

### 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 within such longer period (i) as the Commission may designate up to 90 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 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, 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 No. SR-NASD-2006-035 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-035. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. 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-NASD-2006-035 and should be submitted on or before April 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-4434 Filed 3-27-06; 8:45 am]

**BILLING CODE 8010-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53531; File No. SR-NASD-2006-008]

#### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change to Re-establish a Fee Pilot for National Quotation Data Service**

March 21, 2006.

On January 24, 2006, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to reinstate its pilot program, which reduced the monthly fee that non-professional users pay to receive National Quotation Data Service ("NQDS"), retroactively to September 1, 2005.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on February 15, 2006.<sup>4</sup> The

<sup>6</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> Since August 22, 2000, Nasdaq has operated a pilot to reduce from \$50 to \$10 the monthly fee that non-professional users pay to receive NQDS data. Nasdaq inadvertently let the pilot lapse on September 1, 2005, until January 24, 2006. This filing reinstates the pilot retroactively to September 1, 2005, thereby reflecting the fact that the pilot was in place at that time. See Securities Exchange Act Release Nos. 43190 (August 22, 2000), 65 FR 52460 (August 29, 2000) (notice of filing and order granting accelerated approval of NASD-00-47); 44788 (September 13, 2001), 66 FR 48303 (September 19, 2001); 46446 (August 30, 2002), 67 FR 57260 (September 9, 2002); 48386 (August 21, 2003), 68 FR 51618 (August 27, 2003); and 50318 (September 3, 2004), 69 FR 54821 (September 10, 2004).

<sup>4</sup> See Securities Exchange Act Release No. 53254 (February 8, 2006), 70 FR 8027 (SR-NASD-2006-008).

Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with Section 15A of the Act<sup>5</sup> and the rules and regulations thereunder.<sup>6</sup> Specifically, the Commission finds the proposal to be consistent with Section 15A(b)(5) of the Act,<sup>7</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members. The pilot lowers the monthly fee for non-professionals to receive NQDS from \$50 to \$10 a month. The Commission notes that the NQDS feature provides a mechanism to allow access to market data that is relevant to investors when they make financial decisions and that it does not unfairly discriminate between customers, issuers, brokers or dealers.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NASD-2006-008), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-4436 Filed 3-27-06; 8:45 am]

**BILLING CODE 8010-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53528; File No. SR-NSCC-2005-15]

#### **Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Relating To Buy-Ins in Its Continuous Net Settlement System**

March 21, 2006.

### I. Introduction

On December 1, 2005, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-2005-15 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on

<sup>5</sup> 15 U.S.C. 78o3.

<sup>6</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78o(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

December 27, 2005.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

## II. Description

The purpose of this filing is to modify NSCC's Rules with regard to CNS Buy-Ins in an effort to harmonize the buy-in rules of the industry and to assist NSCC members in reducing their exposure related to buy-ins. At the request of participants and after consultation with the Buy-In Subcommittee of the Securities Industry Association, NSCC is modifying its Rules to create a new buy-in retransmittal procedure that may be utilized by NSCC members receiving buy-in notices initiated outside of the CNS System.<sup>3</sup> Existing NSCC fees related to CNS Buy-Ins will remain unchanged.

### *Current Process for CNS Buy-Ins*

Currently under NSCC's Rules (except with respect to securities subject to a voluntary corporate reorganization), a member having a long position at the end of any day ("Originator") may submit to NSCC a Notice of Intention to Buy-In ("Buy-In Notice") specifying the quantity of securities that it intends to buy-in ("Buy-In Position"). The Buy-In Position is given high priority for allocation from the CNS night cycle on N+1 through completion of the CNS day cycle at approximately 3 p.m. eastern standard time on N+2.<sup>4</sup>

If the Buy-In Position (or a portion thereof) remains unfilled after the evening allocation on N+1, NSCC issues CNS Retransmittal Notices on the following morning allocation (N+1) to a sufficient number of members with short positions. NSCC issues CNS Retransmittal Notices in an aggregate quantity at least equal to the Buy-In Position. In no case will the Buy-In liability of a member exceed the Buy-In Position or the total short position of the member. If several members have short positions with the same age, all such members are issued CNS Retransmittal Notices even if the total of their short position exceeds the Buy-In Position. If the Buy-In Position is not satisfied by 3 p.m. on N+2, the buy-in may be executed.

This current process will remain in effect. Buy-In Notices transmitted by a member which is the original submitter will be referred to as "Original Buy-In Notices."

### *Procedure for CNS Buy-In Retransmittals*

At times, an NSCC member will be in receipt of a buy-in notice initiated outside of the CNS system while at the same time be failing to receive shares from CNS in the same security. Recognizing that such externally initiated buy-ins may expire before the time the expiration period that NSCC's Rules currently provide as the expiration for CNS buy-ins (*i.e.*, the current N+2 expiration), NSCC will utilize a new procedure to permit retransmittals of such buy-ins with an appropriately shortened execution time frame.

Accordingly, the new procedure provides that an NSCC member which has a long position in CNS at the end of any day (*i.e.*, a fail to receive) and which is in receipt of a buy-in notice for securities of the same CUSIP that was initiated outside of the CNS System may submit a "Buy-In Retransmittal Notice" to NSCC. If the Buy-In Position (or a portion thereof) that is the subject of the Buy-In Retransmittal Notice is not satisfied by 3 p.m. on N+1, the buy-in can be executed. The Buy-In Retransmittal Notice will identify the entity that initiated the buy-in against the member.

The differences between a Buy-In Retransmittal Notice and an Original Buy-In Notice are as follows:

- An Original Buy-In Notice refers to a Buy-In Notice transmitted by a member for which the member is the original submitter. A Buy-In Retransmittal Notice refers to a Buy-In Notice submitted by a member where the member has received a buy-in notice outside of the CNS system with respect to securities of the same CUSIP.
- The member submitting a Buy-In Retransmittal Notice receives an elevated priority for CNS allocations upon NSCC's receipt of the notice. The member submitting an Original Buy-In Notice continues to receive elevated priority on the morning of N+1.
- The member submitting a Buy-In Retransmittal Notice is provided with five additional fields to be used to identify the entity or entities that initiated the buy-in against the member. At least one such entity other than the member must be identified or NSCC will reject the Buy-In Retransmittal Notice.
- For Buy-In Retransmittal Notices, NSCC transmits CNS Retransmittal

Notices to CNS short members upon receipt of the Buy-In Retransmittal Notice on N. The CNS Retransmittal Notice identifies both the submitting member and the entity or entities that initiated the buy-in against the member. For Original Buy-In Notices, NSCC continues to transmit CNS Retransmittal Notices to short members on the morning of N+1.

- A buy-in based on a Buy-In Retransmittal Notice may be executed on N+1 if the Buy-In Position (or a portion thereof) is not satisfied by 3 p.m. on N+1. The execution of a buy-in based on an Original Buy-In Notice continues to be at 3 p.m. on N+2.

### *Technical Correction*

In addition to modifying NSCC's Rules and Procedures to reflect the above changes, NSCC is also making technical correction to Procedure X, "Execution of Buy-Ins—CNS System." The procedure states that members that receive CNS Retransmittal Notices and do not satisfy them assume liability for the loss, if any, which occurs as a result of the buy-in and that those members with the oldest short positions after the evening cycle on N+2 will first be held liable for an executed buy-in. Procedure X will now reflect that it is the oldest short positions after the day cycle on N+2 that will first be held liable for an executed buy-in.

### *Implementation*

NSCC plans to implement these changes on a pilot basis open to all members as soon as possible following the Commission's approval of the proposed rule filing. The pilot will be limited to buy-ins of CNS eligible NYSE listed securities. NSCC anticipates that the pilot phase will be completed within thirty calendar days of implementation at which time buy-ins of all other CNS eligible securities will be permitted under these proposed changes. At that time the pilot will cease. NSCC will notify its members by an Important Notice of the specific date on which the pilot will expire and the proposed buy-in procedures are available for use with all CNS eligible securities.

## III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>5</sup> The Commission finds that NSCC's proposed rule change is consistent with this requirement because the buy-in

<sup>2</sup> Securities Exchange Act Release No. 52976 (December 19, 2005), 70 FR 76485.

<sup>3</sup> The specific rules being amended are Rule 11, "CNS System," and Procedures VII, "CNS Accounting Operation," and X, "Execution of CNS Buy-Ins."

<sup>4</sup> The day the Buy-In Notice is submitted to NSCC is referred to as N with N+1 and N+2 referring to the succeeding days. Each CNS day begins in the evening and includes an evening allocation of securities and a daytime allocation of securities.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

retransmittal procedures are designed to harmonize NSCC's buy-in rules with the buy-in rules of other self-regulatory organizations. Harmonization of buy-in rules among self-regulatory organizations should increase the efficiency of the buy-in execution process and should help to promote the prompt and accurate settlement of securities transactions.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (File No. SR-NSCC-2005-15) be and hereby is approved.

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

Nancy M. Morris,  
Secretary.

[FR Doc. E6-4433 Filed 3-27-06; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53529; File No. SR-Phlx-2006-16]

#### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to its Dividend Spread and Merger Spread Program

March 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 24, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") 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 by Phlx. Phlx has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the

Commission. 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

Phlx proposes to: (1) Amend its dividend spread strategy program to assess a \$0.05 per contract side license fee on additional equity option products in connection with dividend spread strategies to recapture license fees associated with the trading of these products; and (2) extend for a period of six months its fee caps on equity option transaction and comparison charges on dividend spread transactions<sup>5</sup> and merger spread transactions,<sup>6</sup> and its \$0.05 per contract side license fee imposed for dividend spread transactions. The current fee caps and \$0.05 per contract side license fee are in effect as a pilot program that expired on March 1, 2006. The Exchange proposes to extend the pilot program for a six-month period until September 1, 2006. The Exchange also proposes to make a minor technical change to delete unnecessary text from its fee schedule and to correct a typographical error.

The text of the proposed rule change is available on Phlx's Web site at <http://www.phlx.com>, at the Office of the Secretary at Phlx, and at the Commission's Public Reference Room.

#### 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 basis for, the proposed rule change and discussed any comments it received on the proposal. 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.

<sup>5</sup> For purposes of this proposal, a "dividend spread" transaction is any trade done within a defined time frame pursuant to a strategy in which a dividend arbitrage can be achieved between any two deep-in-the-money options.

<sup>6</sup> For purposes of this proposal, the Exchange defines a "merger spread" transaction as a transaction executed pursuant to a merger spread strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but different strike prices, followed by the exercise of the resulting long options position, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock.

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

##### 1. Purpose

Currently, the Exchange imposes a fee cap on equity option transaction and comparison charges on merger spread strategy and dividend spread strategy transactions executed on the same trading day in the same options class. Specifically, Registered Options Traders' (ROT's) and specialists' equity option transaction and comparison charges are capped at \$1,750 for transactions effected pursuant to a merger spread strategy or pursuant to a dividend spread strategy when the dividend is \$0.25 or greater. However, for dividend spread transactions for a security with a declared dividend or distribution of less than \$0.25, the ROT's and specialists' equity option transaction and comparison charges are capped at \$1,000 for transactions effected pursuant to a dividend spread strategy executed on the same trading day in the same options class. The fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges.<sup>7</sup>

In addition, the Exchange assesses a license fee of \$0.05 per contract side for dividend spread strategy transactions in options in connection with certain products that carry license fees.<sup>8</sup> The license fee of \$0.05 per contract side: (i) Is not subject to the \$1,750 or \$1,000 caps described above; (ii) is assessed in addition to any other transaction and comparison charges associated with dividend spread strategy transactions; and (iii) does not count towards reaching the \$1,750 or \$1,000 caps. The Exchange proposes to extend the pilot program for the current fee caps and \$0.05 per contract side license fee for a six-month period until September 1, 2006.<sup>9</sup>

<sup>7</sup> Currently, the Exchange provides a rebate for certain contracts executed in connection with transactions occurring as part of a dividend spread or merger spread strategy. Specifically, for those options contracts executed pursuant to a dividend spread or merger spread strategy, the Exchange rebates \$0.08 per contract side for ROT executions and \$0.07 per contract side for specialist executions on the business day before the underlying stock's ex-date. (The "ex-date" is the date on or after which a security is traded without a previously declared dividend or distribution. After the ex-date a stock is said to trade ex-dividend.) See Securities Exchange Act Release No. 51596 (April 21, 2005), 70 FR 22381 (April 29, 2005) (SR-Phlx-2005-19).

<sup>8</sup> These products are listed on the Exchange's fee schedule under the section entitled "\$60,000 'Firm Related' Equity Option and Index Option Cap."

<sup>9</sup> Telephone conversation between Leah Mesfin, Special Counsel, Commission, and Cynthia Hoekstra, Director, Phlx, on March 21, 2006.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

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

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