

through the NASD Board, has the discretion to supplement the record. Thus, at each level of a proceeding under the Rule 4800 Series, the Listing Panel, Review Council, or the NASD Board, as part of its respective review, may:

1. Request additional information from the issuer;
2. Consider the issuer's bid price, market makers or any information that the issuer releases to the public, including any additional quantitative deficiencies reflected in the released information; and
3. Consider any failure to meet any quantitative standard or qualitative consideration set forth in the Rule 4000 Series, including failures previously not considered in the proceeding.

The issuer will be afforded notice of such consideration and given an opportunity to respond to actions taken by the adjudicator. The Commission believes that the ability to supplement the record with the most up-to-date information regarding the issuer will help to ensure that the reviewing body's decision is informed and appropriate under the circumstances.

There are also several new features in the Revised Listings Code. One of the most important restricts communication between Association adjudicators and parties to a listing determination.²¹ For example, the revised rules restrict communication between adjudicators and either the Nasdaq staff or the issuer, unless both are given the opportunity to participate. In addition, any prohibited communication must be entered in the record of the proceeding. The Commission believes that these safeguards will help to ensure greater fairness and openness in Association listings proceedings.

The Revised Listings Code also adds a comprehensive explanation of the content of the official record of a listing proceeding,²² as well as how the record is maintained through various levels of review.²³ This provision is another important improvement that should help to ensure that issuers are made aware of those factors that are considered in a listing or delisting decision, which in turn should assist them in challenging a decision that is adverse to them.

Finally, the Revised Listings Code imposes fees for Association review.²⁴ The Commission believes that these fees are consistent with Section 15A(b)(5) of the Act, which permits the allocation of fees on issuers using any facility or

system that the Association operates or controls. Specifically, the Commission believes that the proposal provides for the equitable allocation of reasonable fees among issuers using the resources of the Association. The Commission also believes that these fees are reasonable under the circumstances in that they are designed to recoup the costs of processing requests for review and holding the subsequent hearings.

The renumbering of the existing Rule 4800 Series to the Rule 9700 Series, as revised, will be effective immediately upon approval of this revised rule change.²⁵ The revised Rule 4800 Series will be made effective immediately upon approval for matters where the issuer has not yet received a Staff Determination, as defined in Rule 4815 of the Revised Listings Code. For issuers that have received notification from the staff that they will be delisted or denied initial inclusion prior to the date of approval, or that otherwise have matters pending before the Listing Panel or the Review Council prior to the date of approval of these rule changes, the existing Rule 4800 Series will continue to apply for 180 days. The Commission believes that this staggered schedule is appropriate because it will allow the Association to make an orderly transition from the existing rules to the Revised Listings Code.

IV. Conclusion

The Commission believes that the proposed rule change is consistent with Act, and, particularly, with Section 15A.²⁶ In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.²⁷

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-NASD-98-88) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41371; File No. SR-NASD-98-96; Amendment No. 4]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 4 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Forms U-4 and U-5

May 5, 1999.

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 April 28, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation" or "NASDR"), filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 4 to the proposed rule change³ as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change as further amended by Amendment No. 4 from interested persons.

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

Amendment No. 4 provides additional detail on how NASDR will process the Proposed Forms U-4 and U-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, NASDR 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. NASDR has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission previously published notice of the proposed rule change on April 22, 1999. See Securities Exchange Act Release No. 41326 (April 22, 1999), 64 FR 23366 (April 30, 1999) (File No. SR-NASD-98-96).

²¹ See revised Rule 4890, *Prohibited Communications*.

²² See revised Rule 4870, *Record on Review*.

²³ See revised Rule 4830(b).

²⁴ See revised Rules 4820(c) and 4840(b).

²⁵ See *supra* note 5, discussing relocation of the current Rule 4800 Series, *Grievances Concerning The Automated Systems*, to the Rule 9700 Series.

²⁶ 15 U.S.C. § 78o-3.

²⁷ 15 U.S.C. § 78c(f).

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).

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

1. Purpose

Amendment No. 4 clarifies two aspects of the proposal⁴ and processing of the Proposed Forms U-4 and U-5 on the new World Wide Web-based Central Registration Depository ("Web CRD"). When a firm initiates a Form U-4 filing on Web CRD for the first time for an individual with disclosure information, a blank Page 3 of the Proposed Form U-4 will appear on the screen. Just as with the current paper filing system, a firm will be required to fill out the entire Page 3 to reflect all currently reportable disclosure information, some or all of which may already have been reported to CRD. Thereafter, as a convenience, a member will be able to retrieve the most recently filed electronic Page 3 of the Form U-4 and edit it for submission, rather than filling out the blank Page 3 for each subsequent filing.

There also will be paper processing available for one part of one Disclosure Reporting Page ("DRP") associated with the Proposed Form U-5. The 1996 Form U-5 DRP for internal reviews contains a Part II, which allows a terminated registered representative to provide a summary of the circumstances relating to an internal review disclosure submitted by the individual's former employer on the Form U-5. This Part II also appears on the Proposed Form U-5 Internal Review DRP. NASDR has informed the Commission staff that it is prepared to accept paper submissions of this Part II information by a terminated registered representative and that NASDR staff will enter the information on to The Web CRD system on behalf of the terminated registered representative.

2. Statutory Basis

NASDR believes that Amendment No. 4 is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must 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. NASDR believes that Amendment No. 4 is consistent with the NASD's authority to adopt appropriate qualification and registration requirements for persons associated with NASD members or applicants for NASD membership. Article V, Section 2 of the NASD By-Laws authorizes the Board to prescribe the form used by any

person who wishes to make application for registration with the NASD. NASDR believes that Amendment No. 4 will make the filing of information with CRD easier and more efficient while continuing to provide complete information for use by regulators, SROs, and firms conducting pre-hire checks.

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

NASD Regulation does not believe that the proposed rule change, as amended, will result in 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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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-98-96 and should be submitted by May 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41365; International Series Release No. 1195; File No. SR-Phlx-99-12]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Proposing To Set Temporarily the Add-On Margin Levels for Non-Customized Cross-Rate Foreign Currency Options

May 4, 1999.

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 April 8, 1999, 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 and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis for a period of six months until November 4, 1999.

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

The Exchange proposes to codify the margin levels set forth in Phlx Rule 722(d) for non-customized cross-rate foreign currency options ("Cross-Rate FCOs") for a three month period or until it develops an updated method of calculating those margin levels. Specifically, the Exchange proposes to continue to require that the initial and maintenance margin requirement for customers' short positions in Cross-Rate FCOs equal an "add-on margin" of four percent of the current market value of the underlying FCO contract, plus 100 percent of the current market value of the option's premium, adjusted for "out-

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴ See *supra* note 3.