

2004 or until approval of SR-NASD-2001-90.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act<sup>10</sup> which requires that the NASD have rules that prevent fraudulent and manipulative acts, promote just and equitable principles of trade, foster cooperation and coordination among persons engaged in regulating, clearing, settling, processing information and facilitating transactions in securities, 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. NASD further believes the proposed rule change is consistent with Section 15A(b)(6)<sup>11</sup> because it does not permit unfair discrimination between customers, issuers, brokers, or dealers, fix minimum profits, impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by members, or regulate matters not related to the purposes of the Act or the administration of NASD.

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

Nasdaq does not believe that the proposed rule change will 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

Written comments were neither solicited nor received. Written comments, however, were solicited on proposed rule changes SR-NASD-2001-90 and SR-NASD-2002-28, the underlying rule filings to SR-NASD-2002-97 and SR-NASD-2003-67, and SR-2003-09, respectively. NASD responded to the comments received in response to SR-NASD-2001-90 in its Amendment No. 2 to that filing submitted to the Commission on May 24, 2002. NASD responded to the comments received in response to SR-NASD-2002-28 in its Amendment No. 1 to that filing submitted to the Commission on May 14, 2002.

## 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)

of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4<sup>13</sup> thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of the 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.

NASD has requested that the Commission waive the 30-day operative delay to prevent the current ADF pilot program from lapsing. Under Rule 19-4(f)(6) of the Act, a proposed rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will ensure the uninterrupted operation of the ADF pilot until October 26, 2004. For this reason, the Commission waives the 30-day operative delay and designates the proposal to be immediately effective and operative upon filing with the Commission.<sup>14</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 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. 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-NASD-2004-12. 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, 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 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 the filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR-NASD-2004-12 and should be submitted by February 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49122; File No. SR-NSCC-2003-23]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees

January 23, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 2, 2004, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change 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 parties.

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

The purpose of the proposed rule change is to (i) adjust the fees NSCC charges for trade recording, (ii) establish fees for the Cost Basis Reporting Service, and (iii) eliminate Archival Microfiche fees.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 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>10</sup> 15 U.S.C. 78o-3.

<sup>11</sup> 15 U.S.C. 78o-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 these 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 (i) adjust the fees NSCC charges for trade recording, (ii) establish fees for the Cost Basis Reporting Service, and (iii) eliminate Archival Microfiche fees.

Pursuant to the proposed rule change, the fee for trade recording for each side of each stock, warrant, or other right entered for settlement has been reduced from \$0.003 to \$0.0025 per 100 shares with a minimum fee of \$0.0075 and a maximum fee of \$0.15 (reduced from \$0.009 and \$0.18, respectively). In addition, the fee for use of the Cost Basis Reporting Service, which had been operating on a pilot basis during which no fee was charged, will be \$0.09 per asset. The Archival Microfiche fees have been eliminated because this format is no longer provided due to more preferred alternative means for providing archival reports. Members were notified of the proposed elimination and the alternative means of receiving archival reports in an Important Notice (A #5671, P&S #524) dated August 29, 2003. These proposed fee revisions are consistent with NSCC's overall pricing philosophy to align service fees and underlying cost.

The proposed rule change is consistent with Section 17A(b)(3)(D) of the Act<sup>3</sup> and the rules and regulations thereunder because it allows for the equitable allocation of reasonable dues, fees, and other charges among NSCC's members.

### (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.

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

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

### (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 received by NSCC.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2)<sup>5</sup> thereunder because the proposed rule establishes or changes 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, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NSCC-2003-23. 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, 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 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 20549-0609. Copies of such filing also will be available for

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

inspection and copying at the principal office of NSCC and on NSCC's Web site at [www.NSCC.com/legal/](http://www.NSCC.com/legal/). All submissions should refer to File No. SR-NSCC-2003-23 and should be submitted by February 24, 2004.

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

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49123; File No. SR-NSCC-2003-11]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Criteria Used To Place Members on Surveillance Status and To Eliminate Member and Applicant Financial Responsibility and Operational Capability Questionnaires

January 23, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 27, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on June 17, 2003, and September 15, 2003, amended the proposed rule change 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 parties.

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

NSCC is seeking to amend the criteria it uses to place members on surveillance status and to eliminate member and applicant financial responsibility and operational capability questionnaires.

#### 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

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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