying the applicable fee.

After careful review, the Commission finds that the proposed Linkage Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission believes that the proposed amendment, which permits the Phlx to become a participant to the Linkage Plan, is consistent with Congress' goal, as set forth in section 11A(a)(1)(D) of the Act,⁷ in which Congress found that the linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders. The Commission believes the proposed amendment to include Phlx as a participant in the Linkage Plan is also consistent with the Rule 11Aa3-2⁸ under the Act in that it will contribute to the maintenance of fair and orderly markets and remove impediments to the perfect the mechanisms of a national market system by allowing the linked markets to more easily access better prices available on the participant exchanges. The Commission finds, therefore, that approving the proposed Linkage Plan amendment is appropriate and consistent with section 11A of the Act.⁹

III. Conclusion

It Is Therefore Ordered, pursuant to section 11A(a)(3)(B) of the Act¹⁰ and Rule 11Aa3-2 thereunder,¹¹ that the proposed Linkage Plan amendment is approved and the Phlx is authorized to act jointly with the other participants to the Linkage Plan in planning, developing, operating, or regulating the intermarket linkage plan as a means of facilitating a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43580; File No. SR-NASD-00-58]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Member Firm Transactions With Association Employees

November 17, 2000.

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 September 25, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") 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 NASD Regulation. 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 Regulation proposes to adopt new NASD Rule 3090 relating to member firm transactions with NASD employees. Proposed new language is *italicized*.

* * * * *

3090. Transactions Involving Association and American Stock Exchange Employees

(a) *When a member has actual notice that an Association or American Stock Exchange employee has a financial interest in, or controls trading in, an account, the member shall promptly obtain and implement an instruction from the employee directing that duplicate account statements be provided by the member to the Association.*

(b) *No member shall directly or indirectly make any loan of money or securities to any Association or American Stock Exchange employee. Provided, however, that this prohibition does not apply to loans made in the context of disclosed, routine banking and brokerage agreements, or loans that are clearly motivated by a personal or family relationship.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(c) *Notwithstanding the annual dollar limitation set forth in Conduct Rule 3060(a), no member shall directly or indirectly give, or permit to be given, anything of more than nominal value to any Association or American Stock Exchange employee who has responsibility for a regulatory matter that involves the member. For purposes of this subsection, the term "regulatory matter" includes, but is not limited to, examinations, disciplinary proceedings, membership applications, listing applications, delisting proceedings, and dispute-resolution proceedings that involve the member.*

* * * * *

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 Regulation 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. NASD Regulation 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 NASD Code of Conduct imposes detailed ethics and conflict-of-interest requirements on Association employees (*i.e.*, employees of the NASD and all of its subsidiary and affiliated companies). The NASD is proposing a new rule, NASD Conduct Rule 3090, that will impose parallel requirements on NASD members in their dealings with Association and American Stock Exchange ("Amex") employees.³

Proposed NASD Rule 3090 addresses three areas: (1) Providing duplicate statements for brokerage accounts in which Association or Amex employees have a financial interest or can control trading; (2) loans by NASD members to Association or Amex employees; and (3) gifts by NASD members to Association or Amex employees.

³ The Amex, whose employees are subject to the NASD Code of Conduct as of October 2000, filed a rule proposal (No. SR-Amex-00-23) to adopt Amex Rule 417, which is virtually identical to proposed NASD Rule 3090. Securities Exchange Act Release No. 43468 (October 20, 2000), 65 FR 65034 (October 31, 2000); Securities Exchange Act Release No. 43587 (November 17, 2000).

⁷ 15 U.S.C. 78k-1(a)(1)(D).

⁸ 17 CFR 240.11Aa3-2.

⁹ 15 U.S.C. 78-1.

¹⁰ 15 U.S.C. 78k-1(a)(3)(B).

¹¹ 17 CFR 240.11Aa3-2.

¹² 17 CFR 200.30-3(a)(29).

a. *Employees' Brokerage Accounts.* The NASD Code of Conduct imposes significant restriction on employees' investments. Among other things, employees may not own stock of broker/dealers or companies that derive more than 25% of their gross revenues from broker/dealer activities, or stock purchased as part of an initial public offering.⁴ The NASD reviews duplicate statements for employees' brokerage accounts to ensure that employees have abided by these restrictions. NASD Regulation represents that New NASD Rule 3090(a) will help ensure that an NASD member receives and implements an instruction to send duplicate account statements to the NASD whenever the member has actual notice that an Association or Amex employee has a financial interest in, or controls trading in, an account. Currently, NASD employees are required to request the broker/dealers with which they maintain accounts to send duplicate account statements to the NASD. However, NASD rules currently do not impose a corresponding obligation on NASD members to obtain and implement such an instruction.

In administering the NASD Code of Conduct, the NASD routinely runs exception reports to determine whether duplicate statements are being received for all reported employee accounts. Employees for whom the NASD has not received duplicate account statements are reported to their department heads for follow-up. Each time exception reports are run, numerous employee accounts are listed as delinquent. In following up on such accounts, the NASD has frequently encountered instances in which NASD employees have repeatedly instructed their broker/dealer in writing that duplicate statements are to be sent to the NASD, but the broker/dealer has failed to implement the instruction. In addition, there have been instances in which broker/dealers have refused to implement the instruction on the ground that they were not required to do so.

When employees' duplicate statement instructions are not implemented, the NASD has no means of monitoring trading in employee accounts. Currently, there is no rule that specifically requires member firms to implement such instructions. NASD Regulation believes that new NASD Rule 3090(a) will remedy this deficiency by imposing on member firms an affirmative obligation to promptly obtain and implement a duplicate

statement instruction when they have actual notice that an Association or Amex employee has a financial interest in, or controls trading in, an account. The information necessary to give members such actual notice is already included on the new account forms used by most broker/dealers, and on a standardized duplicate instruction form that Association and Amex employees can provide to their broker/dealers.

NASD Regulation believes that new NASD Rule 3090(a) imposes requirements that are analogous to those that other self-regulatory organizations already impose (e.g., New York Stock Exchange Rule 407). In addition, NASD Regulation believes that the proposed requirements are similar to those currently imposed by NASD Rule 3050, which applies when an NASD member firm carries an account for a person associated with another broker/dealer.

NASD Regulation represents that new NASD Rule 3090(a) would work as follows with respect to new accounts: When a new account form indicates that an NASD employee has an interest in a proposed new account, the NASD member firm would instruct the employee to obtain a duplicate instruction form (available on the NASD's corporate Intranet), complete the form, and provide it to the member before the account is opened. The NASD expects that most employees will anticipate this request and provide the member with the instruction at the time they seek to open the account. It would not be necessary for NASD officials to issue a letter authorizing the opening of each account.

With respect to existing accounts, new NASD Rule 3090(a) contemplates that Association and Amex employees will use the above-referenced duplicate instruction form to give NASD members actual notice of their interest in an existing account. A member receiving such a form would be expected to promptly implement the duplicate statement instruction.

NASD Regulation represents that the proposed rule would apply prospectively to new accounts, and to those existing accounts as to which an NASD member has actual notice that an Association or Amex employee has financial interest or controls trading. NASD members will not be required to review existing accounts to identify those in which Association or Amex employees may have an interest or control trading.

b. *Loans to Employees.* NASD Regulation represents that new NASD Rule 3090(b) is intended to implement an SEC staff recommendation that the NASD adopt a rule prohibiting NASD

members from making loans to Association or Amex employees outside routine brokerage or banking relationships.⁵ The NASD Code of Conduct already prohibits employees from accepting loans from NASD members, Nasdaq issuers, or any person with whom the NASD transacts business.⁶ NASD Regulation believes that new NASD Rule 3090(b) will simply prevent NASD members from making loans to employees. Consistent with existing NASD Code of Conduct provisions, the prohibition on loans would not apply to loans that are clearly motivated by a family or personal relationship. Thus, for example, a registered representative would not be precluded from making a personal loan to an adult child who works at the NASD or Amex.

c. *Gifts to Employees.* NASD Regulation represents that new NASD Rule 3090(c) also implements an SEC staff recommendation.⁷ The proposed rule change will parallel NASD Code of Conduct provisions that permit employees to accept business gifts with an aggregate annual value of \$100 when no conflict of interest exists, but prohibit employees from accepting a business gift or courtesy from persons involved in regulatory matters in which the employee is involved.⁸ Specifically, the proposed amendment will state that, notwithstanding NASD Rule 3060(a) (which generally permits NASD members to give business gifts with an aggregate annual value of \$100 to employees of others), members may not give business gifts or courtesies of more than nominal value to an Association or Amex employee who has responsibility for a specific regulatory matter that involves the member. A "regulatory matter" would encompass such matters as examinations, disciplinary proceedings, membership applications, listing applications, delisting proceedings, and dispute-resolution proceedings involving a member. The proposed rule would permit members to give items of nominal value to employees responsible for regulatory matters affecting the member, NASD Regulation represents that, for example, a member would be permitted to offer minor refreshments, such as a soft drink or coffee, to NASD Regulation employees conducting an on-site examination.

⁵ See Letter from Lori Richards, Director, OCIE, SEC, to Richard Syron, Chairman and Chief Executive Officer, Amex, November 6, 1998.

⁶ NASD Code of Conduct, Section IX, Paragraph C.3.

⁷ *Id.*

⁸ NASD Code of Conduct, Section IX.

⁴ NASD Code of Conduct, Section VIII, Paragraph E.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,⁹ which requires, among other things, that the Association's 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. Specifically, the NASD believes that, by assisting the NASD in ensuring employee compliance with NASD ethical standards, the proposed rule change serves the public interest.

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

NASD Regulation does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

NASD Regulation did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NASD-00-58 and should be submitted by December 19, 2000.

⁹ 15 U.S.C. 78o(b)(6).

IV. Commission's Findings and Order Granting Accelerated Approval of 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,¹⁰ and in particular, the requirements of section 15A(b)(6)¹¹ of the Act, because it is designed to foster cooperation and coordination with persons engaged in processing information with respect to 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.

The proposed rule change is based upon recommendations made by SEC staff to the SROs. The amendments to the rules are designed to promote a high level of professional and personal ethical conduct by NASD members and employees and to ensure that NASD members and employees do not place their own personal and financial interests above the regulatory interests of the NASD. The proposal also helps to bring the NASD's conflict of interest and ethical conduct provisions in line with those of the NASD Code of Conduct and the Amex (a subsidiary of the NASD) and helps eliminate any confusion regarding the application of these provisions to employees of both self-regulatory organizations.

The Commission finds good cause for approving the proposed rule change (SR-NASD-00-58) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission approved a proposal by the Amex to adopt Amex Rule 417, which is virtually identical to new NASD Rule 3090.¹²

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-NASD-00-58) is hereby approved on an accelerated basis.

¹⁰ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78o-3(b)(6).

¹² See Securities Exchange Act Release No. 43587 (November 17, 2000) (Order approving SR-Amex-00-23).

¹³ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jonathan G. Katz,
Secretary.

[FR Doc. 00-30195 Filed 11-27-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43581; File No. SR-NASD-00-15]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change Relating to NASD Rule 2520, "Margin Requirements"

November 17, 2000.

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 March 31, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") 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 NASD Regulation. NASD Regulation amended its proposal on July 31, 2000, and September 13, 2000.³ The

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Jack Drogin, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 28, 2000 ("Amendment No. 1"); and see letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Jack Drogin, Assistant Director, Division, dated September 11, 2000 ("Amendment No. 2"). Among other things, Amendment No. 1 revises the proposal to: (1) Provide technical corrections for various provisions within NASD Rules 2520 and 2522; (2) revise the cash account provisions of NASD Rule 2520(f)(2)(M)(i) to indicate that a long warrant or option that is not listed must be guaranteed by the carrying broker-dealer to serve as an offset for a short position, or the short position will not be eligible for the cash account and must be margined separately pursuant to NASD Rule 2520(f)(2)(D); (3) amend NASD Rule 2520(f)(2) to provide that the margin for a long over-the-counter ("OTC") option or warrant with over nine months until expiration will be 75% of the option's or warrant's in-the-money amount; (4) amend NASD Rules 2520(f)(2)(D)(i) and 2520(f)(2)(G)(v) to clarify that the minimum amount of margin that must be maintained on certain positions is a percentage of the aggregate exercise price; (5) provide definitions of "stock index warrant" and "escrow agreement" in connection with cash-settled options or warrants;