

(B) Self-Regulatory Organizations' Statements on Burden on Competition

MCC and MSTC believe that the proposed rule changes will not place any burden on competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

MCC and MSTC have neither solicited nor received any written comments on the proposed rule changes.

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

The foregoing rule changes have become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁴ and subparagraph (e)(3) of Rule 19b-4 thereunder⁵ because they are concerned solely with the administration of the self-regulatory organizations. At any time within sixty days of the filing of such proposed rule changes, the Commission may summarily abrogate such rule changes 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.

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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal offices of MCC and MSTC. All submissions should refer to File Numbers SR-MCC-94-15 and SR-MSTC-94-18 and should be submitted by February 17, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35257; International Series Release No. 776; File No. SR-NASD-94-55]

Self-Regulatory Organizations; National Association of Securities Dealers; Notice of Proposed Rule Change Relating to the Access of West Canada Clearing Corporation and Its Members to the Automated Confirmation Transaction Service

January 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 12, 1994, the National Association of Securities Dealers, Inc. ("NASD") 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 the NASD. 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 proposes to amend its rule regarding the Automated Confirmation Transaction services ("ACT") to allow West Canada Clearing Corporation ("West Canada"), a nonmember of the NASD, and members of West Canada who are not members of the NASD to access this service. The NASD also proposes to amend the ACT rule to reflect that NASD members functioning as market makers in over-the-counter equity securities are also classified as ACT participants.

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.

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

The NASD created and implemented the ACT system in response to problems experienced in the wake of the October 1987 market break and at the urging of the Commission to consider accelerating efforts to generate same day compared trades.² ACT has three primary features: (1) trade match process (*i.e.*, the comparison of trade information and the submission of locked-in trades for regular way settlement to clearing agencies on a trade date or next day ["T+1"] basis);³ (2) trade reporting for transactions in securities that are subject to real time trade reporting requirements; and (3) risk management features that provide firms with a centralized, automated environment for assessing market exposure during and after the trading day and that permit clearing firms to monitor and respond to the ongoing trading activities of their correspondents.⁴

Since its implementation, ACT has functioned as an effective and efficient

² For a description of ACT, refer to Securities Exchange Act Release Nos. 27229 (September 8, 1989), 54 FR 38484 [File No. SR-NASD-89-25] (order partially approving proposed rule change to permit ACT to be used by selfclearing firms) and 28583 (October 26, 1990), 55 FR 46120 [File No. SR-NASD-89-25] (order approving remainder of File SR-NASD-89-25 to permit ACT to be used by introducing and correspondent broker-dealers).

³ ACT uses three methods to lock-in trades: (1) trade-by-trade match, whereby both sides of the trade are reported to ACT and matched; (2) trade acceptance, whereby one side of the trade is reported to ACT and accepted by the contra-side; and (3) aggregate volume match, whereby ACT performs a batch-type comparison at the end of each day that aggregates previously unmatched trade reports to effect a match. (For example, two identical trade reports for 300 and 400 shares of the same security may be matched with a 700 share trade report.)

⁴ Among others, ACT has the following risk management capabilities. First, ACT can compute the dollar value of each trade report entered thereby allowing member firms to assess their market exposure during the trading day. Second, clearing firms can establish daily gross dollar thresholds for each correspondent's trading activity. If a correspondent reaches or exceeds the threshold, the clearing firm is so notified. Third, ACT alerts clearing firms when a correspondent reaches 70% or 100% of its daily gross dollar threshold. Fourth, ACT has a single trade limit that provides clearing firms with a 15 minute review period prior to becoming obligated to clear a trade of \$1,000,000 or more executed by one of its correspondents. Fifth, ACT has a super cap limit set at two times the gross dollar thresholds for purchases and sales but in no event less than \$1 million that provides clearing firms with a 15 minute review period prior to becoming obligated to clear a trade of \$200,000 or more executed by one of its correspondents once the limit is surpassed.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

⁵ 17 CFR 240.19b-4(e)(3) (1994).

⁶ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. § 78s(b)(1) (1988).

vehicle to compress the trade comparison cycle thereby facilitating the prompt and accurate clearance and settlement of securities transactions and enabling NASD members to know their positions and market exposure before trading commences the next day. As a facility of The Nasdaq Stock Market operated by The Nasdaq Stock Market, Inc. ("NSMI") subsidiary of the NASD, access to the ACT system is limited to NASD members. Recently, the NASD received a request from West Canada for access to ACT for trade comparison purposes only.⁵ Presently, when an NASD member effects a transaction with a West Canada member, the transaction typically is compared, cleared, and settled in the following manner. The NASD member enters the trade into ACT with the West Canada member designated as the contra-party. Because the West Canada member presently is not an ACT participant, ACT will respond to the NASD member "contra-side not ready." ACT then will report the trade for trade reporting purposes and will transmit the trade to the National Securities Clearing Corporation ("NSCC") as a one-sided trade for trade comparison. The West Canada member submits the trade information to West Canada that in turn sends the trade to the Midwest Clearing Corporation ("MCC"). MCC then transmits the trade report to NSCC by 2:00 a.m. on T+1 for comparison. NSCC then compares the trade reports, and assuming there is a match, NSCC submits the West Canada member's side of the transaction to MCC for clearance and settlement; the NASD member's side of the transaction is retained by NSCC for clearance and settlement. If there is a discrepancy concerning the terms of the transaction, the trade reconciliation process involves the two clearing corporations and the two parties to the transaction and can last until T+3. Although the NASD believes that the facilities of NSCC and MCC have been used to compare trades between NASD and West Canada members adequately, the NASD believes the trade comparison procedure for these trades would be streamlined and made more efficient through the use of ACT.

The proposal to provide West Canada access to ACT has been structured so that the primary parties to the arrangement are West Canada and NSMI, the NASD subsidiary that owns and operates ACT. Rather than

negotiating separate contracts with each individual organization, the NASD believes that it is more efficient for NSMI to negotiate with the exchange, market, or clearing entity to which the non-NASD member belongs, in this case West Canada. Accordingly, under the proposed rule change, West Canada will operate as a service bureau to input information into ACT on behalf of West Canada members. Individual West Canada members will not be able to obtain access to ACT unless there is first an overriding, umbrella-type agreement reached between NSMI and West Canada. Thus, whenever NASD members transact with West Canada members in ACT eligible securities, they will be able to use ACT just as they do now for comparing regular-way trades with other NASD members.

In order for West Canada to have access to ACT, proposed Section (b)(5)(B) of the ACT Rules provides that West Canada must execute a Non-member Clearing Organization ACT Participant Application Agreement. This agreement will require West Canada to abide by the ACT rules and regulations and will ensure that trades processed through ACT by West Canada on behalf of West Canada members will be accepted for clearance and settlement. The agreement also will address NSMI concerns over nonpayment of service charges, the financial exposure and liabilities of the parties, and methods of redress should West Canada or a West Canada member fail to comply with the relevant NASD rules and regulations. In addition, proposed section (b)(5)(B)(6) of the ACT Rules provides that West Canada will not be able to input information into ACT on behalf of a West Canada member unless such member also enters into a Non-Member ACT Access Participant Application Agreement with NSMI. In the case of a clearing broker, this agreement provides that the member will accept and will settle each trade that ACT identifies as having been effected by such member or any of its correspondents on the regularly scheduled settlement date. In the case of an order entry firm, the firm must agree to accept and settle each trade that it has effected or, if settlement is to be made through a clearing member, guarantee the acceptance and settlement of each ACT-identified trade by the clearing member on the regularly scheduled settlement date.

The proposed rule change also provides that a nonmember clearing organization will not be given access to ACT unless it: (1) Is a clearing agency registered under the Act; (2) maintains membership in a registered clearing

agency; or (3) maintains an effective clearing arrangement with a registered clearing agency. West Canada has an effective clearing arrangement with MCC and thus satisfies this requirement.⁶ This requirement will ensure that non-NASD members given access to NASD facilities will otherwise be subject to Commission regulation in general, and Commission regulation concerning the comparison, clearance, and settlement of securities, in particular.

The proposed rule change also provides that West Canada may permit its members that operate as clearing brokers or order entry firms to have direct access to ACT but only if the West Canada member has executed a Non-Member ACT Participant Application Agreement with NSMI. This agreement will help to ensure that West Canada members adhere to relevant NASD and Commission rules and regulations and commit to accept and settle or guarantee the acceptance and settlement of trades for which ACT has identified those members as being responsible.

As a result, the inefficiencies inherent in the current practice of submitting two-sided transaction reports to two separate clearing corporations for each transaction for comparison will be eliminated. The compressed comparison cycle in turn also should result in lower exposure to NASD members and their customers from price movements while

⁶In January 1983, MCC, Midwest Securities Trust Company ("MSTC"), the Vancouver Stock Exchange, and the Vancouver Stock Exchange Service Corporation ("VSESC"), (now known as West Canada Clearing Corporation ["WCCC"]) ("VSESC/WCCC") created the American and Canadian Connection for Efficient Securities Settlements ("ACCESS"). Through ACCESS, over-the-counter securities transactions between the U.S. and Canadian broker-dealers in both U.S. and Canadian securities are compared, cleared, and settled. Trades between U.S. and Canadian broker-dealers involving securities listed on U.S. securities exchanges, Canadian securities exchanges, or the National Association of Securities Dealers Automated Quotation ("NASDAQ") System are eligible for clearance and settlement through ACCESS. To establish ACCESS, VSESC/WCCC became an MCC/MSTC participant, and opened separate sponsored MCC/MSTC accounts for Canadian broker-dealers that were participants of VSESC. As an MCC/MSTC member, VSESC/WCCC is liable as principal (i.e., guarantees) all trades that it submits including all trades in its sponsored accounts. Some safeguards on ACCESS activity include, contributions by VSESC/WCCC to MCC/MSTC's participant fund based on VSESC/WCCC's total activity, and a cash reserve of over 250,000 Canadian dollars maintained by VSESC/WCCC to be used to satisfy the obligations of any VSESC/WCCC participant that may become insolvent. In addition, VSESC/WCCC guarantees all VSESC/WCCC liabilities to MCC/MSTC. Letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, to Michael Wise, Associate Counsel, MCC/MSTC (September 12, 1985).

⁵The present filing solely addresses the access of West Canada to ACT. Other proposals concerning nonmember access to ACT, if any, will be raised in separate rule filings submitted pursuant to Section 19 of the Act.

transactions are open or uncompleted, faster and more efficient trade reconciliation and confirmation, and increased efficiency of back office operations. Finally, the NASD notes that granting West Canada access to ACT will not affect or modify the process by which trades between NASD and West Canada members are cleared and settled. The proposal strictly provides a more efficient and streamlined method to compare trades between West Canada and NASD members in preparation for clearance and settlement.

The NASD also does not believe that granting West Canada and West Canada members access to ACT will jeopardize the integrity of ACT or any other market facility operated by NSMI. In this regard, before West Canada or any of its members are granted access to ACT, these entities must agree to be bound by the terms of the revised ACT Participant Application Agreements, which establish the terms and conditions under which West Canada and its members will receive access to ACT. The NASD believes that the revised Agreements will provide an adequate and sufficient surrogate for NASD membership which otherwise would provide the jurisdictional nexus to ensure compliance with applicable NASD rules and regulations. Initial and continuing access to ACT by nonmembers will be specifically conditioned upon adherence to the terms and conditions of these agreements. West Canada and West Canada members also will be required to maintain the physical security of the equipment used to input trades into ACT. Based on these factors, the NASD believes that granting West Canada and West Canada members access to ACT will not compromise the integrity or operation of ACT. Further, the NASD notes that the Commission has allowed nonmember access to ACT in the context of trade reporting for Nasdaq-listed securities traded on an exchange pursuant to unlisted trading privileges ("UTP"). Specifically, UTP participants may trade report through ACT to comply with transaction reporting requirements.

Apart from addressing ACT access by West Canada and West Canada members, this proposed rule change proposes to amend Section a) 2. of the ACT Rules which defines the term "Participant." As amended, this definition will include NASD member firms that function as market makers in over-the-counter ("OTC") equity securities that are eligible for clearing

via the NSCC's facilities.⁷ The instant modification will clarify that ACT participant status encompasses NASD members that function as market makers in such securities via the OTC Bulletin Board service or another interdealer quotation system.⁸ This element of the rule proposal is a technical change that has no bearing on the provision regarding ACT access to West Canada.

The NASD believes that the proposed rule change is consistent with Sections 15A(b)(6)⁹ and 17A(a)¹⁰ of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to securities, 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. Section 17A(a) provides that the prompt and accurate clearance and settlement of securities transactions is necessary for the protection of investors and that inefficient procedures for clearance and settlement impose unnecessary costs on investors.

By streamlining and improving the process by which trades between NASD and West Canada members are compared, the NASD believes the prompt and accurate clearance and settlement of securities will be facilitated and promoted. In addition, by compressing the time-period in which open trades are left uncompleted, market participants will be better able to access and evaluate their market exposure thereby contributing to fair and orderly markets and the protection of investors and the public interest. Moreover, the NASD believes the proposed rule change is consistent with Rule 15c6-1, which mandates settlement on the third business day following the trade date ("T+3") by June 7, 1995.¹¹ Because ACT

⁷ Securities Exchange Act Release No. 30415 (February 26, 1992), 57 FR 7829 [File No. SR-NASD-92-5] (order approving OTC Equity Securities as ACT eligible securities).

⁸ Under Schedule D to the NASD By-Laws, Part XII, Section 1(d) defines "OTC Market Maker" to mean any NASD member that holds itself out as being a market maker in any OTC Equity Security by entering proprietary quotations or indications of interest in an inter-dealer quotation system.

⁹ 15 U.S.C. § 78o-3(b)(6) (1988).

¹⁰ 15 U.S.C. § 78q-1(a) (1988).

¹¹ On October 6, 1993, the Commission adopted Rule 15c6-1 under the Act, which establishes three business days after the trade date instead of five business days as the standard settlement timeframe for most broker-dealer transactions. Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 (release adopting Rule 15c6-1). On November 16, 1994, the Commission changed the

generally achieves locked-in trades within minutes of an execution, the NASD believes the ability to comply with the shorter time constraints necessitated by T+3 settlement will be enhanced. Accordingly, the NASD proposes to amend its rules governing ACT to accommodate the access of West Canada to ACT.¹²

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

The NASD believes that the proposed rule change will not 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

Comments were neither solicited nor received.

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

Within thirty-five 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 ninety 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 NASD 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 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

effective date of Rule 15c6-1 from June 1, 1995, to June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

¹² Access to the ACT Service desk, however, will continue to be limited to NASD member firms. The ACT Service desk allows input into ACT by those firms that do not have direct access to ACT, or by direct participant's of ACT that are having trouble with their own system.

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 No. SR-NASD-94-55 and should be submitted by February 17, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹³

Jonathan G. Katz,

Secretary.

[FR Doc. 95-2073 Filed 1-26-95; 8:45 am]

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[Release No. 34-35258; File No. SR-Phlx-94-15]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Limited Registration/Floor Member Registration Status and the Use of the Series 7A Examination

January 20, 1995.

On October 3, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 604, Registration and Termination of Registered Representatives, to adopt a limited registration provision applicable to persons conducting a professional customer business from the Phlx trading floor and to adopt the *Content Outline for the Examination Module for Floor Members Engaged in Public Business with Professional Customers* ("Content Outline"). The Exchange also proposes to adopt a requirement that persons conducting functions customarily performed by a registered representative must register and be qualified pursuant to Phlx Rule 604.

The proposed rule changes were published for comment in Securities Exchange Act Release No. 35055 (December 7, 1994), 59 FR 64452 (December 14, 1994). No comments were received on the proposals. This order approves the proposed rule changes.

I. Proposal

Phlx Rule 604, Registration and Termination of Registered Representatives, currently requires every registered representative of a member or participant organization to be registered with and approved by the Phlx. The Phlx proposes to amend Rule 604 to clarify that not only registered representatives, but also persons conducting functions customarily performed by a registered representative must register and be qualified pursuant to Phlx Rule 604.³ The Exchange seeks to clarify this requirement by adopting a specific provision in Rule 604(a) which would expressly state that conducting a public business requires registration pursuant to the General Securities Registered Representative ("Series 7") Examination.⁴

In addition to amending Rule 604(a), the Exchange seeks to adopt a new paragraph (c) of Rule 604 to permit a limited registration for persons conducting a professional customer business from the Phlx trading floor. In lieu of full registration as a registered representative, the proposed limited registration would apply to accepting orders from professional customers only, as defined in proposed Rule 604(c)(i).⁵ Limited registration/floor members would be required to register as such with the Exchange and pass an examination.⁶ This examination, a subset of the Series 7 Examination,

³The Exchange notes that its members who are also NYSE members, for example, are currently subject to the NYSE's registration provisions; "Phlx-only" members would now be subject to a corresponding provision.

⁴The Series 7 Examination is an industry-wide qualification examination for persons seeking registration as general securities representatives. The Commission recently approved a proposed rule change that updated the Series 7 Examination. Securities Exchange Act Release No. 34853 (October 18, 1994), 59 FR 53694.

⁵The proposal would define a professional customer to include: a bank, trust company, insurance company, investment trust, state or political subdivision thereof, charitable or nonprofit educational institution regulated under the laws of the United States, or any state, or pension or profit sharing plan subject to ERISA or of an agency of the United States or of a state or political subdivision thereof or any person who has, or has under management, net tangible assets of at least sixteen million dollars. For purposes of this definition of professional customer, the term "person" shall mean the same as that term is defined in Phlx Rule 20, except that it shall not include natural persons.

⁶The Exchange will use the Series 7A Examination that was approved in SR-NYSE-93-10 (Securities Exchange Act Release No. 32698 (July 29, 1993), 58 FR 41539). The Series 7A Examination for Phlx members will be administered by the New York Stock Exchange, Inc. ("NYSE"). Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, Phlx and Elisa Metzger, Senior Counsel, Office of Market Supervision, Division of Market Regulation, SEC, on December 5, 1994.

would be tailored toward the professional customer business being conducted, testing knowledge required to conduct such a business. The advantage of such an examination is that it would cover important topics relevant to conducting a professional customer business, but not knowledge particular to conducting a retail business. The Content Outline details the topics contained in the examination: federal and state securities laws; general characteristics of equity securities and corporate bonds; conduct respecting customer accounts; primary and secondary securities markets; and order execution, confirmation, settlement and recordkeeping.

II. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Sections 6(b)(5) and 6(c)(3)(B) of the Act.⁷ Section 6(b)(5) requires, among other things, that the rules of an exchange be 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. Section 6(c)(3)(B) provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

The Commission also believes that the proposed rule changes are consistent with Section 15(b)(7) of the Act⁸ which stipulates that prior to effecting any transaction in, or inducing the purchase or sale of, any security, a registered broker or dealer must meet certain standards of operational capability, and that such broker or dealer (and all natural persons associated with such broker or dealer) must meet certain standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.

The Commission also believes that the amendment to Rule 604(a) will clarify

⁷ 15 U.S.C. § 78f(b)(5) and (c)(3)(B) (1988).

⁸ 15 U.S.C. § 78o(b)(7) (1988).

¹³ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1991).