

[Release No. 34-36008; File No. SR-NSCC-95-08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding a Technical Correction to its Fee Schedule

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 5, 1995, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-95-08) 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 comment 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 proposed rule change makes a technical correction to NSCC's fee schedule to include a fee inadvertently deleted when changes were made to NSCC's rules and fees to accommodate three day settlement of securities transactions ("T+3").

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 such statements.²

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

Prior to the recent amendments to its rules and fees to accommodate T+3 settlement, NSCC's fee structure had a category labeled Basket Trades in the Trade Comparison and Recording Fee section and a separated basket fee in the Pass Through and Other Fees section. Within the Trade Comparison section, NSCC had two charges, a \$30 charge for

the processing of baskets (*i.e.* processing of a basket includes such things as the bursting of the basket into the underlying security components) and a \$10 charge for the processing of mini baskets. The \$30 fee category also was used to charge members for the creation and redemption of index receipts. The fee schedule also had a separate charge of \$125 per month which covered the production of the composition file for baskets and index receipts. When NSCC revised its rules and fees for T+3, it deleted references to and fees for baskets because NSCC does not process these items any longer. This resulted in the unintentional deletion of the fee category used for the creation and redemption of index products. It did not delete the \$125 charge for the production of a composition file for baskets.

The purpose of the proposed rule change is to restore and to rename the \$30 fee that NSCC charges to process index receipts (*i.e.*, to accept creation and redemption instructions) and to rename the fee associated with the production of the composition file. The new names will reflect the fact that the fees are for services provided in connection with index receipts.

The proposed rule change is consistent with Section 17A(b)(3)(D)³ of the Act, as amended, which requires that the rules of a registered clearing agency provide for the equitable allocation of reasonable fees for the services which it provides to participants.

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

NSCC does not perceive that the proposed rule change will have an impact on or impose a 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 have been solicited or received. NSCC will notify the Commission of any written comments received.

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

The foregoing rule change has become effective on filing pursuant to Section 19(b)(3)(A)(ii)⁴ of the Act and pursuant to Rule 19b-4(e)(2)⁵ in that the proposed rule change establishes or

changes a due, fee, or other charge imposed by NSCC. At any time within sixty days of the filing of this 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.

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 submissions, 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, N.W., Washington D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal offices of NSCC.

All submissions should refer to File No. SR-NSCC-95-08 and should be submitted by August 21, 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. 34-36019; File No. SR-NYSE-95-16]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment to a Proposed Rule Change Relating to the Options Market Maker Exemption From the NASD Short Sale Bid Test for Certain Merger and Acquisition Securities

July 24, 1995.

I. Introduction

On April 21, 1995, the New York Stock Exchange, Inc. ("NYSE" or

¹ 15 U.S.C. 78s(b)(1) (1988).

² The Commission has modified parts of these statements.

³ 15 U.S.C. 78q-1(b)(3)(D) (1988).

⁴ 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

⁵ 17 CFR 240.19b-4(e)(2) (1994).

⁶ 17 CFR 200.30-3(a)(12) (1993).

"Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal to extend the market maker exemption from the NASD's bid test rule to Nasdaq National Market ("Nasdaq/NM" or "NM") securities involved in merger and acquisition ("M&A") transactions. The proposed rule change was published for comment and appeared in the **Federal Register** on May 10, 1995.³ On May 31, 1995, the NYSE filed Amendment No. 1 to its proposal.⁴ This order approves the proposal, as amended.

II. Description of the Proposal

In November 1994, the Commission approved proposals submitted by the options exchanges concerning a market maker exemption⁵ to the NASD bid test rule⁶ applicable to short sales of NM securities traded through Nasdaq. The Exchanges' proposals were approved on a temporary basis to remain in effect concurrently with the NASD's bid test rule pilot program.⁷

The NYSE's market maker exemption from the NASD short sale rule is codified as Rule 759A. NYSE Rule 759A allows each exchange options specialist and Competitive Options Trader ("COT") to rely on the NASD's options market maker exemption to effect short sales in Nasdaq/NM securities at or

below the best bid when the displayed bid is below the preceding best bid if the short sale qualifies as an "exempt hedge transaction."⁸ The NYSE now proposes to expand the definition of "exempt hedge transaction" to include certain short sales in M&A securities, defined as the securities of a company that is a party (or a prospective party) to a publicly announced M&A with an issuer of a Nasdaq/NM security that underlies an Exchange-listed option.⁹ Specifically, exempt hedge transactions would include short sales in M&A securities effected by a qualified Exchange options market maker to hedge, and which in fact serves to hedge, an existing or prospective position¹⁰ in an Exchange-listed option overlying an NM security of another company that is a party to the M&A.¹¹ Thus, with respect to an Exchange options specialist, the exemption would apply to short sales of a company that is a party to an M&A with a company whose Nasdaq/NM security underlies a speciality stock option; with respect to a COT, the exemption would apply to short sales of a company that is a party to an M&A with a company whose Nasdaq/NM security underlies an Exchange-listed stock option.

Finally, the Exchange's proposal effects certain minor technical changes to the wording of its Rule 759A.

⁸The NYSE currently defines an "exempt hedge transaction," in relevant part, as a short sale in an NM security effected to hedge, and which in fact serves to hedge, an existing offsetting options position or an offsetting options position that was created in one or more transactions contemporaneous with the short sale. See NYSE Rule 759A(a)(i).

⁹Proposed NYSE Rule 759A(ii).

¹⁰A "prospective position" refers to a position that might be created as the result of specific, communicated indications of interest that the specialist or COT has initiated prior to the hedge transaction.

¹¹The NASD provides an exemption from the bid test rule for risk arbitrageurs (and other NASD members) who take positions in stocks involved in M&A transactions. See Securities Exchange Act Release No. 34277, *supra* note 6. The NASD short sale rule states that once an M&A has been publicly announced, a qualified market maker in one of the two affected securities may immediately register as a qualified market maker in the other M&A security. See NASD Rules, Article III, § 48(1)(3)(iii). Consequently, such a market maker may rely on the market maker exemption for short sales of the other M&A security.

Recently, the Amex, CBOE, and PSE amended their respective rules to extend the market maker exemption from the bid test rule to certain short sales of the stock of a company that is involved in a publicly announced M&A with a company whose stock is a designated Nasdaq/NM security. Securities Exchange Act Release No. 35211 (January 10, 1995), 60 FR 3887. A "designated NM security" is an NY security which the market maker has designated as qualifying for the bid test exemption. See *e.g.*, CBOE Rule 15.10(c)(2)(B).

III. Discussion

The Commission believes that the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission believes the Exchange's proposal is consistent with the requirements of Section 6(b)(5) of the Act¹² in that it is designed to remove impediments to, and perfect the mechanism of, a free and open market, and to protect investors and the public interest.

The Commission approved the NASD's short sale rule on a temporary basis on June 29, 1994.¹³ In so doing, the Commission stated that the short sale rule, together with the market maker exemption, is a reasonable approach to regulating short sales of Nasdaq/NM securities. The Commission believes that the Exchange's proposal is consistent with the NASD's bid test rule and addresses the limitations established by the NASD concerning the applicability of the market maker exemption.

Specifically, the Exchange's proposal is designed to extend the market maker exemption to the stock of a company that is involved in a publicly announced M&A with a company whose stock is designated Nasdaq/NM security. The Commission believes that when a designated Nasdaq/NM security becomes involved in an M&A, options specialists and COTs may need to hedge positions in options overlying such a designated Nasdaq/NM security by buying or selling the securities of the other company involved in the M&A, whether or not the other company's stock has listed overlying options. Indeed, where there are no options on the other company's stock, buying or selling that company's stock at times may be the only feasible way for an options specialist or COT to hedge positions in options on the designated Nasdaq/NM security, given the risk arbitrage relationship that is likely to exist between the two stocks. Therefore, the Commission believes that by allowing options specialists and COTs to sell short, for hedging purposes, shares of a company that is involved in an M&A with a company whose stock is a designated Nasdaq/NM security, and by designating such sales as bid test exempt, the Exchange's proposal will enhance the ability of its options specialists and COTs to perform their market making functions, thereby

¹² 15 U.S.C. § 78f(b)(5) (1988).

¹³ Securities Exchange Act Release No. 34277, *supra* note 6.

¹ 15 U.S.C. 78s(b)(1)(1988).

² 17 CFR 240.19b-4 (1994).

³ See Securities Exchange Act Release No. 35672 (May 4, 1995), 60 FR 24942.

⁴ In Amendment No. 1, the Exchange modifies its proposal to clarify that to qualify as an exempt hedge transaction, a short sale in an M&A security must in fact serve to hedge a market maker's position. In addition, Amendment No. 1 includes a revised *Exhibit 1* that incorporates certain non-substantive language inadvertently omitted from the original filing. Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Francois Mazur, Staff Attorney, Division of Market Regulation, Commission, dated May 26, 1995 ("Amendment No. 1").

⁵ Securities Exchange Act Release No. 34632 (September 2, 1994), 59 FR 46999 (approving proposals by the American Stock Exchange, Inc. ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), NYSE, Pacific Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc.).

⁶ The NASD bid test rule prohibits broker-dealers from effecting short sales, for themselves or their customers, at or below the "bid" when the current "inside" or best bid is below the previous inside bid. NASD Rules of Fair Practice ("NASD Rules"), Art. III, § 48. See Securities Exchange Act Release No. 34277 (June 6, 1994), 59 FR 34885 (amending the NASD Rules to add the short sale rule). The NASD bid test rule is also referred to as the "short sale rule."

⁷ See Securities Exchange Act Release No. 34632, *supra* note 5. The Commission approved the NASD's short sale rule on an eighteen month temporary basis, effective September 6, 1994, through March 5, 1996. *Id.*

contributing to the liquidity of the market for options, as well as the liquidity of the market for the stocks of both companies.

The Commission notes that the proposed extension of the market maker exemption from the short sale rule is limited to publicly announced M&As. Moreover, the Exchange's options specialists and COTs may avail themselves of the M&A extension to the exemption only if the short sales are made to hedge existing or prospective positions in Exchange-listed options on a security of another company involved in the M&A, and the short sales are or will be "exempt hedge transactions" as defined by the Exchange.¹⁴

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 states that to qualify as an exempt hedge transaction, a short sale in a Nasdaq/NM security must in fact serve to hedge an overlying options position. Amendment No. 1 also includes certain non-substantive language inadvertently omitted from the original filing.

The Commission believes that these changes serve to clarify the Exchange's proposal and make it consistent with the provisions of the other Exchanges relating to the market maker short sale exemption for certain M&A securities. Accordingly, the Commission believes the Amendment raises no new or unique regulatory issues. Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act¹⁵ to approve Amendment No. 1 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. 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 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 will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-95-16 and should be submitted by August 21, 1995.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (File No. SR-NYSE-95-16), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36013; File No. SR-PHILADEP-95-04]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

July 24, 1995.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on July 10, 1995, the Philadelphia Depository Trust Company ("Philadep") 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 Philadep. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

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

Philadep is filing the proposed rule change in order to revise, consolidate, and restate its published schedule of fees and charges (attached as Exhibit 1).

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

In its filing with the Commission, Philadep 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. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

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

The purpose of the proposed rule change is to revise, consolidate, and restate Philadep's published schedule of fees and charges. It has been nearly four years since Philadep filed a comprehensive fee schedule. Philadep has adjusted the graduated Legal Deposit Fees to reflect a new tier of volume related discounts which provides that Philadep participants with monthly legal deposits of 2,501 to 3,000 will be charged a flat rate of \$3.50 per deposit and that Philadep participants having monthly legal deposits of 3,001 or more will be charged at flat rate of \$2.75 per deposit.³ Philadep believes these fees will be highly competitive and will encourage current and prospective Philadep participants to increase their use of this service. Philadep also has consolidated and restated all other existing fees and charges and hereafter annually will file a comprehensive schedule of fees and charges.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among Philadep's participants.

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

Philadep does not perceive any burdens on competition as a result of the proposed rule change.

² The Commission has modified the text of the summaries prepared by Philadep.

³ Previously, Philadep participants were charged \$3.50 for every deposit over 2,500.

¹⁴ See *supra* note 8.

¹⁵ 15 U.S.C. 78f(b)(5) and 78s(b)(2) (1988).

¹⁶ 15 U.S.C. 78s(b)(2) (1988).

¹⁷ 17 CFR 200.30-3(a)(12) (1994).

¹⁸ 15 U.S.C. 78s(b)(1) (1988).