

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

1. Purpose

The Exchange has entered into a license agreement to use various indexes and trademarks of Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P"), in connection with the listing and trading of options on certain Select Sector SPDR Funds. The purpose of this proposed rule change is to adopt a fee for trading in three of these options that the Exchange has listed.⁴ The ISE believes that charging the participants that trade in options on these instruments is the most equitable means of recovering the costs of the license. However, because competitive pressures in the industry have resulted in the waiver of all transaction fees for customers, we propose to exclude Public Customer Orders (as defined in Exchange Rule 100) from this additional fee. This additional fee will only be charged with respect to non-Public Customer Orders.

For example, if broker A has a Public Customer Order that broker A gives to broker B (an ISE electronic access member) to execute on the ISE, broker B will not be charged the proposed \$.10 fee. On the other hand, if broker A gives broker B (an ISE electronic access member) an order for the account of broker A (or another broker-dealer), broker B will be charged the \$.10 fee.⁵

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(4) of the Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.⁶

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁴ The proposed fee will apply to options on the Financial Select Sector SPDR Fund ("XLF"), Technology Select Sector SPDR Fund ("XLK") and Utilities Select Sector SPDR Fund ("XLU"). Telephone conversation between Joseph W. Ferraro, Assistant General Counsel, ISE, and Jennifer Colihan, Special Counsel, Division, Commission, January 16, 2003.

⁵ Telephone conversation between Joseph W. Ferraro, Assistant General Counsel, ISE, and Jennifer Colihan, Special Counsel, Division, Commission, January 16, 2003.

⁶ 15 U.S.C. 78f(b)(4).

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective immediately pursuant to section 19(b)(3)(A)(ii) of the Act⁷ and rule 19b-4(f)(2) thereunder.⁸ At any time within 60 days of the filing of such 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, including whether the proposed rule change 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 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. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 21, 2003.

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 19b-4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47206; File No. SR-NSCC-2002-10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Modification of Fixed Income Transaction System in Preparation for the Implementation of Real Time Trade Processing

January 16, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice is hereby given that on November 5, 2002, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-2002-10) 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

NSCC proposes to modify its Trade Comparison Service rules to modify its Fixed Income Transaction System ("FITS") in order to begin the move to real time trade matching processing ("RTTM") for fixed income securities that are eligible for processing by NSCC.

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,

¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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

RTTM³ was implemented by the Government Securities Clearing Corporation ("GSCC"), an NSCC affiliate, in the fourth quarter of 2000 for the processing of government securities. It was designed with a vision to also use the platform for other fixed income securities. Once RTTM was deployed for government securities, GSCC and MBS Clearing Corporation ("MBSCC") worked together to adapt RTTM to support the requirements of mortgage-backed securities and was implemented by MBSCC on September 27, 2002. The next logical extension of RTTM is its further adaptation for fixed income securities that are eligible for processing by NSCC. NSCC currently plans to implement RTTM for corporate bonds, municipal bonds, and Unitary Investment Trusts ("UIT") in the fourth quarter of 2003. RTTM will eventually replace NSCC's current FITS.

One of NSCC's main objectives will be to ensure an orderly transition to RTTM. In order to prepare participants for the new RTTM functionality, NSCC proposes that certain modifications be made to FITS during March 2003. These modifications will enable participants to become familiar with RTTM-type processing. In addition, some lesser-utilized FITS functionality that will not be incorporated into RTTM will be eliminated from FITS. The proposed modifications have been endorsed by the RTTM Working Group, which consists of representatives of participants who maintain key positions in The Bond Market Association, the Securities Industry Association, and the Regional Municipal Operations Association.

The following is a summary of the proposed modifications to FITS:

- FITS will automatically compare a trade even if the counterparties submit data on the trade in different pieces, a process known as "trade summarization."⁴

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

³ RTTM provides firms with the ability to compare trades shortly after execution. It will facilitate Straight Through Processing by utilizing a single pipeline with one communications link for all fixed income products. Standardized message formats are utilized for all inbound and outbound interactive transmissions.

⁴ For example, Firm A submits one trade for \$30 million and Firm B "breaks down" the trade into three \$10 million pieces. Alternatively, Firm A and Firm B may execute five separate trades each worth

- Except for trades where the settlement date is the same business day as or the business day after the trade date,⁵ FITS will be modified to accept (instead of reject) trade submissions with a contractual settlement date of the day of input or of prior dates and will automatically assign a settlement date of the next business day to the trades.

- Corporate bond trades in quantities of other than multiples of a thousand (round-lots) must be divided into separate data submissions of the round lot quantity and the odd-lot quantity (multiples of less than one thousand).

The following is a summary of functions that NSCC proposes to eliminate from FITS:

- Demand As Of processing.⁶
- One Sided Deletes for compared, secondary market municipal security trades. In order to delete these trades, both counterparties will be required to submit Withholds that match in all respects.⁷
- Trade Submit and Carry Forward Totals will not be reported on the Supplemental and Added Trade Contracts.
- Regular Way Extended Settlement Carry Forward Totals.⁸

Along with these proposed changes, NSCC proposes to change the current cutoff time for trade submission and will require the submission of certain additional trade data.⁹ Finally, NSCC wishes to make a technical correction to the use of the term "business day" in its rules. During the preparation of this filing, NSCC realized that the use of upper and lower case letters for the term is inconsistent in the rules. In order to carry out the intention of the drafters of the rules, NSCC proposes that each use of the term throughout its rules be "business day" (lower case) as specified

\$10 million. Firm A submits each trade separately while Firm B "bunches" the five trades into one \$50 million piece. In both of these examples, the trades will be compared.

⁵ NSCC will continue to reject trades where the settlement date is the same business day as or the business day after the trade date regardless of the date of submission.

⁶ The As Of capability will still be available to compare trades that do not initially compare in FITS. The As Of capability requires the submission by each counterparty of data that matches in all respects whereas the Demand As Of capability permitted a trade to be "force compared" on the submitter's terms even if the counterparty did not respond.

⁷ One Sided Deletes functionality will be retained for syndicate takedown transactions and for uncomparable municipal bond, corporate bond, and UIT trades.

⁸ Carry Forward Totals will be retained on New Issue Contracts.

⁹ The details for these technical changes can be found in Exhibit C to NSCC's proposed rule change, which is an important notice that was distributed to NSCC's participants on October 2, 2002.

in the definition of that term in NSCC rule 1–1.

NSCC believes that the proposed rule change is consistent with the provisions of the Act and the rules and regulations thereunder because it would prepare its participants for the new RTTM functionality that will enable NSCC to process trades in the efficient manner that is currently utilized by GSCC and MBSCC in connection with other fixed-income trades.

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 solicited or received. NSCC will notify the Commission of any written comments it receives.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or such longer period (i) as the Commission may delegate up to ninety days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization 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, NW., Washington, DC 20549–0069.

Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-NSCC-2002-10. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements

with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with 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-2002-10 and should be submitted by February 21, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47245; File No. SR-Phlx-2002-88]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Equity Transaction Charge

January 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on December 31, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. 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 Exchange proposes to amend its schedule of dues, fees and charges to clarify the definition of a trade that utilizes the Phlx's Automated Communication and Execution System ("PACE") as it relates to the imposition of the Exchange's equity transaction

value charge.³ Currently, the Exchange's equity transaction value charge is assessed based on total shares per transaction,⁴ with the exception of specialist trades and PACE trades.⁵ The Exchange proposes to define with greater specificity a PACE trade in order to clarify the imposition of the equity transaction value charge, as it relates to PACE trades only.

First, the Exchange proposes to clarify that the equity transaction value charge applies in situations where an order, after being delivered to the Exchange by the PACE system, is executed by way of an outbound Intermarket Trading System ("ITS") commitment,⁶ when such outbound ITS commitment reflects the PACE order's clearing information (and not the specialist's clearing information).⁷ In this situation, the trade is not considered to be a PACE trade for purposes of the equity transaction value charge and thus, becomes subject to this charge.

Secondly, the Exchange proposes to clarify that the equity transaction value charge does not apply where a PACE trade was executed against an inbound ITS commitment. The execution (on the Phlx) against an inbound ITS commitment is considered a PACE trade and therefore, the equity transaction value charge does not apply to these transactions.

Thirdly, the Exchange proposes to rebate to any members who were charged an equity transaction value charge for PACE trades that were executed against an inbound ITS commitment for the months of September, October, November and December 2002.

Lastly, the Exchange proposes to rename the title of the "equity transaction value charge" to the "equity transaction charge," (hereinafter referred to as "equity transaction charge") because it is now a share-based charge and not a value-based charge.

³ PACE is the Exchange's order routing, delivery, execution, and reporting system for its equity-trading floor. See Exchange rules 229, Philadelphia Stock Exchange Automated Communication and Execution System, and 229A, Operation of PACE System When Competing Specialists Are Trading.

⁴ See Securities Exchange Act Release No. 46874 (November 21, 2002), 67 FR 71226 (November 29, 2002).

⁵ See Securities Exchange Act Release No. 44381 (June 1, 2001), 66 FR 31264 (June 11, 2001).

⁶ The ITS means the application of the System that permits intra-day trading in Eligible Listed Securities between Participant markets as set forth in the ITS Plan. See Exchange rule 2001, Intermarket Trading System.

⁷ If the outbound ITS commitment reflects the specialist's clearing information, the equity transaction value charge does not apply because it does not apply to specialist trades.

The text of the proposed rule change is available at the principal offices of the 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, the Exchange included statements concerning the purpose of, and the 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 Exchange 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

1. Purpose

The purpose of the proposed rule change is to clarify the Exchange's Summary of Equity Charges as it relates to the Exchange's equity transaction charge. The Exchange believes that not charging members the equity transaction charge for PACE trades that are executed against an inbound ITS commitment should encourage greater use of the PACE system, which in turn should promote a more active and liquid equities market. Also, this clarification should help to avoid any member confusion.

The Exchange believes that, for the purposes of this fee, a PACE trade executed by way of an outbound ITS commitment, when such ITS commitment reflects the PACE order's clearing information, does not receive a PACE execution, and therefore the equity transaction charge should apply.⁸

Previously, the Exchange's billing system charged an equity transaction value charge for PACE trades executed against an inbound ITS commitment due to the difficulties in identifying executions of orders in this manner. Due to advances in billing, the Exchange can now more readily identify PACE trades that are executed against inbound ITS commitments. The Exchange believes that by not charging an equity transaction value charge and by providing a rebate, as described above, for the months of September through

⁸ Charging an equity transaction charge for PACE orders sent over ITS with the PACE order's clearing information attached is consistent with the Exchange's Outbound ITS Fee. See Securities Exchange Act Release No. 45388 (February 4, 2002), 67 FR 6310 (February 11, 2002).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.