

purchase of fuel or fuel reserves or options on fuel reserves.

In addition, the Marketing Subsidiaries might use available hedging tools, such as gas futures contracts and options on gas futures, similar to those traded on the New York Mercantile Exchange, and gas and oil price swap agreements and other, primarily commodity based, derivative instruments. Holdings represents that the Marketing Subsidiaries will not deal in derivative products for purposes of speculative trading.

Holdings might also offset price risk exposure under a purchase or sales contract through an opposite position to that purchase or sale. Similarly, in a portfolio of purchase and sales contracts, risk could also be limited through an appropriate mix of long-term and short-term contracts.

Ultimately, the Marketing Subsidiaries will seek to manage a "book" of various energy contracts involving purchases, sales and trades of oil, gas and electric power. The Marketing Subsidiaries will seek to hedge the risk associated with these contracts through a combination of physical assets, balanced physical purchases and sales, purchases and sales on futures markets, or other derivative risk management tools.

The aggregate investment made by Southern to finance the investments of Holdings in the Marketing Subsidiaries will be subject to all of the limitations applicable to investments in Energy-Related Companies imposed by the Order. Similarly, Holdings anticipates that guarantees of performance by the Marketing Subsidiaries could be required from time to time. Holdings will count the amount of such guarantees against the overall limitation set forth in the Order to the extent that the guarantees are directly or indirectly made by Southern itself.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 96-10242 Filed 4-24-96; 8:45 am]

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[Release No. 34-37131; File No. SR-NASD-96-08]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Quotation of Direct Participation Programs in the OTC Bulletin Board® Service**

April 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 12, 1996, the National Association of Securities Dealers Inc. ("NASD" or "Association") 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 self-regulatory organization. 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 NASD is herewith filing a proposed rule change to permit the quotation of Direct Participation Programs ("DPPs") in the OTC Bulletin Board Service ("OTCBB" or "OTC Bulletin Board") and to require the reporting of transactions in DPPs through the Automated Confirmation Service ("ACT"). The text of the proposed rule change is available at the NASD and at the Commission.<sup>2</sup>

**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 NASD 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 NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Pursuant to a new rule numbering system for the NSDA Manual anticipated to be effective no later than May 1, 1996, the rules that are the subject of this proposed rule change will become Rules 6530, 6540, and 6550 (regarding the OTC Bulletin Board Rules); Rule 6100 (regarding the Automated Confirmation Transaction Service); and new Rule 6900 series (regarding transaction reporting for DPPs). See Securities Exchange Act Release No. 36698 (Jan. 11, 1996), 61 FR 1419 (approving new NASD rule numbering system).

**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 increase transparency and provide for more efficient price discovery in the secondary market for limited partnerships, also known as DPPs, by permitting these securities to be quoted in the OTC Bulletin Board and requiring transactions in DPPs to be reported through ACT.

**a. Background**

In 1990, at the direction of the NASD's Direct Participation Programs Committee ("Committee"), the staff undertook a study of the nature and functioning of the secondary market for limited partnership securities. Data gathered and interviews conducted during the study revealed that approximately \$90 billion was invested in public direct participation programs. The programs were organized to invest in a variety of industries including, but not limited to, real estate, oil and gas, cable television, commodities, and equipment leasing. Although these securities were not intended to be liquid and tradeable, the NASD estimated at that time that approximately two dozen participants act as principal or agent for customers in a fragmented secondary market that in the aggregate transfers ownership of an estimated \$250 to \$300 million worth of limited partnership securities annually. The NASD noted that the majority of transactions that occur in the market are necessitated by triggering events that force the sale of the partnership unit upon the limited partner. Such events include estate sales by trustees due to the death of a limited partner, liquidation of IRA accounts, divorce, and unexpected or extraordinary expenses such as major medical or post-secondary education. Thus, the inefficiencies of the fragmented market tend to disproportionately impact investors who need liquidity, rather than investors who are merely seeking liquidity.

In response to the developing secondary market, the NASD has directed its regulatory focus to ensuring that NASD members active in the market comply with NASD rules, federal securities laws and state laws relating to advertising and sales literature, suitability and recommendations to customers, solicitation and tender offers, prospectus disclosure, transactions with non-members, net capital, and escrow.

A particular focus has been directed toward rules and policies relating to markups/markdowns and best execution of customer orders that require members to use reasonable diligence to obtain the most favorable price possible under prevailing market conditions. The NASD published its findings on the secondary market in Notice to Members 91-69.

Since the time of that study, the Committee has expressed the view that the NASD's primary concern should continue to focus on ensuring that the secondary market in partnership securities is regulated efficiently and operates in a manner that protects public investors. In furtherance of these goals, the Committee determined that the quotation of DPPs in the OTC Bulletin Board would enhance investor protection and greatly assist the NASD in carrying out its regulatory responsibilities. The OTC Bulletin Board is an electronic quotation medium operated by the Nasdaq Stock Market, Inc. that allows eligible members to enter, update, and retrieve quote information and unpriced indications of interest for non-Nasdaq securities.

#### b. Tax Status of DPPs

The NASD has long been aware that facilitation of a more centralized means for the quotation of DPPs could cause these securities to be deemed "publicly traded partnerships" under the Internal Revenue Code, as that term is defined therein. This would lead to the unintended result of DPPs being treated as corporations for federal tax purposes.

Recently issued IRS regulations, however, have clarified the circumstances under which interests in partnerships may be quoted without impacting their tax status.<sup>3</sup> The proposed rule change reflects the requirement contained in these new regulations, and thus is intended to ensure that the quotation of DPPs in the OTC Bulletin Board would not, by itself, have negative tax status consequences for the issuers of these securities. For example, because the OTC Bulletin board will not disseminate firm buy or sell quotations with respect to partnership interests under the proposed rule change, it would not fall within the definition of an "interdealer quotation system" under the new IRS regulations, as that term is defined therein. As a result, such interests in DPPs are not publicly traded for

purposes of the IRS Code, provided that the some of the percentage interests in partnership capital or profits transferred during the taxable year of the partnership (subject to certain exclusions) does not exceed two percent (or five percent for grandfathered existing partnerships) of the total interests in capital or profits. It is expected that the monitoring of these two and five percent thresholds will not be the responsibility of the NASD, but will be that of the general partners, who, under most partnership agreements, must approve each transfer of units in the partnership. The NASD, however, will make transaction reporting information available to general partners for a nominal fee to assist them with such compliance.

#### c. Quotation of DPPs in the OTC Bulletin Board

Generally, the treatment of DPPs quoted in the OTC Bulletin Board will be similar to that of foreign securities and ADRs currently; *i.e.*, no firm prices will be displayed. NASD members will be permitted to insert only non-firm prices or unpriced indications of interest ("bid wanted" or "offer wanted" and "name only" entries). These non-firm prices or indications of interest will provide the basis for a negotiation that will take place in order to complete a transaction in a DPP security. The OTCBB display screen will reflect the inside market, last sale, previous close, volume, and distribution information, if available.

In addition, only NASD members will be permitted to apply to place unpriced entries or indicative quotes on the OTC Bulletin Board. The requirements of Securities Exchange Act Rule 15c2-11 will apply, and thus firms generally will be required to submit Form 211 prior to initiating a quotation of a DPP in the OTC Bulletin Board, unless an exemption applies.<sup>4</sup> There will be no provision for any automatic execution for DPPs in the OTCBB.

#### d. Reporting Transactions in DPPs

Subject to certain exclusions under the reporting requirements, all secondary market transactions in DPPs will be required to be reported to the NASD, without regard to whether the DPP was the subject of a quotation in the OTCBB. Transactions will be reported through ACT for reporting purposes only.<sup>5</sup> Thus, ACT will not be

used to facilitate clearance and settlement of these securities notwithstanding the possibility that a particular DPP eligible for inclusion in the OTCBB also may be eligible for clearing with a clearing agency, *e.g.* NSCC, nor will the OTCBB provide assistance to parties in completing the transfer documents and other forms necessary to clear and settle a transaction in a DPP security.<sup>6</sup>

Firms will report on T+1, designating the transaction "as of" the previous day and include the time of execution. Member firms that have the operational capability to report transactions within 90 seconds of execution, however, may do so. A symbol directory will be prepared to facilitate transaction reporting in DPPs.

The NASD recognizes that some member firms who participate in this market may not be Nasdaq Workstation subscribers and thus may not have the facility to report transactions through ACT. Members without direct access to ACT will have the option of reporting through the ACT Service Desk if the member averages a limited number of transactions in DPPs.<sup>7</sup> Alternatively, such members may consider obtaining a computer-to-computer interface ("CTCI") or a Nasdaq Workstation. Members may contact Subscriber Services for further information.

#### 2. Statutory Basis

The NASD believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act<sup>8</sup> in that it is 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. Subparagraph (b)(11) of that section authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for

capacity of agent. For reporting purposes, it is expected that the concepts of agency and principal have the same meaning as those terms are commonly used or understood, unless otherwise noted in Rule 6900.

<sup>6</sup> Certain technical corrections have been made to the definition of the term "ACT eligible security" to clarify that transactions in Nasdaq SmallCap and certain other OTC securities must be reported through ACT, and to delete an outdated reference to ACT implementation.

<sup>7</sup> As set forth in Rule 6920, a member may use the ACT Service Desk if it averages five or fewer trades per day during the previous calendar quarter. For this purpose, any calculation of the average number of trades per day shall include transactions in any security, and not just DPPs.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>3</sup> Section 1.7704-1 has been added to the Income Tax Regulations, (26 CFR Part 1), relating to Section 7704(b) of the Internal Revenue Code, which defines the term "publicly traded partnership." 60 FR 62026 (Dec. 4, 1995).

<sup>4</sup> 17 CFR 240.15c2-11 (governing the initiation or resumption of quotations by a broker-dealer for over-the-counter securities in a non-Nasdaq interdealer quotation medium).

<sup>5</sup> It is understood that members who effect transactions in DPPs predominantly act in the

collecting and disseminating quotations. The proposed rule change would centralize a fragmented market and provide greater transparency, while maintaining certainty with respect to the tax status of these securities. It will provide more efficient price discovery in the secondary market for limited partnerships, and is expected to aid NASD members in complying with their obligations for best execution when effecting transactions.

In addition, the NASD relies on Section 11A(a)(1) of the Act<sup>9</sup> in that the proposed rule change is consistent with the Congressional findings and policy goals, as set forth therein, respecting operational enhancements to the securities markets. Basically, Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants.

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

The NASD believes the proposed rule change will impose no 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*

The NASD has neither solicited nor received written comments.

#### *III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action*

Within 35 days of the 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 the 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 the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-96-08 and should be submitted by May 16, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Jonathan G. Katz,  
Secretary.

[FR Doc. 96-10244 Filed 4-24-96; 8:45 am]

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[Release No. 34-37123; File No. SR-Phlx-96-03]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Component Additions to the Phlx Gold/Silver Index**

April 18, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 1, 1996, 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 self-regulatory organization. On April, 16, 1996, the Exchange filed Amendment No. 1 to the proposal.<sup>1</sup> 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*

The Exchange proposes to revise the composition of the Phlx Gold/Silver Index ("XAU" or "Index") by adding three underlying stocks and to adopt a procedure regarding replacements, additions and deletions of component stocks. The text of the proposed rule change is available at the Office of the Secretary, Phlx and at 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, 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*

The XAU is a capitalization weighted index currently composed of the stocks of nine widely held U.S. companies in the gold and silver mining industry. Options on the Index have an American style expiration and the settlement value is based on the closing values of the component issues on the last trading day prior to expiration. The Index was the first narrow based or industry index approved for trading on the Exchange.<sup>2</sup> Pursuant to Footnote 10 to the Index Approval Order,<sup>3</sup> the Exchange had agreed to submit to the Commission pursuant to Rule 19b-4 under the Act, any changes to the stocks comprising the Index and to attempt to formulate a rule that will govern this process. Accordingly, pursuant to this rule filing, the Exchange is requesting approval to change the composition of the XAU by adding three stocks. The stocks are AMAX Gold, Inc. (AU), Santa Fe Pacific Gold Corp. (GLD) and TVX Gold Inc. (TVX) and they all currently trade on the New York Stock Exchange. The addition of these three stocks will help ensure an even more accurate response to overall market activity in the precious

<sup>10</sup> 17 C.F.R. 200.30-3(a)(12).

<sup>1</sup> In Amendment No. 1 the Phlx states that the Index has always been a P.M. settled index and that it proposes to apply all of the maintenance criteria of Rule 1009(A)(c) except the requirement that the index be designated as A.M. settled. See letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to James T. McHale, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated April 16, 1996 ("Amendment No. 1").

<sup>2</sup> See Securities Exchange Act Release No. 20437 (December 2, 1983) 48 FR 55229 (December 9, 1983) ("Index Approval Order").

<sup>3</sup> *Id.*

<sup>9</sup> 15 U.S.C. 78k-1.