

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49685; File No. SR-NSCC-2004-02]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Acceptance of Non-Standard Settlement Input for Trade Recording Purposes

May 11, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 7, 2004, 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 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 modify NSCC's procedures to provide for the acceptance of non-standard settlement input (*i.e.*, cash, next day, and sellers-options transactions) from members that are either special representatives or self-regulatory organizations ("SROs") submitting on behalf of NSCC members for the members' over-the-counter ("OTC") equity, regional exchange ("RIO"), and correspondent clearing ("CORR") transactions.

#### 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 modify NSCC's Procedures II (Trade Comparison Service) and IV (Special Representative Service) to provide for the acceptance by NSCC of non-standard settlement input (*i.e.*, cash, next day, and sellers-option transactions) from members that are either special representatives or SROs submitting on behalf of NSCC members for the members' OTC equity, RIO, and CORR transactions.<sup>3</sup> These transactions will not settle through NSCC. They must be settled directly between the parties.<sup>4</sup>

NSCC provides the same service for New York Stock Exchange ("NYSE") and American Stock Exchange ("Amex") equity securities and will offer a similar service for cash and next day settling transactions in fixed income securities through NSCC's real-time trade matching system ("RTTM").<sup>5</sup>

NSCC has determined to provide this additional service at the request of its participants. Like the current service provided for NYSE and Amex equity securities and the RTTM service for fixed income securities transactions, members will settle all non-standard equity OTC, RIO, and CORR transactions outside of NSCC. This should ensure that there is no increased risk to NSCC or its participants. NSCC believes that accepting such non-standard settlement input will provide increased efficiencies for members by enabling them to further automate their processes for such transactions.

The proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>6</sup> and the rules and regulations thereunder because it will allow NSCC to provide increased efficiencies to

<sup>3</sup> Cash, next day, and sellers-option trades in foreign securities will not be accepted for reporting by NSCC as reflected in revised NSCC Procedure II.C.2.

<sup>4</sup> At this time, NSCC will only accept locked-in trade input for trade recording purposes. NSCC will not accept transaction input from members for trade comparison purposes. Data submitted by members that are special representatives is submitted as lock-in trade data, as provided in NSCC Rule 39. Members should also note that because these non-standard settlement transactions will be settled outside of NSCC, a non-standard settling trade and its related corresponding clearing transaction will not be netted. Rather these transactions will result in two separate transactions that must be settled separately by the related parties.

<sup>5</sup> Securities Exchange Act Release No. 49294 (February 23, 2004), 69 FR 9668 (March 1, 2004) [File No. SR-NSCC-2003-15] (order approving NSCC's implementation of RTTM for fixed income securities). RTTM will commence receiving non-standard settlement input for comparison purposes in June 2004.

<sup>6</sup> 15 U.S.C. 77(q-1)(b)(3)(F).

participants with regard to their automation of processes for non-standard OTC, RIO, and CORR transactions and thereby will promote the prompt and accurate clearance and settlement of securities transactions.

#### (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 has advised its members of the proposed changes in its Important Notice A#5678, P&S#5338 (February 18, 2004). 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 took effect upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(4)<sup>8</sup> thereunder because the proposed rule effects a change in an existing service of NSCC that does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC or for which it is responsible and does not significantly affect the respective rights or obligations of NSCC or persons using the service. 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. 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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(4).

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

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

Number SR–NSCC–2004–02 on the subject line.

*Paper comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NSCC–2004–02. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at <http://www.nsc.com>. 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–NSCC–2004–02 and should be submitted on or before June 7, 2004.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49671; File No. SR–PCX–2004–32]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Amending the Designated Options Examination Authority Fee

May 7, 2004.

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 April 15, 2004, the Pacific Exchange, Inc. (“PCX” 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 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 is proposing to amend its Schedule of Fees and Charges by changing the Designated Options Examination Authority (“DOEA”) fee charged to its members. The text of the proposed rule change is available at the Commission and the PCX.

#### 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 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

In 2003, the Exchange filed a proposed rule change that allowed the Exchange to assess a \$2000/month DOEA fee in order to recover the Exchange's costs of DOEA examinations

for which it would be responsible.<sup>3</sup> At the time the Exchange set DOEA fee, it contemplated that it would conduct some of the examinations itself and would contract with the NASD to conduct other examinations. For that reason, the Exchange adopted a flat fee of \$2000/month based upon the preexisting \$2000/month Designated Examination Authority (“DEA”) fee. The Exchange anticipated that the costs of the examinations, whether conducted by the NASD or by the Exchange, would be about the same as the costs of the DEA examinations.

The Exchange has relied exclusively on the NASD to conduct its DOEA examinations and as a result, believes it is appropriate to amend its Schedule of Fees and Charges to change its DOEA fee from \$2000/month to a fee that would be a pass through of the costs that the Exchange pays the NASD for conducting DOEA examinations plus a 17% administrative charge. The PCX believes that since the current DOEA fee applies to all firms, even to smaller firms that conduct largely equities business, but also do occasional options trades for their public customers, assessing a flat fee for all firms regardless of the number of Registered Representatives that they maintain, is inequitable. The Exchange represents that the 17% percent administration fee that it proposes to charge relates directly to costs actually incurred by the Exchange in the administration of this program.

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,<sup>4</sup> in general, and section 6(b)(4) of the Act,<sup>5</sup> in particular, in that it provides for the equitable allocation of reasonable fees among its members.

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

The Exchange does not believe that the proposed rule change 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

Written comments were neither solicited nor received with respect to the proposed rule change.

<sup>3</sup> See Securities Exchange Act Release No. 47577 (March 26, 2004), 68 FR 16109 (April 2, 2003) (File No. SR–PCX–2003–03).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>9</sup> 17 CFR 200.30–3(a)(12).