

the dealer may sell additional shares or units to that customer if the dealer sends a copy of any new, supplemented, amended or "stickered" official statement in final form, by first class mail or other equally prompt means.¹¹ Allowing for householding in the context of municipal fund securities would be particularly beneficial, especially where one family has accounts for multiple children (or each parent has separate accounts for the same child) and the dealer may be required to deliver disclosure documents on an ongoing basis (e.g., the customer participates in a periodic plan or non-periodic program).

Thus, the proposed rule change provides that a dealer may satisfy its official statement delivery obligations by complying with that Rule's requirements when sending disclosure documents to two or more customers sharing the same address. The amendment further provides that dealers that are required to send ongoing disclosure documents to customers who participate in a periodic municipal fund security plan or a non-periodic municipal fund security program are specifically required to comply with Rule 154(c) by providing those customers with information, at least annually, on how to revoke their consent to the householding process and thereby receive individual copies of disclosure documents, if they so desire.

II. Summary of Comments

The Commission did not receive comment letters relating to this proposed rule change.

III. Discussion

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Act and the rules and regulations thereunder, which govern the MSRB.¹² The language of Section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to,

¹¹ If the dealer sends a supplement, amendment or sticker without including the remaining portions of the final official statement, the dealer must include a written statement describing which documents constitute the complete final official statement and stating that it is available upon request.

¹² Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.¹³

After careful review, the Commission finds that the Board's proposed rule change consisting of a proposed amendment to Rule G-32, on disclosures in connection with new issues, as well as amendments to Rule G-8, on books and records, and Rule G-9, on preservation of records, meets the requisite statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Act, as set forth above.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁴ that the proposed rule change (File No. MSRB-2002-06) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-20332 Filed 8-9-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46316; File No. SR-NASD-2002-90]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Modification of a Pilot Program To Provide Daily Share Volume Reports via NasdaqTrader.com

August 6, 2002.

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 July 1, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to 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 Nasdaq. Nasdaq filed Amendment No. 1 to the proposal with the Commission on August 1, 2002.³ Nasdaq filed the proposal pursuant to Section 19(b)(3) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to amend its Nasdaq PostDataSM ("PostDataSM") pilot program to make the following additional information available through PostDataSM: (1) Buy volume reports; (2) sell volume reports; (3) crossed volume reports; and (4) consolidated activity volume reports. New text is italicized.

* * * * *

Rule 7010 System Services

(a)-(o) No changes.

(q) NasdaqTrader.com Volume and Issue Data Package Fee

The charge to be paid by the subscriber for each entitled user receiving the Nasdaq Volume and Issue Data Package via NasdaqTrader.com shall be \$70 per month. The charge to be paid by market data vendors for this information shall be \$35 per month for each end user receiving the information through the data vendor. The availability of this service through NasdaqTrader.com shall be limited to NASD members, Qualified Institutional Buyers^{*} and data vendors. The Volume and Issue Data package includes: (1) Daily Share Volume reports

³ See letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Yvonne Fraticelli, Special Counsel, Division of Market Regulation, Commission, dated July 31, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq represented that the proposed modifications to Nasdaq PostDataSM, a trading data distribution facility, will be made available at no charge to all vendors and direct subscribers of Nasdaq. Nasdaq further represented that it had made information on the proposed modifications available to market data vendors, but that no vendors currently accept the PostDataSM feed or re-distribute that feed to their subscribers. In addition, Nasdaq requested that the Commission waive both the five-day pre-filing notice requirement and the 30-day operative delay provided under Rule 19b-4(f)(6) of the Act.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

^{*} For purposes of this service, see definition of "Qualified Institutional Buyer" found in Rule 144A of the Securities Act of 1933.

¹³ 15 U.S.C. 78o-4(b)(2)(C).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

- (2) Daily Issue Data
- (3) Monthly Volume Summaries
- (4) *Buy Volume Report*
- (5) *Sell Volume Report*
- (6) *Crossed Volume Report*
- (7) *Consolidated Activity Volume Report*

* * * * *

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

On January 11, 2002, the Commission approved, on a twelve-month pilot basis, the creation of PostDataSM, a voluntary trading data distribution facility accessible to NASD members, buy-side institutions and market data vendors through the NasdaqTrader.com website.⁶ PostDataSM currently consists of three reports provided in a single package: (1) Daily share volume reports, which provide subscribers with T+1 daily share volume in each Nasdaq security, listing the volume by any NASD member firm that voluntarily permits the dissemination of this information; (2) daily issue data, which contains a summary of the previous day's activity for every Nasdaq issue; and (3) monthly volume summaries, which provide monthly trading volume statistics for the top 50 market participants sorted by industry sector, security, or type of trading (e.g., block or total).

In response to requests from professional Nasdaq market participants to increase the availability and granularity of Nasdaq-verified trading data provided through NasdaqTrader.com, Nasdaq has determined to expand the information made available to PostDataSM subscribers. Specifically, Nasdaq has determined to make available through PostDataSM the following four additional

reports: buy volume reports, sell volume reports, crossed volume reports, and consolidated activity volume reports. According to Nasdaq, each report would offer information regarding total Nasdaq reported buy, sell, cross, or consolidated volume in the security, as well as rankings of registered market makers based upon various aspects of their activity in Nasdaq. In addition, the reports would provide recipients with information about the number and character of each market maker's trades. Finally, the reports would also provide the information described above with respect to block volume, be it buy, sell, cross or consolidated interest. Nasdaq notes that these new reports, as well as the existing reports, would include the volume reported by another exchange only if that volume is executed through a Nasdaq execution system.

In its proposal to create PostDataSM, Nasdaq represented that it would make product enhancements available to all PostDataSM users of the proposed products, whether the users were customers of Nasdaq or of a participating data vendor.⁷ Specifically, Nasdaq represented that if it offered a free product enhancement during the pilot program, it would make the enhancement available to all direct and indirect users at no cost, and that such modifications to PostDataSM during the pilot period would be limited to minor enhancements to the content of the package.⁸ In addition, Nasdaq represented that it would provide notice to vendors to allow vendors to implement programming changes if necessary.⁹ Nasdaq believes that the current proposal meets these requirements because (1) the proposed modifications to PostDataSM will be made available at no charge to all vendors and direct subscribers of Nasdaq and (2) Nasdaq has made information on the proposed modifications available to market data vendors.¹⁰

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5)¹¹ and 15A(b)(6) of the Act.¹² Section 15A(b)(5) of the Act requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a

national securities association. Section 15A(b)(6) of the Act requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

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

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and subparagraph (f)(6) of Rule 19b-4¹⁴ thereunder because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of the proposed rule 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.

Nasdaq has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. Under Rule 19-4(f)(6) of the Act, a proposed "non-controversial" does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time. The Commission believes that waiving the five-day pre-filing notice requirement and the 30-day operative delay is

⁶ See Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002) (Order approving File No. SR-NASD-99-12) ("Pilot Approval Order").

⁷ See Pilot Approval Order, *supra* note 6.

⁸ Nasdaq also represented that it would seek Commission approval of any fees to be assessed for such enhancements. *Id.*

⁹ See Amendment No. 1, *supra* note 3.

¹⁰ See Amendment No. 1, *supra* note 3.

¹¹ 15 U.S.C. 78o-3(b)(5).

¹² 15 U.S.C. 78o-3(b)(6).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq to provide the additional PostDataSM information to all users of PostDataSM immediately. For this reason, the Commission designates the proposal, as amended, to be effective and operative upon filing with the Commission.¹⁵

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 the filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR-NASD-2002-90 and should be submitted by September 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-20281 Filed 8-9-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46296; File No. SR-Phlx-2002-37]

Self-Regulatory Organization; Notice of Filings and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a 10-Up AUTO-X Guaranteed Size for Option Orders for the Proprietary Account(s) of Off-Floor Broker-Dealers in the Top 120 Options

August 1, 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 July 22, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to 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 Phlx. On July 31, 2002, the Exchange filed Amendment No. 1 to the proposal.³ 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 Exchange Rule 1080, Commentary .05(iv), to provide that the minimum guaranteed AUTO-X size shall be at least ten contracts for off-floor broker-dealer limit orders in the 120 most actively traded equity options (the "Top 120 Options").⁴ The text of the proposed rule change is set forth below. New text is in *italics*; deletions are in brackets.

Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)

(a)-(j) No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter to John C. Roeser, Special Counsel, Division of Market Regulation, Commission, from Richard S. Rudolph, Director and Counsel, Phlx, dated July 26, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to expand the definition of the Top 120 Options so that any equity option listed on the Exchange, regardless of when such equity option was listed can be considered a Top 120 Option. For purposes of calculating the sixty-day abrogation period, the Commission considers the abrogation period to have begun on July 31, 2002.

⁴ The Exchange has defined a Top 120 Option as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded nationally for a specified month based on volume reflected by The Option Clearing Corporation. See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-Phlx-2000-71). See also Amendment No. 1, *supra* note 3.

Commentary:

.01-.03 No change.

.04 Reserved.

.05

(1)-(iii) No change.

(iv) (a) *The minimum guaranteed AUTO-X size shall be at least 10 contracts for off-floor broker-dealer limit orders in the 120 most actively traded equity options (the "Top 120 Options"). A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded nationally for a specified month based on volume reflected by The Options Clearing Corporation ("OCC").*

(b) *With respect to all other options. [O]ff-floor broker-dealer limit orders may be eligible for automatic execution via AUTO-X on an issue-by-issue basis, subject to the approval of the Options Committee.*

(c) *The AUTO-X guarantee for off-floor broker-dealer limit orders may be for a different number of contracts, on an issue-by-issue basis, than the AUTO-X guarantee for public customer orders, subject to the approval of the Options Committee.*

(v) No change.

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 place 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 guarantee automatic executions of at least ten contracts in Top 120 Options for orders delivered via AUTOM⁵ from off the floor of the

⁵ AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

¹⁵ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). In addition, for purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on August 1, 2002, the date Nasdaq filed Amendment No. 1.

¹⁶ 17 CFR 200.30-3(a)(12).