SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39613; File No. SR–NASD–97–83]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Listing Fees for Nasdaq National Market Issuers

February 2, 1998.

I. Introduction

On November 13, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder [2] to amend Nasdaq listing fees for Nasdaq National Market issuers. On December 3, 1997, the NASD filed Amendment No. 1 to the proposal.[3]

Notice of the proposed rule change, including Amendment No. 1, was published in the **Federal Register**.[4] One comment was received, which is described below.

II. Description of the Proposal

Nasdaq's proposal would amend NASD Rule 4510 to revise the fees for Nasdaq National Market issuers and would make conforming changes to NASD Rule 4520. The proposed rule change will adjust both the Entry Fee and the Annual Fee for Nasdaq National Market issuers, effective January 1, 1998. Nasdaq has determined that an increase in the Entry Fee and the Annual Fee for issuers included on the Nasdaq National Market is necessary. Nasdaq has not filed an adjustment to its fee rates since the fall of 1991. Nasdaq has represented that, since that time, it has committed increased resources in efforts to strengthen market qualifications, to communicate with investors, and to prepare for closer integration of the world's equity markets.

The proposed rule change also revises references to the type of information on which the fees are based to include, in addition to the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority, more recent information held by Nasdaq. The NASD has made other technical changes to Rules 4510 and 4520.

III. Summary of Comments

One commenter responded to the proposal.[5] The commenter, which opposed the proposal, indicates that it is a Nasdaq-listed company and, as a result, would be subject to the proposed fee increase. The commenter argues that the proposed increase in the listing fee is ''excessive,'' contending that Nasdaq collects fees in excess of the level of its costs. The commenter also states that many of Nasdaq's enhancements are electronic and should reduce mailing and paper costs. The commenter expresses concern that a ''significant portion'' of the Nasdaq budget ''has gone to administrative salaries, overhead and marketing.'' The commenter notes that it has been approached by an exchange regarding listing there and indicates that the proposed fee increase will increase the likelihood that the commenter will in fact delist from Nasdaq and pursue another marketplace for listing.

By letter dated January 23, 1998, Nasdaq responded to the comment letter.[6] In its response, Nasdaq states that, with respect to the commenter's assertion that the proposed issuer listing fee increase is excessive, Nasdaq has not increased fees since the fall of 1991. Nasdaq re-emphasizes a point made in its initial filing, that ''since 1991 Nasdaq has committed increased resources in efforts to strengthen market qualifications, to communicate with investors, and to prepare for close integration of the world's equity markets.'' Nasdaq also notes its development of new information services for investors and issuers, such as nasdaq.com and Nasdaq Online. Nasdaq states that such additional services were not envisioned when the 1991 filing fee was instated.

Nasdaq further notes in its response letter that the fee increase also would be used ''to support the continued expansion and technological enhancements of Nasdaq's qualification and market surveillance systems and programs.'' Nasdaq believes that such initiatives will ''enhance the overall quality of companies listed on Nasdaq, foster the protection of investors, and promote the integrity of The Nasdaq Stock Market.'' Nasdaq asserts that the proposed fee increase ''reflects additional costs that Nasdaq incurs for services provided to issuers.''

IV. Discussion

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, Sections 15A(b)(5) and 15A(b)(6) of the Act. Section 15A(b)(5) requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers using the Nasdaq system. Section 15A(b)(6) requires, among other things, that the rules of a national securities association not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Since 1991, the last time that the NASD raised the fees it charges issuers, there has been tremendous change in the Nasdaq stock market, both in terms of volume and market developments. Volume on Nasdaq has increased significantly over the past several years, suggesting that investor interest in Nasdaq-listed companies is growing. This growth has resulted in investor expectations for Nasdaq to render services commensurate with its market position. For example, the NASD represented in its proposal that during the last eighteen months Nasdaq has incurred substantial incremental annual expenses in developing and implementing new information services for issuers and investors. These services include nasdaq.com and Nasdaq Online. While the NASD believes that such services add value to a Nasdaq listing, the associated costs were not envisioned in 1991 when issuer listing fees were set at their current levels.

The NASD has represented that the proposed fee increase will also be used to support the continued expansion and technological enhancements of Nasdaq's qualification and market surveillance systems and programs. Initiatives include the development of an automated issuer risk assessment system and an automated Internet surveillance system. The NASD has represented that additional resources will be committed to additional listing qualifications staff to ensure compliance with the recently approved increase in Nasdaq's listing

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 3, 1997.

[4] Securities Exchange Act Release No. 39441 (Dec. 11, 1997), 62 FR 66707 (Dec. 19, 1997).

[5] *See* Letter from James R. Maronick, Vice President, Finance, Crown Resources, to Douglas A. Patterson, Senior Vice President, Nasdaq, dated Dec. 19, 1997 (copy of which was forwarded to the Division of Market Regulation, Commission).

[6] *See* Letter from Arnold P. Golub, Attorney, Nasdaq, to Katherine England, Esq., Assistant Director, Division of Market Regulation, Commission, dated January 23, 1998.

requirements.[7] These initiatives, in concert with the additional services that Nasdaq is providing to companies and investors, should enhance the overall quality of companies listed on Nasdaq, foster the protection of investors, and promote the integrity of The Nasdaq Stock Market.

Because the fee increases are allocated equitably and do not discriminate between issuers, the Commission believes that the proposal is consistent with Sections 15A(b)(5) and 15A(b)(6) of the Act. Although one commenter has argued that the fee increases are excessive, the Commission notes that no other issuer expressed similar views. Even the single commenter indicated that there may be a suitable alternative to paying the increased fees (*i.e.*, by listing on another marketplace).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–97–83) be, and hereby, is approved.[9]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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[7] *See* Securities Exchange Act Release No. 38961 (Aug. 22, 1997), 62 FR 45895 (Aug. 29, 1997).

[8] 15 U.S.C. § 78s(b)(2).

[9] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. The proposed rule change should not have a materially adverse impact on the issuer listing process due to the robust competition among marketplaces to attract issuers. The net effect of approving the proposed rule change will be positive. 15 U.S.C. § 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39616; File No. SR–PHLX 97–49]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc., Relating to Exchange Approval of Member Advertising

February 3, 1998.

I. Introduction

On November 13, 1997, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change (SR–PHXL–97–49) to require Exchange approval of member advertising. On December 15, 1997, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on December 29, 1997.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

In the rule proposal, the Phlx proposed to amend Phlx Rule 605 to require member or foreign currency option participant organizations for which the Phlx is the designated examining authority (''DEA''): (1) to receive Exchange consent prior to using the Internet to provide market quotations or to advertise to the general public; (2) to receive prior Exchange consent before making use of radio or television broadcasts for any business purpose or broadcasting Exchange quotations on radio or television programs or via public telephone reports; and (3) to submit the text of all commercials or program materials about securities or investing sponsored by the firm on radio, television, public telephone or on the Internet, promptly following the program in which it was used. Further, the commentary to the rule which states that the provisions of the rule do not apply to advertisements, market letters and sales literature relating to options as defined in Rule 1049 would be deleted so that the rule would apply to all products traded on the Exchange, including, options. The Exchange filed Amendment No. 1 to make clear that print advertisements are also subject to prior Exchange review and approval under the new proposed language of Phlx Rule 605.

III. 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. the Commission believes the proposal is consistent with the requirements of section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest.[4]

The Commission believes that it is beneficial and in the public interest to add a layer of review to the advertisements of Phlx members. The Commission believes that the review process will protect investors because it will help prevent misleading advertisements and fraudulent practices.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–PHLX–97–49) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 39466 (December 18, 1997), 62 FR 67680.

[4] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before March 12, 1998. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629.