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.

The Commission has decided to waive the five day notice and designates that the proposal become operative on June 30, 2002, because it is consistent with the protection of investors and the public interest to continue the pilot program uninterrupted and permit the Exchange to continue to evaluate the pilot program in light of changes to the marketplace.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 the File No. SR–BSE–2002–08 and should be submitted by August 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18563 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46097A; File No. SR–NASD–2002–69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Posting of Margin Disclosure and Day-Trading Risk Disclosure Statements on Web Sites; Correction

July 15, 2002.

In FR document No. 02–16257 beginning on page 43364 in the issue of Thursday, June 27, 2002, the title described the filing incorrectly. The title is corrected to read as set forth above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18559 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46221; File No. SR–NASD–2002–15]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Situations in Which a Suspended, Terminated, or Otherwise Defunct Member or Associated Person Fails To Answer or Participate in an Arbitration Proceeding

July 17, 2002.

I. Introduction

On February 1, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution''), 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 to amend Rule 10314 of the NASD Code of Arbitration Procedure (''Code'') to provide default procedures for situations in which a suspended, terminated, or otherwise defunct member or associated person (collectively referred to in this order as ''defunct'') fails to answer or participate in an arbitration proceeding, and the claimant nevertheless elects to pursue arbitration. The proposed rule change was published for comment in the **Federal Register** on May 1, 2002.[3] The Commission received one comment letter regarding the proposal.[4] NASD Dispute Resolution filed a response to the comment letter with the Commission on July 3, 2002.[5] This order approves the proposed rule change.[6]

II. Description of the Proposed Rule Change

NASD Dispute Resolution is proposing to amend Rule 10314 of the Code to provide an expedited default procedure for certain cases in which a respondent is an associated person whose registration is terminated, revoked, or suspended; a member whose membership has been terminated, suspended, canceled, or revoked; a member that has been expelled from the NASD; or a member that is otherwise defunct. NASD Dispute Resolution represents that the procedures are designed to make it easier for claimants to obtain an award against a defunct party. This award can then be enforced in court. NASD Dispute Resolution states that the proposed rule change would address some concerns discussed in a United States General Accounting Office (''GAO'') report that was issued in June 2000.[7]

Under the proposed rule change, if a defunct respondent fails to answer the claim in a timely manner, the claimant may elect to proceed under optional default procedures as to that respondent. If there are several claimants, all must agree to use default procedures. The default procedures may be used against one or more defunct respondents while the rest of the initial

[1] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 45818 (April 24, 2002), 67 FR 21789.

[4] *See* letter from Barbara Black, Professor, and Jill I. Gross, Visiting Professor, Pace Law School, to Secretary, Commission, dated May 21, 2002 (''Pace Letter'').

[5] *See* letter from Jean I. Feeney, Chief Counsel and Associate Vice President, NASD Dispute Resolution, to Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated July 3, 2002 (''NASD Letter'').

[6] The NASD Dispute Resolution represents that the proposal will be effective by October 15, 2002. Telephone conversation between Jean I. Feeney, Chief Counsel and Associate Vice President, NASD Dispute Resolution, and Cyndi Nguyen, Attorney, Division, Commission, on July 8, 2002.

[7] The report is entitled ''Securities Arbitration: Actions Needed to Address Problems of Unpaid Awards,'' Report No. GAO/GGD–00–115 (June 15, 2000) (''GAO Report''). The report is available online at *http://www.gao.gov.*

arbitration proceeds against any remaining respondents.[8]

If the claimant opts to use default procedures, the case would proceed with a single arbitrator without a hearing. Under the default procedures, the arbitrator would make an award based upon the Statement of Claim and any other material submitted by the claimant. The arbitrator may request additional information from the claimant before rendering an award. In keeping with the streamlined nature of the procedures, neither the claimant nor the single arbitrator would have the option to ask that two additional arbitrators be appointed to decide the case (as is sometimes done in other single-arbitrator cases).

NASD Dispute Resolution states that the procedures have several provisions to safeguard the integrity of the process, such as:

- The claimant may not amend the claim to increase the relief requested after the staff has notified the parties that the claim will proceed under default procedures.
- An arbitrator may not make an award based solely on the non-appearance of a party. The party who appears must present a sufficient basis to support the making of an award in that party's favor.
- The arbitrator may not award damages in an amount greater than the damages requested in the Statement of Claim and may not award any other relief that was not requested in the Statement of Claim.

The proposed rule provides, however, that the default award would have no effect on the non-defaulting parties. The proposed rule would apply to all types of claimants, such as customers, associated persons, or member firms, that are bringing a claim against a suspended or terminated member or associated person.

Finally, if a respondent thought to be defunct belatedly files an answer or otherwise begins to participate after the staff has notified the parties that the claim will proceed under default procedures but before an award has been rendered, the default procedures would be suspended, and the case would proceed under the regular procedures.[9]

[8] If a case is to be a bifurcated and handled under two different procedures, regular and default, each proceeding will be assigned a separate case number to avoid confusion. Proposed NASD Rule 10314(e) provides that the default award will have no effect on any non-defaulting part.

[9] *See* NASD Letter, *supra* note 5.

III. Summary of Comments and NASD Dispute Resolution's Response

As noted above, the Commission received one comment letter regarding the original proposal.[10] NASD Dispute Resolution filed a response to address concerns raised by the comment letter.[11]

The commenters supported the proposed rule change as beneficial to customers and stated that the default procedures set forth in proposed NASD Rule 10314(e) would provide an alternative so that claimants can expeditiously obtain an award without the necessity of a hearing. However, the commenters proposed two substantive changes to the rule.[12]

First, the commenters questioned the fairness of paragraph (e)(7) of the proposed rule, which provides that the default procedures are terminated if the respondent files an answer anytime before an award has been rendered. The commenters believe that respondents who do not file an answer until late in the process should not have an absolute right to terminate the default procedure. They suggested that the decision to terminate the default procedure and resume the case under regular procedures should be granted at the discretion of the arbitrator, after giving the claimant an opportunity to respond to the request.[13]

NASD Dispute Resolution responds that it is appropriate to allow the defaulting respondent to appear and automatically terminate default procedures. NASD Dispute Resolution states that to deny the respondent the right to rejoin the regular proceedings due to a late answer could result in court challenges that might delay the proceeding to the claimant's detriment.[14] The NASD Dispute Resolution also states that a respondent is unlikely to abuse this provision to fail deliberately to appear and then make a sudden untimely appearance because the respondent would have to rejoin the case where the respondent finds it.[15]

[10] *See* Pace Letter, *supra* note 4.

[11] *See* NASD Letter, *supra* note 5.

[12] *See* Pace Letter, *supra* note 4.

[13] The commenters suggest that, in making the decision, the arbitrator should take into account the reasons given by the respondent for not filing sooner and the hardship to the claimant of being required to go forward with a hearing. *See* Pace Letter, *supra* note 4.

[14] NASD Dispute Resolution made reference to Rule 55(c) of the Federal Rules of Civil Procedure that provides that, for good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b). *See* NASD Letter, *supra* note 5.

[15] For example, if a single arbitrator or the panel has already been selected, the respondent would have to accept that choice without input into the selection, subject only to a challenge for cause. Additionally, in multi-party cases, if a prehearing conference or hearing session has been held, the late-appearing respondent is subject to previous determinations unless the respondent successfully moves for relief. *See* NASD Letter, *supra* note 5.

Furthermore, NASD Dispute Resolution states that NASD Rule 10314(b)(2)(C) would provide sufficient deterrent from such abuse because it provides that a respondent who fails to file an answer within 45 calendar days from receipt of service of a claim, unless the time to answer has been extended, ''may, in the discretion of the arbitrators, be barred from presenting any matter, arguments, or defenses at the hearing.''

Second, the commenters criticized the proposed rule for not addressing the situation where after filing an answer, the respondent ceases to participate in the hearing because of one of the events described in proposed NASD Rule 10314(e)(1). The commenters suggested that, in this event, the claimant should have the option to convert the proceedings to a default procedure.[16]

In response, NASD Dispute Resolution states its intention to draft a rule that would cover the majority of situations involving defunct respondents without making it unduly complicated. If it should happen that, after filing an answer, a respondent becomes defunct as defined in proposed NASD Rule 10314(e)(1), the claimant would put on its case, and the panel issue an award. If there are no other respondents, NASD Dispute Resolution states that the matter could be concluded expeditiously and that it may not even be necessary to hold an in-person hearing, which would further reduce hearing session costs to the claimant.[17]

Although NASD Dispute Resolution does not feel that an amendment to the proposed rule is currently necessary, it states that it would monitor the operation of the rule and consider any further enhancements that may be warranted.

IV. Discussion

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.[18] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[19] in that it is designed to

[16] *See* Pace Letter, *supra* note 4.

[17] *See* NASD Letter, *supra* note 5.

[18] 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).

[19] 15 U.S.C. 78*o*–3(b)(6).

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

Specifically, the Commission finds that NASD Dispute Resolution's proposal is designed to protect investors and the public interest by making it faster and less costly for investors and other claimants to proceed and obtain awards against defunct members and associated persons while also providing safeguards to all parties. The Commission also believes that the proposed rule change implements the recommendations in the GAO report concerning unpaid arbitration awards issued in arbitration proceedings in securities industry arbitration forums.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NASD–2002–15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18566 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46212; File No. SR–Phlx–2002–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Fees Applicable to Competing Specialists

July 16, 2002.

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 June 28, 2002, 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 prepared by the Exchange. 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

The Phlx proposes to amend its schedule of dues, fees and charges to increase from $0.30 to $0.35 its equity option transaction charge on members for off-floor broker-dealer transactions.[3] The Exchange intends to implement this fee on transactions settling on or after July 1, 2002.[4]

Currently, the Exchange imposes a fee on its members for off-floor broker-dealer transactions.[5] This category includes registered options traders (''ROTs'') who trade from off-floor and broker-dealers who route orders through firm, customer or market maker accounts carried by a member clearing firm that are executed on the Exchange trading floor, but not firm/proprietary orders.[6] All other equity option transaction charges will remain unchanged.[7]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

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 Phlx 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. The Phlx 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 purpose of the proposed rule change is to generate additional revenue for the Exchange by increasing the fee imposed on members for off-floor broker-dealer transactions. Thus, the broker-dealer equity option transaction charge will be increased from $0.30 to $0.35.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(4) of the Act,[9] in particular, by providing for the equitable allocation of reasonable dues, fees and other charges among its members. The Exchange believes the proposal is equitable and reasonable because the proposed broker-dealer equity option transaction charge represents a modest increase intended to generate additional revenue.

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

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

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 rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The Exchange is also amending the accompanying footnote in the Summary of Equity Options Charges on the Exchange's schedule of dues, fees and charges to make it more precise.

[4] This fee will continue to be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues, charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

[5] *See* Securities Exchange Act Release No. 45942 (May 16, 2002), 67 FR 36060 (May 22, 2002) (SR–Phlx–2002–32).

[6] A firm/proprietary transaction or comparison charge applies to members for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35 percent of its annual, gross revenues from commissions and principal transactions with customers. *See* Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (SR–Phlx–00–85).

[7] For purposes of the equity option transaction charge, the broker-dealer option equity transaction charge is currently defined in a footnote in the Summary of Equity Options Charges on the Exchange's schedule of dues, fees and charges, as a charge that is applied to members for orders *entered* from other than the floor of the Exchange for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes orders for the account of an ROT entered from off-floor. The Exchange proposes to replace the word ''entered'' with the word ''received'' to make the definition more precise.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).