

requires that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to 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. The Commission believes that the CHX's proposal to explicitly codify its policy for handling stop orders should help to provide guidance for its members regarding the handling and execution of such orders. The Commission also believes that defining and confirming that a stop order, once elected by a price penetration on a national securities exchange or association, will be treated as a market order for purposes of determining the execution price due the order, should conform the CHX's stop order handling rules to those of other markets, including the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange LLC ("Amex"), and the Pacific Exchange, Inc.<sup>9</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-CHX-2003-25), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49497; File No. SR-NASD-2003-184]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Require Members To Review and Update Executive Representative Contact Information on a Quarterly Basis

March 29, 2004.

#### I. Introduction

On December 8, 2003, the National Association of Securities Dealers, Inc.

("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 require members to conduct a review, and, if necessary, update their executive representative contact information on a quarterly basis, specifically within 17 business days after the end of each calendar quarter. The proposed rule change was published for notice and comment in the **Federal Register** on January 27, 2004.<sup>3</sup> The Commission received two comment letters on the proposal.<sup>4</sup> On March 17, 2004, the NASD filed a response to comments.<sup>5</sup> This order approves the proposed rule change.

#### II. Summary of Comments

The Commission received two comment letters on the NASD's proposal.<sup>6</sup> One commenter expressed full support for the proposal, but suggested the information become a line item on the quarterly FOCUS report, because "small firms seldom have executive management changes."<sup>7</sup> The other commenter found it "difficult to not agree" with the NASD's proposal, but noted a lack of instructions on how the NASD will implement the proposed rule change, and a concern that the costs of the proposed rule change might outweigh the benefits of the new requirement.<sup>8</sup> The commenter raised a number of specific questions, including:

- Is the lack of current information a quarterly problem?
- Do contact persons change that often?
- Is this a significant problem with small broker-dealers?
- What is the penalty if a member fails to comply for one quarter?
- If there is no response from the designated person, can the local district follow up to see if there has been a change?<sup>9</sup>

NASD, in response to the comments, stated the proposal "is essential to its

ability to regulate the marketplace."<sup>10</sup> NASD believes that requiring members to review and update such information will "help ensure the accuracy of the information."<sup>11</sup>

NASD stated it will collect the information through NASD's Contact System ("NCS"), with all quarterly reviews and updates being performed on a central location in NCS. Additionally, NASD will require members "to perform all quarterly reviews and updates on the same schedule (*i.e.*, within 17 business days after the end of each quarter)."<sup>12</sup>

In response to a commenter's suggestion that NASD add the executive representative contact information directly to the FOCUS report, NASD "notes that the FOCUS report is an SEC document, requiring SEC action to be amended, and that any amendments to such form tend to be related to financial reporting requirements."<sup>13</sup> Instead, to help members comply with this new requirement, NASD is considering different methods of notifying members of the need to update their executive representative designation and contact information, including (1) reminders that are contemporaneous with the act of filing a quarterly FOCUS report; (2) periodic e-mail broadcasts distributed to members' executive representatives; and (3) individual e-mails to executive representatives.<sup>14</sup>

The NASD explained that failure to provide the requisite information during the 17 business days following each calendar quarter can result in disciplinary action by NASD.<sup>15</sup> NASD noted that, in SR-NASD-2004-025,<sup>16</sup> NASD seeks to amend its minor rule violation plan to address violations of the requirement that members provide or update contact information.

#### III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the

<sup>10</sup> NASD letter at 1.

<sup>11</sup> NASD has proposed similar quarterly contact information review requirements. *See* Securities Exchange Act Release Nos. 49246 (February 13, 2004), 69 FR 8255 (February 23, 2004) (SR-NASD-2003-183) (order approving continuing education contact person(s) quarterly update requirement), and 46444 (August 30, 2002), 67 FR 57257 (September 9, 2002) (SR-NASD-2002-108) (proposing quarterly update of emergency contact information).

<sup>12</sup> NASD letter at 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> NASD letter at 3 ("NASD may use informal or formal means to enforce violations of its rules").

<sup>16</sup> The Commission has not yet published notice of SR-NASD-2004-025. Copies of the proposed rule change are available at the Commission and at the NASD.

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

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

<sup>3</sup> *See* Securities Exchange Act Release No. 49110 (January 21, 2004), 69 FR 3973.

<sup>4</sup> *See* February 4, 2004 letter from Bradley C. McCurtain, Maine Securities Corporation ("MSC letter") (via e-mail), and February 16, 2004 letter from John J. Dardis, President, Jack Dardis & Associates, LTD ("Dardis letter") (via e-mail).

<sup>5</sup> *See* March 17, 2004 letter from Grace Yeh, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("NASD letter").

<sup>6</sup> *See* footnote 4, *supra*.

<sup>7</sup> MSC letter.

<sup>8</sup> Dardis letter.

<sup>9</sup> *Id.*

<sup>9</sup> *See* NYSE Rule 13; Amex Rule 131; and Archipelago Exchange Facility Rule 7.31.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

comment letters, and the NASD's response to the comments, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association<sup>17</sup> and, in particular, the requirements of section 15A(b)(6) of the Act,<sup>18</sup> which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Specifically, the Commission believes the proposed rule change should assist the NASD in maintaining accurate information about its members' executive representative designation and contact information. Balancing the important role of an executive representative, the NASD's need for accurate information, and the NASD's efforts to minimize the burden of reporting on a quarterly basis the information described in this proposed rule change, the Commission believes the proposed rule change is reasonable and consistent with the purposes of the Act. The Commission also is satisfied that NASD has adequately addressed the commenters' concerns.

#### IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-NASD-2003-184) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49492; File No. SR-SCCP-2002-07]

#### Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Approving a Proposed Rule Change Relating to Ex-Clearing Account Transactions

March 29, 2004.

On December 26, 2002, the Stock Clearing Corporation of Philadelphia

("SCCP") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-SCCP-2002-07 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 January 14, 2004.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

The proposed rule change will add a provision to SCCP Rule 11 (Ex-Clearing Accounts) to enable SCCP participants to use an ex-clearing account when both sides of a securities transaction facilitated by the Philadelphia Stock Exchange ("Phlx") agree to transmit the transaction data to the National Securities Clearing Corporation ("NSCC") for clearance and settlement themselves, instead of transmitting the transaction data to NSCC through SCCP. Currently, SCCP participants that have agreed to settle a transaction outside any registered clearing agency may do so through an "ex-clearing account." With this rule amendment, the ex-clearing account may be used not only for transactions to be settled outside a registered clearing agency but also for transaction being sent to NSCC but not through SCCP. SCCP anticipates that certain Phlx members that participate in Phlx's program to trade Nasdaq securities will arrange for the clearance and settlement of their Nasdaq securities trading at Phlx directly with NSCC.<sup>3</sup> As before the amendment, SCCP makes no trade guarantee respecting any ex-clearing transaction.

#### II. Discussion

Section 17A(b)(3)(F) of the Act<sup>4</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with this requirement because it will provide an additional mechanism for SCCP participants to have their securities transactions cleared and settled at NSCC, a registered clearing agency, which should promote the prompt and accurate clearance and settlement of securities transactions.

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

<sup>2</sup> Securities Exchange Act Release No. 49046 (Jan. 8, 2004), 69 FR 2167.

<sup>3</sup> The use of ex-clearing accounts is not limited to trading in Nasdaq securities and may be used in any situation that otherwise meets the criteria for the use of ex-clearing accounts.

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

#### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act<sup>5</sup> and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-SCCP-2002-07) be, and hereby is, approved.

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

**Margaret H. McFarland,**  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49491; File No. SR-SCCP-2001-09]

#### Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Approving a Proposed Rule Change Relating to Establishing Risk Management Procedures for Short Settlement Transactions

March 29, 2004.

On August 30, 2001, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR-SCCP-2001-09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and on October 9, 2001,<sup>2</sup> and September 20, 2002,<sup>3</sup> amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on January 27, 2004.<sup>4</sup> No comment letters were

<sup>5</sup> 15 U.S.C. 78q-1.

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

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

<sup>2</sup> In October 2001, SCCP filed Amendment No. 1 to its original filing in order to replace its request for immediate effectiveness under Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(1) with a request for approval pursuant to Section 19(b)(2). Amendment No. 1 also revised SCCP Rule 9 to reflect the addition of the schedule for late margin call payments which had previously been approved by the Commission in another SCCP rule filing. Securities Exchange Act Release No. 44722 (Aug. 20, 2001), 66 FR 44661 (Aug. 24, 2001) [SR-SCCP-2001-04].

<sup>3</sup> In September 2002, SCCP filed Amendment No. 2 to its original filing whereby SCCP added the requirement that the SCCP Operations Committee or Board of Directors shall determine whether additional margin will be required prior to the settlement date for short settlement transactions.

<sup>4</sup> Securities Exchange Act Release No. 49079 (Jan. 14, 2004), 69 FR 3988.

<sup>17</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>18</sup> 15 U.S.C. 78o-3(b)(6).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).