

the standard LCN connection.<sup>14</sup> Additionally, the Exchange represents that there is no differentiation among Users regarding the fees charged for a particular product, service or piece of equipment. In light of the Exchange's representations, the Commission believes that the co-location fees proposed are consistent with Section 6(b)(4) and 6(b)(5) of the Exchange Act.

The Exchange is offering additional co-location services as a convenience to Users. For instance, the cross connects and LCN CSP connections provide Users within the data center with another alternative to transmit data or provide services, such as order routing or market data delivery services. The cages offered to Users can help prevent the discovery of the hardware employed by Users for co-location. As noted by the Exchange, these additional co-location services are available to all Users on an equal basis. The Commission believes that these additional services are also consistent with Section 6(b)(5) of the Exchange Act, as they are designed to remove impediments to and perfect the mechanism of a free and open market and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-NYSEMKT-2012-11) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2012-20568 Filed 8-21-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67673; File No. SR-NSCC-2012-06]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Enhance the Default Pricing Methodology Used by NSCC's Automated Customer Account Transfer Service

August 15, 2012.

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 August 7, 2012, 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 persons.

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

The proposed rule change involves Rule 50 of NSCC's Rules and Procedures. NSCC proposes to amend this rule to eliminate the use of a default pricing matrix to assign values to certain items transferred through NSCC's Automated Customer Account Transfer Service ("ACATS").

#### 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 and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements and comments 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>3</sup>

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

##### 1. Background

ACATS enables NSCC Members to effect automated transfers of customer accounts among themselves.<sup>4</sup> Pursuant to Rule 50, an NSCC Member to whom a customer's full account will be transferred ("Receiving Member") will initiate the transfer by submitting to NSCC a transfer initiation request, which contains the customer detail information that the NSCC Member in possession of the account ("Delivering Member") requires in order to transfer

the account. Delivering Members that have neither rejected the account transfer request nor sought corrections to the request within the allotted time must submit to NSCC certain detailed customer account asset data.

For items transferred through ACATS that are not eligible to be processed through NSCC's Continuous Net Settlement ("CNS") system<sup>5</sup> (and for CNS-eligible items that are designated to be delivered ex-CNS), NSCC will produce ACATS Receive and Deliver Instructions. These ACATS transfers then settle either outside of NSCC or through a separate service at NSCC.<sup>6</sup> In order to incentivize the timely completion of ACATS transfers, at the start of the day on ACATS settlement date, the Delivering Member's NSCC money settlement account will include a debit, or an incentive charge ("Incentive Charge"), equal to the aggregate market value of the items the Delivering Member is transferring through ACATS; the Receiving Member's NSCC money settlement account includes a credit in the same amount.<sup>7</sup> Once delivery of an item is complete, the Incentive Charge associated with that item is effectively offset when the Receiving Member pays the Delivering Member for the transferred items. This Incentive Charge is intended to encourage the Delivering Member to make delivery of the item in a timely manner.<sup>8</sup>

Each item transferred through ACATS must be assigned a market value in order to calculate the Incentive Charge. CNS-eligible items being transferred through ACATS are assigned a market

<sup>5</sup> CNS is an ongoing accounting system that nets today's Settling Trades with yesterday's Closing Positions, producing net short or long positions per security issue for each Member. NSCC is always contraside for all positions. The positions are then passed against the Member's Designated Depository positions and available securities are allocated by book entry. This allocation of securities is accomplished through an evening cycle followed by a day cycle. Positions that remain open after the evening cycle may be changed as a result of trades accepted for settlement that day. To allocate deliveries in both the night and day cycles, CNS uses an algorithm based on priority groups in descending order, age of position within a priority group, and random numbers within age groups.

<sup>6</sup> For example, non-CNS ACATS may settle at (i) The Depository Trust Company ("DTC"), for DTC-eligible items; (ii) NSCC's automated ACATS-Fund/SERV interface, for eligible mutual fund assets; (iii) NSCC's ACATS-IPS interface, for eligible annuities; and (iv) the Options Clearing Corporation, where transfers in customer-options positions take place, for options.

<sup>7</sup> Incentive Charges are not calculated for the transfer of options or annuities.

<sup>8</sup> It also allows the Receiving Member to record the customer position on its books, regardless whether the item is actually delivered on settlement date. This process supports the requirements of FINRA Rule 11870.

<sup>14</sup> A LCN CSP connection may only be used for providing services to Subscribing Users and may not be used for other purposes, such as accessing the Exchange.

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

<sup>16</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> The Commission has modified the text of the summaries provided by NSCC.

<sup>4</sup> ACATS complements Financial Industry Regulatory Authority ("FINRA") Rule 11870 regarding Customer Account Transfers, which requires FINRA members to use automated clearing agency customer account transfer services, and to effect customer account transfers within specified time frames.

value through the CNS system. Non-CNS eligible items, however, are assigned a market value pursuant to NSCC Rule 50, which calls for a market value based on either (i) the price obtained from a pricing source, if available or, if a pricing source is not available, (ii) the greater of (a) the price in U.S. dollars assigned by the Delivering Member ("Submitter's Value"), which, in most cases, must be the current market value of the item,<sup>9</sup> or (b) the value ascribed to such item pursuant to a default pricing matrix, as established from time to time by NSCC. The current default pricing matrix assigns a value to an item based on its "asset category type," as classified by the Delivering Member in the detailed customer account asset data submitted to NSCC. For example, the current default pricing matrix assigns equities a default price of \$1 per share, with a cap of \$20,000, and assigns U.S. government securities and U.S. government agency securities a default price of the face amount. The default pricing matrix was developed in close coordination with industry participants and the National Association of Securities Dealers shortly after the initial development of ACATS.

It has been observed that the default pricing matrix may, in some cases, overvalue items being transferred through ACATS. When this occurs, on ACATS settlement date the Delivering Member will be debited an Incentive Charge based on a higher market value than the actual value of the item being transferred. Delivering Members will not receive the offset for this Incentive Charge until they deliver the related ACATS item. Therefore, a Delivering Member that does not deliver the ACATS item on ACATS settlement date will be required to pay the Incentive Charge associated with that item. If the default pricing matrix has overvalued an ACATS Incentive Charge, a Delivering Member that has failed to deliver the item will be faced with an unexpected inflated settlement charge on ACATS settlement date.

## 2. Proposed Rule Change

In order to reduce the risk of overcharging a Delivering Member, NSCC is proposing a rule change that will require NSCC to assign the Submitter's Value to items when the system cannot otherwise find a price for the security, thereby eliminating the use

of the ACATS default pricing matrix altogether. Under the proposed rule change, in the case of non-CNS eligible items transferred through ACATS, NSCC will assign a market value to those items as either (i) the price obtained from a pricing source, if available or, if a pricing source is not available, the assigned market value will be (ii) the price in U.S. dollars assigned by the Delivering Member (*i.e.*, the Submitter's Value), which, in most cases, must be the current market value of the security.<sup>10</sup>

According to NSCC, this proposed rule change will reduce the risk that a non-CNS eligible item transferred through ACATS is assigned an inflated value based on its asset category, as it will require that the market value of these items be obtained either from a pricing source or from the Delivering Member.

## 3. Statutory Basis for Proposed Rule Change

NSCC believes the proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, a policy underlying ACATS. As a result, it is NSCC's view that the proposal is consistent with the requirements of the Act<sup>11</sup> and the rules and regulations thereunder applicable to NSCC.

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

NSCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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

Within 45 days of the date of publication of this notice in the **Federal Register**, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the 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 may be submitted by using the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>), or by sending an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NSCC-2012-06 on the subject line.

- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NSCC-2012-06. To help the Commission process and review your comments more efficiently, please use only one method of submission. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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.dtcc.com/downloads/legal/rule\\_filings/2012/nscc/SR-NSCC-2012-06.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2012/nscc/SR-NSCC-2012-06.pdf).

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-2012-06 and should be submitted on or before September 12, 2012.

<sup>9</sup> See Section (d)(5)(A) of current FINRA Rule 11870, stating that a customer statement delivered in connection with a transfer instruction, "must include a then-current market value for all assets so indicated. If a then-current market value for an asset cannot be determined (*e.g.*, a limited partnership interest), the asset must be valued at original cost."

<sup>10</sup> See note 9, *supra*.

<sup>11</sup> 15 U.S.C. 78s(b)(1).

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

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Elizabeth M. Murphy,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67678; File No. SR-NASDAQ-2012-094]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove the Expired Pilot Under Rule 4753(c) From the NASDAQ Rule Book

August 16, 2012.

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 August 3, 2012, The NASDAQ Stock Market LLC (“NASDAQ” 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 NASDAQ. 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

NASDAQ proposes to remove the expired pilot under Rule 4753(c) (the “Volatility Guard”) from the NASDAQ rule book. NASDAQ will remove the rule text 30 days after the filing date of this proposal.

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in [brackets].

\* \* \* \* \*

#### 4753. Nasdaq Halt and Imbalance Crosses

(a)–(b) No change.

(c) *Reserved.* [For a pilot period ending the earlier of July 31, 2012 or the date on which, if approved, a limit up/limit down mechanism to address extraordinary market volatility, is approved, between 9:30 a.m. and 3:35 p.m. EST, the System will automatically monitor System executions to determine whether the market is trading in an orderly fashion and whether to conduct an Imbalance Cross in order to restore

an orderly market in a single Nasdaq Security.

(1) An Imbalance Cross shall occur if the System executes a transaction in a Nasdaq Security at a price that is beyond the Threshold Range away from the Triggering Price for that security. The Triggering Price for each Nasdaq Security shall be the price of any execution by the System in that security within the prior 30 seconds. The Threshold Range shall be determined as follows:

Execution price	Threshold range away from triggering price (percent)
\$1.75 and under .....	15
Over \$1.75 and up to \$25 .....	10
Over \$25 and up to \$50 .....	5
Over \$50 .....	3

(2) If the System determines pursuant to subsection (1) above to conduct an Imbalance Cross in a Nasdaq Security, the System shall automatically cease executing trades in that security for a 60-second Display Only Period. During that 60-second Display Only Period, the System shall:

(A) Maintain all current quotes and orders and continue to accept quotes and orders in that System Security; and  
(B) Disseminate by electronic means an Order Imbalance Indicator every 5 seconds.

(3) At the conclusion of the 60-second Display Only Period, the System shall re-open the market by executing the Nasdaq Halt Cross as set forth in subsection (b)(2)–(4) above.

(4) If the opening price established by the Nasdaq Halt Cross pursuant to subsection (b)(2)(A)–(D) above is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Halt Cross will occur at the price within the threshold amounts that best satisfies the conditions of subparagraphs (b)(2)(A) through (D) above. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.]

(d) No change.

\* \* \* \* \*

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

In its filing with the Commission, NASDAQ 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. NASDAQ 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

NASDAQ is proposing to remove the expired pilot under Rule 4753(c) from the rule book. On June 18, 2010, NASDAQ filed a rule change for Commission approval, proposing to adopt Volatility Guard as a six month pilot in 100 NASDAQ-listed securities.<sup>3</sup> NASDAQ proposed implementing the Volatility Guard pilot as a means to address aberrant trading volatility on the Exchange, in part, as a response to the unprecedented aberrant volatility witnessed on May 6, 2010 and the limited effect that NASDAQ's market collars had in dampening such volatility.

On March 11, 2011, the Commission approved the Volatility Guard. Important to its subsequent determination to hold the implementation of Volatility Guard in abeyance, NASDAQ notes that the Commission stated in approving Volatility Guard that it may find exchange-specific volatility moderators inconsistent with the Act once a uniform, cross-market mechanism to address aberrant volatility is adopted. Specifically, the Commission stated:

[T]hat it is continuing to work diligently with the exchanges and FINRA to develop an appropriate consistent cross-market mechanism to moderate excessive volatility that could be applied widely to individual exchange-listed securities and to address commenters' concerns regarding the complexity and potential confusion of exchange-specific volatility moderators. To the extent the Commission approves such a mechanism, whether it be an expanded circuit breaker with a limit up/limit down feature or otherwise, *the Commission may no longer be able to find that exchange-specific volatility moderators—including both Nasdaq's Volatility Guard and the NYSE's LRPs—are consistent with the Act.*<sup>4</sup>

During the time that the Volatility Guard pilot was progressing through the notice and comment process with the Commission, NASDAQ together with the other national securities exchanges and FINRA (“SROs”) and in

<sup>3</sup> Securities Exchange Act Release No. 64071 (March 11, 2011), 76 FR 14699 (March 17, 2011) (SR-NASDAQ-2010-074). The proposal was amended to identify the 100 pilot securities as the securities comprising NASDAQ 100 Index. See Amendment 1 to SR-NASDAQ-2010-074.

<sup>4</sup> *Id.* at 14701 (*emphasis added*).

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

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