

NSCC-97-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-11604 Filed 5-2-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38553; File No. SR-NSCC-96-22]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Making Orders from Defined Contribution Plans Eligible For NSCC's Mutual Fund Service

April 28, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 26, 1996, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on March 18, 1997, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The proposed rule change amends NSCC's rules to permit transactions involving defined contribution plans to be cleared and settled through NSCC's mutual fund 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 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.²

(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 amend NSCC's rules to allow NSCC to offer clearance and settlement services to mutual fund orders from defined contribution plans that are authorized under Section 414(i) of the Internal Revenue Code. According to NSCC, the Investment Company Institute ("ICI") on behalf of a committee of mutual fund companies, third party administrators ("TPAs"), and trustees of plans asked NSCC to provide clearance and settlement services to alleviate the processing and operational constraints that have occurred as a result of the rapid expansion of the defined contribution mutual fund business.

TPAs serve as the administrators of Plans, acting as the contact person for all participants. To provide better services and more flexible investment options, TPAs allow participants in their plans to select among investments in multiple mutual fund complexes. Participants in plans submit all purchase or redemption orders to the TPA which transmits the orders to the appropriate mutual fund. The TPA must communicate separately with each mutual fund to place orders to buy or sell shares. The TPA also must forward the trade information to the plan trustee which handles the plan's assets (e.g., the participants' money contributions). The trustee also must maintain communications with several parties (e.g., TPAs and mutual funds) to monitor trade activity and to satisfy multiple settlement obligations.

Under the proposed rule change, NSCC will permit TPAs to join NSCC as nonsettling members and to participate in the Fund/Serv, Networking, and the Mutual Fund Profile Service portions of NSCC Mutual Fund Services.³ TPA members will be able to initiate and to respond to orders and redemptions on behalf of their plans.⁴ Because

settlement obligations for the TPA's orders and redemptions are the responsibility of the trustee,⁵ the proposed rule change will require the TPA to submit to NSCC a form designating the appropriate trustee responsible for the settlement of its orders, and the trustee will be required to acknowledge its settlement responsibilities with respect to each TPA.

In order to become a TPA member and to maintain TPA membership, a TPA must demonstrate that its business and capabilities are such that it could reasonably expect material benefit from direct access to NSCC's services. In addition, NSCC must determine that the TPA: (1) Has a business history of a minimum of three years or has personnel with sufficient operational background and experience to ensure the ability of the TPA member to conduct such a business; (2) maintains adequate staff, physical facilities, books and records, and procedures so it is capable of handling mutual fund transactions with NSCC; and (3) is not subject to any statutory disqualification or an order of similar effect issued by court or agency.

If the TPA does not meet the operational standards of (1) Or (2) above, NSCC may approve the application if the TPA applicant demonstrates an acceptable alternative operational standard. To approve an application based upon an alternative operational standard, NSCC must determine that: (1) The alternative operational standard will not require any extended manual intervention on behalf of NSCC; (2) the TPA will be able to submit data within the time parameters established by NSCC; and (3) the alternative operational standard does not expose NSCC to undue risk.

In addition, NSCC will have the ability to examine the operational capability of TPA members on an ongoing basis. NSCC may also require the TPA member to provide adequate assurances of its operational capability, including: (1) Additional reporting by a TPA member of its operational condition at intervals and in detail as determined by NSCC and (2) assurances as may be required pursuant to NSCC's guidelines and procedures.

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

³ As nonsettling members, TPAs may not participate in the Mutual Fund Commission Settlement portion of Mutual Fund Services.

⁴ In addition to the changes described below, the following NSCC rules will be amended to apply to TPA members: Rule 5 (General Provisions relating to authorized representatives), Rule 6 (Distribution Facilities), Rule 17 (Fine Payments), Rule 18 (Procedures For When the Corporation Declines or Ceases to Act), Rule 20 (Insolvency), Rule 22 (Suspension of Rules), Rule 24 (Changes for Services Rendered), Rule 26 (Bills Rendered), Rule

27 (Admission to Premises of the Corporation), Rule 29 (Qualified Securities Depositories), Rule 32 (Facsimile Signatures), Rule 33 (Procedures), Rules 34 (Insurance), Rule 35 (Financial Reports), Rule 36 (Rule Changes), Rule 37 (Hearing Procedures), Rule 39 (Special Representative/Index Receipt Agent), Rule 45 (Notices), Rule 46 (Restrictions on Access to Services), and Rule 48 (Disciplinary Proceedings).

⁵ The Trustee must be a NSCC participant bank or broker-dealer.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

Before becoming a member, the TPA must agree: (1) That the only NSCC service or system that it will utilize is NSCC's Mutual Fund Services; (2) that it will abide by NSCC's rules, provisions, and remedies; (3) that NSCC's rules will be a part of the terms and conditions of every transaction that it submits to NSCC; (4) that it will not submit any transaction to the Mutual Fund Services unless NSCC's rules are part of the terms and conditions of the transaction, and it will not submit or confirm any transaction to or through NSCC's Mutual Fund Services in contravention of the Investment Company Act of 1940;⁶ (5) that it will pay to NSCC any compensation provided for by NSCC's rules for a Mutual Fund Services transaction and pay any fines that may be imposed under NSCC's rules; (6) that it will be bound by any amendments of NSCC's rules that relate to any transaction submitted through the Mutual Fund Services; and (7) that its agreement with NSCC will inure to the benefit of and be binding upon the parties respective successors and assigns.

Once an NSCC member, the TPA may submit a mutual fund order to NSCC on the trade date of the order or on any date thereafter.

If the order does not contain the information required by NSCC, NSCC will reject the order and advise the TPA member of the rejection. If the TPA member desires to resubmit a rejected order, it must submit the order to NSCC as if it had never been submitted. Upon receipt of a TPA member's properly submitted mutual fund order, NSCC will transmit the information to the appropriate mutual fund member and to the trustee.⁷

The fund member may accept or reject the TPA member's mutual fund order. A rejection by the fund member will result in the deletion of the mutual fund order. The trustee also will have the ability to cause orders to be deleted from Fund/Serv by submitting an exit instruction.⁸ If the trustee does not submit an exit instruction for an order submitted by a TPA member, NSCC's rules make it clear that the trustee will be responsible for such order. When an order is deleted, NSCC will notify the other parties, and the TPA member and fund

member will have to adjust the order.⁹ If the TPA member's order is accepted, the fund member will confirm the order. TPA members that do not agree with the terms of a mutual fund order as confirmed by a fund member may submit a correction to NSCC.

In addition to the ability to submit orders, the proposed rule change will provide TPA members with the ability to engage in the following activities. TPA members will be able to submit money only charges. A trustee who does not agree with the terms of a money related charge submitted by a TPA will be able to submit a deletion to NSCC. TPA members will submit exit orders when, for whatever reason, they do not want to settle through Fund/Serv. If a TPA member determines that data it transmitted to a fund member regarding a settled order is incorrect, it will be able to submit an extended correction instruction to NSCC. When this occurs, NSCC will notify both the fund member and the trustee. TPA members will have the option of submitting registration data for orders submitted through Fund/Serv. TPA members also will be entitled to participate in or process mutual fund orders that result from underwritings and tender offers.

NSCC also will provide data concerning the status of all Fund/Serv transactions to TPA members each business day, and TPA members may receive information through the Mutual Fund Profile Service.¹⁰

In addition to the amendments described above, the proposed rule change amends the definition of an NSCC fund member and member to include limited liability corporations as a named category of eligible entity. The proposed rule change also amends NSCC's rules to allow a bank or trust company to become a mutual fund services member, which is a broker-dealer, bank, trust company, or other entity that has agreed to limit its use of NSCC's services to NSCC's Mutual Fund Services. According to NSCC, the purpose of these changes is to update NSCC's rules to be consistent with NSCC's current practice.

⁹ In addition to deletions by the parties, NSCC may delete from Fund/Serv any uncompleted Fund/Serv items upon the withdrawal of a TPA member from participation in Fund/Serv but not earlier than five business days following notification to the trustee of the TPA member's intention to withdraw from Fund/Serv.

¹⁰ NSCC will charge TPA members the standard fees for the Mutual Fund Services. NSCC will collect the fees through automated clearing house ("ACH") debits. TPA members will be required to enter into an authorization agreement which will permit NSCC to initiate wire transfer debit entries through ACH.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act¹¹ and the rules and regulations thereunder because it will facilitate 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

The ICI, on behalf of a committee of mutual fund companies, TPAs and trustees of plans, asked NSCC to develop a solution to existing defined contribution processing operational constraints. No written comments 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

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.¹² The Commission believes that the rule change is consistent with this obligation because the proposal should enhance the clearance and settlement of plan orders by providing a centralized and automated facility for transmission of order data by TPAs. Currently, to process its customers orders, TPAs and trustees must communicate by various means with several parties, which may be a cumbersome process. Under the proposed rule change, TPA members will submit all plan orders to NSCC, and NSCC will automatically forward the information to the appropriate mutual fund and trustee. Because the orders will be sent through NSCC, the time and cost associated with processing should be reduced. Thus, the proposal promotes the prompt and accurate clearance and settlement of securities transactions.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. Commission finds good cause for approving the proposed rule change

¹¹ 15 U.S.C. 78q-1.

¹² 15 U.S.C. 78q-1(b)(3)(F).

⁶ 15 U.S.C. 80a-1 *et seq.*

⁷ The proposed rule change also will allow fund members to submit orders against TPA members instead of the TPA submitting the order. TPA members that do not agree with the terms of a fund originated order will be able to delete the order and then resubmit an adjusted order.

⁸ The trustee may want to delete the order if for example the trustee no longer has the plan as a customer or the trustee does not have sufficient funds to pay for the order.

prior to the thirtieth day after publication of the notice of filing because accelerated approval will permit NSCC to begin making mutual fund orders from TPAs for their plans eligible for NSCC's mutual fund service immediately. Thus, NSCC will be able to respond promptly to the processing and operational constraints that are currently being experienced in this area.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, 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, 450 Fifth Street, NW., Washington DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR-NSCC-96-22 and should be submitted by May 27, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-96-22) be, and hereby, is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-11608 Filed 5-2-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38544; File No. SR-Phlx-97-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 thereto by the Philadelphia Stock Exchange, Inc. Relating to PACE Execution Guarantees.

April 24, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on March 3, 1997, 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 the self-regulatory organization. On April 4, 1997, the Phlx filed Amendment No. 1 to the proposal.¹ On April 21, 1997, the Exchange filed Amendment No. 2 to the proposed rule change.² 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 Rule 19b-4 of the Act, proposes to amend Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System (PACE), to amend the: (1) Execution guarantee applicable to PACE market³ and marketable limit orders over 599 shares; (2) out-of-range protection provisions; (3) execution price for partial round lots; and (4) limit order provisions for clarity. First, the Exchange proposes to amend the execution guarantee applicable to orders greater than 599 shares.⁴ Specifically,

¹ Amendment No. 1 makes several clarifying revisions to the proposal and corrects a typographical error. See Letter from Philip H. Becker, Senior Vice President, Chief Regulatory Officer, Phlx, to James T. McHale, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated April 3, 1997 ("Amendment No. 1").

² Amendment No. 2 clarifies the operation of the proposed rule change by revising the fourth example under the heading "Market orders." See letter from Philip H. Becker, Senior Vice President, Chief Regulatory Officer, Phlx, to James T. McHale, Attorney, OMS, Division, Commission, dated April 17, 1997 ("Amendment No. 2").

³ Market orders are defined as orders to buy or sell a stated amount of a security at the best price obtainable after the order is represented on the Exchange.

⁴ Consistent with the existing provisions of Supplementary material .05, if an order is for 599

where a specialist voluntarily agrees to automatically execute market or marketable limit orders greater than 599 shares, an order is automatically executable at the PACE Quote,⁵ if it is: (a) Greater than 599 shares; (b) within the specialist's automatic execution guarantee; and (c) less than or equal to the size of the PACE Quote. Orders greater than the size of the PACE Quote are guaranteed either: (1) A manual execution at the PACE Quote price up to the size of the PACE Quote, with the balance of the order receiving a professional execution, in accordance with Rule 229.10(b) ("the First Guarantee"); or (ii) an automatic execution at the PACE Quote, up to the size of the order (within the specialist's execution guarantee size), regardless of the size of the PACE Quote ("the Second Guarantee").

The First Guarantee is applicable to all specialists who agree to accept orders greater than 599 shares. With respect to the portion of an order exceeding the size of the PACE Quote, such order shall receive a professional execution, meaning an execution consistent with prevailing market conditions, fair and orderly markets and other applicable Exchange rules; this language is proposed to be added to Supplementary Material .10(b). The Second Guarantee is applicable to orders greater than 599 shares and for which specialists have agreed to establish a guarantee for a security independent of the size of the PACE Quote. The First and Second execution guarantees are proposed to be added to Supplementary Material .05.

Second, the provisions respecting out-of-range executions also are being amended. Currently, pursuant to Supplementary Material .07(a), member organizations which enter market orders after the opening may elect to have such orders executed (i) In accordance with the procedures set forth in Supplementary Material .05, or (ii) if such execution price would be outside the New York market high-low range for the day, manually at or within the New York market high-low range of the day. This is referred to as out-of-range protection, a long-standing feature of the

shares or less, it will continue to be automatically executable at the PACE Quote, regardless of the size of the PACE Quote, as the Exchange is not amending the automatic execution guarantee applicable to orders for 599 shares or less.

⁵ The PACE Quote is defined as the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific, or Philadelphia Stock Exchanges, or the Intermarket Trading System/Computer Assistant Execution System ("ITS/CAES") quote, as appropriate.

¹⁴ 17 CFR 200.30-3(a)(12).