

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, 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.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act<sup>8</sup> because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission previously has found NASD's pilot rule relating to price-improvement standards under the Manning Interpretation to be consistent with the Act.<sup>9</sup> NASD now proposes to reinstate the pilot; to make it effective retroactively to July 1, 2004; and extend it through December 31, 2004. NASD is not proposing any textual changes to the pilot rule. In the Pilot Approval Order, the Commission stated that the pilot rule should ensure that customer limit orders "will continue to have access to market liquidity ahead of market makers in appropriate circumstances."<sup>10</sup> More recently, the Commission also has stated:

When market participants can gain execution priority for an infinitesimally small amount, important customer protection rules such as exchange priority rules and the NASD's Manning Interpretation as currently formulated could be rendered meaningless. \* \* \* If investors' limit orders lose execution priority for a nominal amount, over time, investors may cease to use them, which would deprive the markets of a vital source of liquidity.<sup>11</sup>

For these reasons, the Commission continues to believe that NASD's pilot rule is consistent with the Act and will continue to provide beneficial protection to customer limit orders.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of filing thereof in the **Federal Register**. Accelerated

approval will allow the customer limit order protection offered by the pilot rule to continue without interruption.

#### V. Conclusion

*Is it therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NASD-2004-112) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jill M. Peterson,**

*Assistant Secretary*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50095; File No. SR-NSCC-2004-03]

#### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Mutual Fund Profile and Fund/SPEED Service Fees

July 27, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 21, 2004, the National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change provides for revisions to NSCC's fees which will be effective September 1, 2004, for its Mutual Fund Profile Service ("MFPS") and Fund/SPEED Service.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.<sup>2</sup>

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Mutual Fund Profile Service

NSCC's MFPS is a centralized information database used by NSCC's mutual fund service members. Phase I of MFPS provided daily mutual fund prices in the form of mutual fund net asset values and rates for daily accrual funds. Phase II was introduced in 1999 to add member profiles (*i.e.*, information about processing capabilities of other members), security issue profiles (*i.e.*, information relating to identification of fund securities characteristics such as minimum requirements and purchase amounts for a particular security), and distribution declaration profiles (*i.e.*, information relating to record, reinvestment, and payable dates for dividend and capital gains payments).

NSCC is making extensive enhancements to Phase II of MFPS to incorporate additional securities-related data in order to facilitate more accurate tracking and application of breakpoint related information, which is consistent with the recommendations of the Joint NASD/Industry Task Force on Breakpoints.<sup>3</sup> NSCC proposes a fee increase for MFPS consistent with these enhancements.

The current fee for MFPS (Phase I and Phase II) is \$325.00 per month. The revised fees will introduce two tier pricing as follows:

MFPS—Phase I (Price and Rate) Only:

\$325.00 per month.

MFPS—Phase I and II: \$750.00 per month.

Members currently subscribing to MFPS will automatically be subject to the higher fees applicable to MFPS, Phases I and II, effective September 1, 2004. Members will be given advance notice of the fee increase in order to provide the opportunity to convert to MFPS Phase I (Price and Rate only) if the member so desires.

<sup>2</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>3</sup> The breakpoint issue and the enhancements to MFPS are further described in NSCC's Important Notice A#5765, P#S#5335 (February 12, 2004), which is attached as Exhibit A to this filing. Copies of this filing and the attached exhibits will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at [www.nsccl.com/legal/](http://www.nsccl.com/legal/).

<sup>7</sup> 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).

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

<sup>9</sup> See *supra* note 3.

<sup>10</sup> 66 FR at 19271.

<sup>11</sup> Securities Exchange Act Release No. 49325 (February 26, 2004), 69 FR 11126, 11170 (March 9, 2004) (proposing Regulation NMS). Nothing in this approval order presupposes any action that the Commission may take with respect to proposed Regulation NMS.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

## 2. New Fund/SPEED Activity Fee

NSCC currently charges fees for the following Fund/SPEED functions:

*Inquiries:* \$.005 per transaction.

*Trade Data Transmission:* \$.50 per transaction.

*New Accounts:* \$.75 per transaction.

NSCC is adding an additional function, Account Maintenance, for which there will be a fee of \$.25 per transaction. A transaction is defined as a request for information and a response. The fee will be effective on September 1, 2004.

NSCC regards all of the proposed fees to be consistent with its policy to set fees at a level that projects full cost recovery for the product line.

NSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act<sup>4</sup> and the rules and regulations thereunder applicable to NSCC because the proposed rule change will provide for the equitable allocation of dues, fees and other charges among NSCC's members.

### (B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. The enhancements to NSCC's MFPS, which address the need for more accurate identification of breakpoint-related data, were discussed and developed through meetings and communications among members of the Joint NASD/Industry Task Force, of which NSCC and several NSCC members are members. NSCC will notify the Commission of any written comments received by NSCC.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii)<sup>5</sup> of the Act and Rule 19b-4(f)(2)<sup>6</sup> promulgated thereunder because the proposal is establishing or changing a due, fee, or other charge imposed by NSCC. At any time within sixty days of the filing of such proposed rule change, the Commission could have

summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2004-03 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NSCC-2004-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSCC-2004-03 and should be submitted on or before August 24, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50100; File No. SR-Phlx-2003-59]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments No. 1, 2, 3, 4, and 5 and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 6 and 7 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's New Electronic Trading Platform, "Phlx XL"

July 27, 2004.

## I. Introduction

On October 3, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt new rules for the implementation of its new electronic trading platform, "Phlx XL." On December 9, 2003, December 11, 2003, January 28, 2004, and May 11, 2004, the Exchange filed Amendments No. 1, 2, 3, and 4, respectively, to the proposed rule change.<sup>3</sup> On June 4, 2004, the Exchange filed Amendment No. 5 to the proposed rule change.<sup>4</sup> The proposed rule change and Amendments No. 1, 2, 3, 4, and 5 were published for comment in the **Federal Register** on June 15, 2004.<sup>5</sup> The Commission received no comments with respect to the proposal, as amended. On July 6, 2004 and July 15, 2004, the Phlx filed Amendments No. 6 and 7, respectively, to the proposed rule

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letters from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 9, 2003 ("Amendment No. 1"); December 11, 2003 ("Amendment No. 2"); January 28, 2004 ("Amendment No. 3"); and May 10, 2004 ("Amendment No. 4").

<sup>4</sup> See letter from Richard S. Rudolph, Director and Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated June 3, 2004 ("Amendment No. 5").

<sup>5</sup> See Securities Exchange Act Release No. 49832 (June 8, 2004); 69 FR 33442 ("Notice").

<sup>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).