

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 revise the fees for the listing of additional shares ("LAS") program and to institute a record-keeping fee for certain changes by issuers.

The LAS program involves notification and fee requirements for the issuance of additional shares.

Specifically, an issuer must notify Nasdaq prior to a transaction that may implicate the corporate governance requirements and thereafter pay a fee that is based on the change in the issuer's total shares outstanding as reported in its periodic reports filed with the SEC. Revenues from the LAS program are used to fund issuer-related operations that include educational initiatives, issuer service initiatives and NASD surveillance measures.³

NASD Rules 4510(b) and 4520(b) currently provide that the fee for the listing of additional shares is \$2,000 or \$0.01 per additional share, whichever is higher, up to a maximum of \$22,500 per quarter and an annual maximum of \$45,000 per issuer. There is no fee for issuances of up to 49,999 additional shares per quarter.

Nasdaq proposes to modify the LAS program fees in two ways. First, the minimum fee would be increased from \$2,000 to \$2,500 for issuances of between 50,000 and 250,000 additional shares.⁴ Second, the current quarterly cap of \$22,500 would be eliminated. The annual cap of \$45,000, however, would be retained.

Nasdaq also proposes to institute a \$2,500 record-keeping fee for certain changes made by issuers. Such a fee would be used to address the costs associated with revising Nasdaq's records when issuers engage in certain actions, including a change of name, a change in the par value or title of securities, or a voluntary change in trading symbol.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁵ in general, and with Section 15A(b)(5) of the Act,⁶ in particular, in that the proposal provides for the equitable

allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Specifically, Nasdaq states that the LAS program fees, which are used to fund issuer-related operations,⁷ will be imposed on all issuers equally based on the number of additional shares issued. In addition, the proposed record keeping-fee will be imposed equally on all listed issuers that make the changes described above.

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

Nasdaq 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.

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, 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 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 number SR-NASD-2003-127 and should be submitted by September 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48425; File No. SR-Phlx-2003-60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending the Program To Deploy the Options Floor Broker Management System

August 29, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on August 29, 2003, 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, II, and III, below, which Items have been prepared by the Phlx. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A)(iii) of the Act,³ and paragraph (f)(6) of Rule 19b-4 under the Act,⁴ which renders the proposal effective upon receipt of this filing by the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁵ The Exchange has requested that the Commission waive both the five-day pre-filing notification requirement and the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

³ See Securities Exchange Act Release No. 31586 (December 11, 1992), 57 FR 60257 (December 18, 1992).

⁴ As under the current rules, there would be no fee for issuances of up to 49,999 per quarter.

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(5).

⁷ See Securities Exchange Act Release No. 31586, *supra* note 3.