

grammatical and technical errors in Rule 4613(e) that must be fixed.

First, Nasdaq is changing the acronym "MMID" to "MPID" to be consistent with its use of those terms throughout the rules governing usage of the SuperMontage system. Second, Nasdaq is replacing references to "messages" to "orders" or "Directed Orders," as appropriate. This change makes consistent the use of such terms across NASD Rule 4613(e)(1). In addition, Nasdaq is adding the word "for" when describing the minimum number of shares for which a Trade or Move Directed Order is required to be sent. Finally, Nasdaq is changing Rule 4613(e)(1)(c)(ii)(a) to reflect that an ECN that wishes to lock or cross the market between 9:20:00 and 9:29:29 must send a Trade or Move Directed Order. The current rule language erroneously indicates that ECNs are obligated to send such Directed Orders up until 9:29:59. This technical change conforms the rule to the clear intent of SR-NASD-2002-56, which was approved on August 23, 2002.<sup>5</sup>

## 2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with section 15A of the Act in general,<sup>6</sup> and section 15A(b)(6) of the Act in particular,<sup>7</sup> in that the proposal 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. Nasdaq believes that the proposed rule change, as amended, should enhance the interaction of the Trade or Move Rule with the SuperMontage opening, and that such enhancements would ensure a smooth opening of daily trading for the ultimate benefit of investors.

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

Nasdaq does not believe that the proposed rule change, as amended, will impose 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*

No written comments were either solicited or received.

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

The foregoing proposed rule change, as amended, (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate. The proposed rule change, as amended, has therefore become effective pursuant to section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder.

Nasdaq has requested that the Commission waive the usual five-day notice and 30-day pre-operative waiting periods. The Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date and to waive the five-day notice period since the proposed rule change, as amended, makes only technical corrections to the rule text. For these reasons, the Commission designates the proposal, as amended, to be effective and operative upon filing with the Commission.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, as amended, 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.<sup>11</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> For purposes of determining the effective date and calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on October 21, 2002, the date Nasdaq filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C). For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

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 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-2002-137 and should be submitted by November 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46720; File No. SR-NSCC-2002-03]

### **Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Revising the Fee Schedule**

October 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 30, 2002, 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 persons.

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

The proposed rule change will establish a base participation fee for NSCC participants using NSCC's Mutual Fund Services Profile 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

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

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

<sup>5</sup> See Securities Exchange Act Release No. 46410 (August 23, 2002), 67 FR 55897 (August 30, 2002).

<sup>6</sup> 15 U.S.C. 78o-3.

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

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.<sup>2</sup>

*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 establish a base participation fee for NSCC participants using NSCC's Mutual Fund Services Profile service ("Profile service").<sup>3</sup> The Profile service was introduced in 1997 and in 2000 was made accessible through the internet via NSCC's PC WebDirect system. Since its introduction, NSCC has provided the service without charge.

However, consistent with its goal to align fees with costs and to reflect the numerous enhancements that NSCC has made to the service, NSCC is establishing a Profile membership fee payable by the users of the service. Accordingly, participating settling members and fund members will now be charged a \$325 monthly membership fee to use the Profile service, regardless of usage.<sup>4</sup> This fee was effective July 1, 2002.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

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

NSCC does not believe 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 relating to the proposed rule change have been

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

<sup>3</sup> The Profile service is a data base system that enables mutual fund industry participant to exchange accurate and timely information on daily prices and dividend rates, firm and fund members, individual security identifications and processing capabilities, and projected and actual distribution declarations.

<sup>4</sup> Because the Profile service is not a transaction-based execution system but rather an informational data base resource, NSCC believes that a monthly usage fee is the most practical way to allocate the costs of the service.

solicited or received. NSCC has notified participants who use the Profile service of the new fee charges and will notify the Commission of any written comments it receives.

**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) of the Act<sup>5</sup> and Rule 19b-4(f)(2)<sup>6</sup> thereunder because the proposed rule change is changing a due, fee, or other charge. At any time within sixty days of the filing of such 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the rule proposal that are filed with the Commission, and all written communications relating to the rule proposal 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 Room in Washington, DC. Copies of such filing will also be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR-NSCC-2002-03 and should be submitted by November 22, 2002.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

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

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

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

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46721; File No. SR-Phlx-2002-63]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Increase Maintenance and Transfer Registration Fees for Registered Representatives**

October 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 15, 2002, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") submitted to 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 Phlx. 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 Phlx, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes to amend its schedule of dues, fees and charges to increase from \$50.00 to \$55.00 both the maintenance and transfer registration fees for registered representatives.<sup>5</sup> The initial registered representative registration fee will remain at \$55.00.<sup>6</sup> In addition, the Exchange proposes to make a minor change to its schedule of dues, fees and charges by changing the word "Maintenance" that appears under Registered Representative Registration to "Renewal."

The proposed fee of \$55.00 for maintenance and transfer registration for registered representatives will apply to 2003 registered representative registrations.<sup>7</sup> Consistent with current

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

<sup>5</sup> These fees are not eligible for the monthly credit of up to \$1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR-Phlx-2001-49).

<sup>6</sup> See Securities Exchange Act Release No. 44947 (October 17, 2001), 66 FR 53822 (October 24, 2001) (SR-Phlx-2001-90).

<sup>7</sup> Registered representative categories include registered options principals, general securities representatives, general securities sales supervisors and United Kingdom-limited general securities registered representatives.