clearing firms to review their practices regarding the collection of such fees from customers, discovering that over half of the firms surveyed did not have an accumulated funds balance. NASD worked with the other SROs to recommend a potential solution to allow NASD member firms to resolve title to the accumulated funds and, in the process, concluded that it would be virtually impossible to return customer-related accumulated funds to the customers that had paid these funds to the firms.[8]

Consequently, NASD has proposed interpretive material (''IM'') that will allow firms, on a one-time-only basis, voluntarily to remit historically accumulated funds (collected for purposes of paying an ''SEC Fee'' or ''Section 31 Fee'') to NASD. These funds then would be used to pay NASD's current Section 31 fees in conformity with prior representations made by member firms. To the extent the payment of these historically accumulated funds is in excess of the fees due the SEC from NASD under Section 31 of the Act, such surplus would be used by NASD to offset other NASD regulatory costs. The effective date of the proposed rule change is December 8, 2007, six months following the date of this approval order. Moreover, the IM will automatically sunset on June 8, 2008, six months after the effective date.

The Commission received one comment letter regarding the proposed rule change, from NYSE. NYSE acknowledged that the proposal provides ''member firms a ready and efficient means'' for dealing with accumulated funds but questioned ''whether there is a nexus between amounts accumulated by NASD member firms and sales effected through facilities of the NASD or Nasdaq (prior to the separation of NASD from Nasdaq and Nasdaq's registration as an exchange)'' and whether it would be feasible for member firms to correlate each execution market with a specific portion of the accumulated funds held by the firm.[9] As a result, NYSE argued that ''the fairest way to address this issue is for all exchanges to adopt procedures similar to those in the [NASD proposal], and to allow a member firm to remit accumulated funds to any SRO of which it is a member'' and indicated its intention to submit a proposed rule change similar to the NASD proposal that would allow NYSE members and member organizations to remit all or a portion of their accumulated funds to the NYSE to permit the Exchange to make payments required by Section 31.[10]

After carefully considering the proposal and the comment submitted, 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.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[12] which requires, among other things, that NASD 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.

The Commission believes that this NASD program will provide a reasonable means for member firms to dispose of any accumulated funds they may have in their possession.[13] The Commission notes that, because the program is voluntary, it imposes no obligation on any NASD member that believes that accumulated funds should be retained or disposed of in another manner. The NYSE Comment does not raise any issue that would preclude approval of the NASD proposal.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–NASD–2007–027) be, and hereby is, approved.

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

Nancy M. Morris,

Secretary.

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[8] NASD had asked all surveyed firms whether they could ''identify and relate the funds to specific customers on a transaction by transaction basis.'' The surveyed firms universally stated that tracking fractions of a penny to individual customers would be impossible and any over-collections could not be passed back at the customer level.

[9] *See* NYSE Comment at 1.

[10] *Id.* at 2.

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78o–3(b)(6).

[13] The Commission notes that it has previously issued guidance that any fee collected by broker-dealers from their customers should not be referred to as an ''SEC Fee'' or ''Section 31 Fee.'' *See* Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004). If broker-dealers adhere to this guidance, issues related to accumulated funds should not recur.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55878; File No. SR–NASD–2006–074]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Application of NASD Rule 2790 to Issuer-Directed Securities

June 7, 2007.

On June 12, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') a 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 NASD Rule 2790 as described below. The proposed rule change was published for comment in the **Federal Register** on January 25, 2007.[3] The Commission received one comment on the proposal.[4] On June 4, 2007, the NASD submitted a response to the comment.[5] This order approves the proposed rule change.

I. Description of the Proposal

NASD Rule 2790 provides that a member or a person associated with a member may not sell a new issue to any account in which a restricted person has a beneficial interest, or purchase a new issue in any account in which such member or associated person has a beneficial interest. Currently, Rule 2790(d)(1) provides that these prohibitions do not apply to new issues that are specifically directed by the issuer to restricted persons, provided that issuer-directed securities are not sold to or purchased by an account in which broker-dealer personnel, finders and fiduciaries, or certain members of their immediate family, have a beneficial interest, unless such persons, or members of their immediate family, are employees or directors of the issuer, the issuer's parent, or a subsidiary of the issuer or the issuer's parent. The NASD is proposing to amend Rule 2790(d)(1) to prohibit issuer-directed allocations of new issues to broker-dealers.

The NASD is also proposing to amend Rule 2790(d) by adding a new

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55128 (January 18, 2007), 72 FR 3453.

[4] *See* letter from Morgan, Lewis Bockius LLP to Nancy M. Morris, Secretary, Commission, dated February 15, 2007.

[5] *See* letter from Afshin Atabaki, Assistant General Counsel, NASD, to Nancy M. Morris, Secretary, Commission, dated June 4, 2007 (''Response Letter'').

subparagraph to Rule 2790(d), to be numbered Rule 2790(d)(2), which would provide that the prohibitions on the purchase and sale of new issues do not apply to securities that are specifically directed by the issuer to restricted persons, provided that a broker-dealer: (A) Does not underwrite any portion of the offering; (B) does not solicit or sell any new issue securities in the offering; and (C) has no involvement or influence, directly or indirectly, in the issuer's allocation decisions with respect to any of the new issue securities in the offering.

II. Comments

The Commission received one comment on the proposal, which expressed support for the proposal, but requested clarification regarding two points under proposed NASD Rule 2790(d)(2).[6]

First, the commenter requested clarification that a new issue undertaken by an issuer may qualify for the exception provided for by proposed Rule 2790(d)(2), notwithstanding that the issuer has engaged a broker-dealer to provide advisory services, including advice regarding capital structure and capital raising, so long as no broker-dealer has engaged in the conduct specified in proposed Rule 2790(d)(2)(A)–(C) set forth above. The NASD noted in the Response Letter that nothing in proposed subparagraph (d)(2) would prevent an issuer from engaging a broker-dealer to provide such advisory services or other limited services, so long as the conditions set forth in the subparagraph continue to be satisfied.

Second, the commenter requested clarification that a purchaser may reasonably rely on a representation from an issuer to the effect that no broker-dealer has engaged in any of the conduct specified in proposed Rule 2790(d)(2)(A)–(C) with respect to the offering, so long as the purchaser neither knows, nor has reason to know, that the representation is false. In the Response Letter, the NASD stated that it believes that, for purposes of compliance with proposed Rule 2790(d)(2), a member or associated person that wishes to purchase new issues in such offerings may rely on a written representation obtained in good faith from the issuer that the conditions in proposed subparagraph (d)(2) are satisfied, so long as the member or associated person does not believe, or have reason to believe, that such representation is inaccurate.

[6] *See supra* note 4.

III. Discussion

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[7] the requirements of Section 15A of the Act,[8] in general, and Section 15A(b)(6) of the Act,[9] in particular, which requires that the NASD's rules 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. The Commission believes that the proposed rule change strikes a reasonable balance between providing issuers with flexibility in directing shares and improving the capital raising process while also preserving the objectives of NASD Rule 2790.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2006–074) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

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[7] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55877; File No. SR–Phlx–2006–87]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to Options Exchange Officials

June 7, 2007.

I. Introduction

On December 14, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a 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 eliminate floor officials from the Exchange and establish a new category of Exchange staff called Options Exchange Officials (''OEOs''). The Phlx filed Amendment No. 1 to the proposed rule change on February 23, 2007, and filed Amendment No. 2 to the proposed rule change on March 15, 2007. The proposed rule change, as amended, was published for comment in the **Federal Register** on April 6, 2007.[3] The Commission received no comments on the proposal. The Commission is approving the proposed rule change, as modified by Amendment Nos. 1 and 2.

II. Description of the Proposed Rule Change

The Exchange proposes to create the new category of Exchange staff, OEOs, who will replace the Exchange's floor officials, and assume all authority and responsibility currently handled by the Exchange's floor officials. As a result, floor officials would cease to exist on the Exchange. Further, the Exchange's decision making process would be streamlined in that some rulings that currently require the concurrence of two floor officials, or two floor officials with the concurrence of a Market Surveillance officer, will now be made by one OEO. The role of the Exchange's Referee, however, will remain unchanged. The Exchange will make the proposed rule changes operative shortly after Commission approval of the proposal, and will notify members at least three business days in advance of such operative date.[4]

Current Floor Official Process

Pursuant to Exchange By-Law Article VIII, floor officials are members who are designated by the Chairpersons of the Exchange's Options Committee and Foreign Currency Options Committee and are authorized to administer the provisions of Exchange By-Laws and Rules of the Exchange pertaining to the respective trading floors and the immediately adjacent premises of the Exchange. Among other things, floor officials may impose penalties, as applicable, for breaches of rules or regulations relating to order, decorum, health, safety and welfare on the respective trading floors. Additionally, floor officials may, in accordance with Exchange rules, rule on trading

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55552 (March 29, 2007), 72 FR 17212.

[4] Telephone conversation on May 7, 2007 between Richard Rudolph, Vice President and Counsel, Phlx and Jennifer Dodd, Special Counsel, Division of Market Regulation, Commission.