

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 Number SR-Phlx-2009-10 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2009-10. 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 Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-Phlx-2009-10 and should be submitted on or before March 4, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-2858 Filed 2-10-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59321; File No. SR-NSCC-2008-08]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend Rules To Add an Agreement From Fund Members That Submit Mutual Fund Profile Information

January 30, 2009.

#### I. Introduction

On September 30, 2008, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-2008-08 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 December 29, 2008.<sup>2</sup> For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

The Mutual Fund Profile Service ("Profile") is a central data source for comprehensive fund prospectus and operational information relating to mutual funds. The repository is a recognized industry standard for information critical to the distribution of mutual funds in the third-party market.

Profile is organized into three databases: (1) Security Issue Database (containing information such as Security ID number, security name, fee structure, investment objectives, breakpoint schedule data, and blue sky eligibility); (2) Participant Database (containing contact information, NSCC processing capabilities and restrictions or requirements); and (3) Distribution Database (containing projected or actual distributions, capital gains and dividend amounts and details, and commission information). NSCC fund members input data regarding their mutual funds into the Security Issue and Participant

Profile databases. Profile is then accessed by the NSCC members that are mutual fund distributors.

NSCC has recently enhanced the Security Issue Database in Profile to include new data fields needed by distributors and to re-engineer the structure of the data hierarchy to be easier for fund members to populate their data. Some of the enhancements to the Profile database were initiated in response to a recommendation in the Report ("Report") of The Joint NASD/ Industry Task Force on Breakpoints ("Task Force").<sup>3</sup> NSCC has also adopted measures to assist funds members in validating their data once it is in the Profile database by developing reports that note probable inconsistencies among related data fields, by arranging for free access by fund members to a vendor tool that verifies Profile data, and by reaching out to fund members in the form of personal contacts and an on-line web demonstration on populating data into the Profile database.

Consistent with its efforts to expand Profile's capabilities as a comprehensive and accurate source for the mutual fund distribution industry, NSCC is now amending its rules to add an agreement that requires NSCC fund members to have taken reasonable steps to validate the accuracy of their data they submit to the Profile database. This agreement is not intended to be either a basis for independent legal rights against the fund member or is any third party intended or permitted to rely upon it as a representation to a third party or upon which a third-party can base any legal rights. NSCC requires similar agreements from its members elsewhere in its rules and in its membership agreement, such as the agreement required of a fund member in Section 2 of Rule 51 to not submit a transaction through NSCC's Mutual Fund Services in contravention of any applicable regulatory requirements.

<sup>3</sup> The Task Force was formed in 2003 by the National Association of Securities Dealers ("NASD", now "FINRA") with the participation of major fund companies, broker-dealers, NSCC, the Securities Industries Association and the Investment Company Institute, in response to the NASD examination findings in which it was discovered that investors frequently failed to receive appropriate breakpoint discounts in front-end sales load mutual fund transactions. Recommendation (B) of the report stated that NSCC's Profile database should be expanded to include breakpoint aggregation terms and rules for all fund families and should include identification of both link-eligible products (for example, retirement plans, annuities, and insurance products and college savings plans with mutual fund holdings). The Report also noted that for this database to be effective, it must also be comprehensive. Accordingly, mutual funds must fully and accurately populate the database and must update the database on a timely basis.

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

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

<sup>2</sup> Securities Exchange Act Release No. 59105 (December 16, 2008), 73 FR 79530.

### III. Discussion

Section 17A(b)(3)(F) of the Act 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, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.<sup>4</sup> The rule change is consistent with the requirements of Section 17A of the Act, because it should promote the prompt and accurate clearance and settlement of securities transactions by modifying an NSCC service in order to reduce the inherent risks associated with securities certificates. Since NSCC's Profile database is widely used by mutual fund distributors in processing the distribution of mutual fund shares, the proposed rule change should facilitate the prompt and accurate clearance and settlement of securities transactions by assisting in the overall processing efficiency of mutual fund transactions and reducing processing difficulties resulting from incomplete or inaccurate information.

Accordingly, for the reasons stated above the Commission believes that the rule change is consistent with NSCC's obligation under Section 17A of the Act.

### IV. Conclusion

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

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-2008-08) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-2854 Filed 2-10-09; 8:45 am]

**BILLING CODE 8011-01-P**

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

<sup>5</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation.

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

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59320; File No. SR-NYSE-2008-112]

#### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change To Discontinue Policy of Prohibiting Transfer Agents From Charging Fees for Issuing Stock Certificates

January 30, 2009.

#### I. Introduction

On October 30, 2008, the New York Stock Exchange LLC ("NYSE") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NYSE-2008-112 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 December 29, 2008.<sup>2</sup> The Commission received two comment letters.<sup>3</sup> For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

As a part of the securities industry moving towards eliminating the use of physical certificates (*i.e.*, dematerialization) by encouraging investors to hold securities positions in book-entry form either in street name at a broker-dealer or through the Direct Registration System ("DRS"), the NYSE is discontinuing its long-standing, unwritten policy of prohibiting NYSE listed companies from charging for the issuance of stock certificates. DRS allows investors to have securities directly registered in book-entry form on the records of the issuer or its transfer agent without having a certificate issued.<sup>4</sup>

In its letter to the NYSE, the Securities Industry and Financial Markets Association ("SIFMA"), which

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

<sup>2</sup> Securities Exchange Act Release No. 59106 (December 16, 2008), 73 FR 79531.

<sup>3</sup> Letters from Charles V. Rossi, President, The Securities Transfer Association, Inc. (January 16, 2009); and Martin J. McHale, Jr., President, U.S. Equity Services, Computershare (January 20, 2009).

<sup>4</sup> DRS allows securities positions to be electronically transferred to a broker-dealer in order to effect a transaction without the risk and delay associated with the use of paper certificates. Since March 31, 2008, Section 501.00 of NYSE's Listed Company Manual has required that all securities listed on the NYSE must be eligible for participation in DRS. Approximately 2,428 NYSE listed securities currently participate in DRS. Securities Exchange Act Release No. 58398 (August 20, 2008), 73 FR 51546 (September 3, 2008) [File No. SR-NYSE-2008-069].

is one of the leaders in the movement towards dematerialization, requested that the NYSE discontinue its prohibition of issuers or their transfer agents charging fees in connection with the issuance of securities certificates ("SIFMA Letter").<sup>5</sup> SIFMA noted that almost 75% of physical certificates deposited by broker-dealers and bank custodians at The Depository Trust Company ("DTC"), a registered clearing agency that is the primary custodian of securities traded in the United States, were issued within the last six months. SIFMA stated its beliefs that these recent deposits indicate that DTC participants (*i.e.*, broker-dealers and banks) are providing physical certificates to their customers only to have the securities moved back into street name in a short period of time. In SIFMA's view, this activity results in unnecessary expense and in the risk that the certificates may be lost, destroyed, or stolen. SIFMA stated that it had recently conducted a survey that showed that more than 1.2 million certificates each year need to be replaced because of loss, destruction, or theft at an approximate cost to the transfer agents of \$65 million.<sup>6</sup>

NYSE believes that securityholders derive no apparent benefit from continuing to hold their securities in certificated form rather than in uncertificated form in street name or through DRS and that the inability of the issuers or their transfer agents to charge for the issuance of securities certificates imposes a considerable cost on issuers and transfer agents. Therefore, NYSE is discontinuing its prohibition of issuers or their transfer agents charging fees for the issuance of new certificates. Allowing transfer agents to charge for the issuance of certificates should not only shift the cost of the issuance of certificates from the issuers and transfer agents to the requesting securityholders but should also have the added effect of encouraging more securityholders to hold their securities in street name or through DRS, which should further the dematerialization movement. NYSE listed companies that want their investors to continue to have access to the free issuance of new certificates will be able to ensure the continuation of such practice through their contractual arrangements with their transfer agents.

<sup>5</sup> Letter to Stephen Walsh, Vice President, NYSE Euronext, from Lawrence Morillo, SIFMA Operations Legal & Regulatory Sub-Committee Chair. (August 26, 2008).

<sup>6</sup> "Securities Industry Immobilization & Dematerialization Implementation Guide—The Phase-Out of the Stock Certificate" (SIFMA, 2008).