

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 self-regulatory organization 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

Currently, the BOX Fee Schedule lists fingerprint processing fees that are imposed on BOX Participants by the Financial Industry Regulatory Authority, Inc., ("FINRA") in connection with participation in FINRA's Web CRD registration system. The Exchange was recently notified by FINRA that, effective March 19, 2012, FINRA decreased the per card Initial Submission and Third Submission fees from \$30.25 to \$27.50. As such, the Exchange proposes to amend the BOX Fee Schedule to reflect this change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of 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 dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes the proposed change is reasonable because the fees for fingerprint processing will now be lower than they previously were. The proposed change is equitable and not unfairly discriminatory because the new, lower fingerprint processing fees will apply to all eligible parties. Further, this fee is not being assessed or set by BOX or the Exchange, but by FINRA.

*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 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*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act<sup>6</sup> and Rule 19b-4(f)(2) thereunder,<sup>7</sup> because it establishes or changes a due, fee, or other charge applicable only to a member. As such, the proposed rule change is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2012-023 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-BX-2012-023. This file number should be included on the subject line if email 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 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 a.m. and 3 p.m. Copies of the filing will also 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-BX-2012-023 and should be submitted on or before April 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66731; File No. SR-NSCC-2012-02]

**Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Enhance Its Margining Methodology as Applied to Municipal and Corporate Bonds**

April 4, 2012.

**I. Introduction**

On February 1, 2012, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-NSCC-2012-02 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change was published for comment in the **Federal Register** on February 22, 2012.<sup>2</sup> The Commission received no comment letters. For the reasons discussed below,

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 34-66398 (February 15, 2012), 77 FR 10589 (February 22, 2012).

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

the Commission is granting approval of the proposed rule change.

## II. Description

This rule change will enhance NSCC's margining methodology as it applies to municipal and corporate bonds

### *Proposal Overview*

A primary objective of NSCC's clearing fund ("Clearing Fund") is to have on deposit from each applicable member assets sufficient to satisfy losses that may otherwise be incurred by NSCC as the result of the default of the member and the resultant close out of that member's unsettled positions under NSCC's trade guaranty. Each member's Clearing Fund required deposit is calculated daily pursuant to a formula set forth in Procedure XV of NSCC's Rules, which formula is designed to provide sufficient funds to cover this risk of loss. The Clearing Fund formula accounts for a variety of risk factors through the application of a number of components, each described in Procedure XV.<sup>3</sup>

The volatility component or "VaR" is a core component of this formula and is designed to calculate the amount of money that may be lost on a portfolio over a given period of time and that is assumed would be necessary to liquidate the portfolio within a given level of confidence. Pursuant to Procedure XV, NSCC may exclude from this calculation net unsettled positions in classes of securities such as illiquid municipal or corporate bonds, whose volatility is amenable to generally accepted statistical analysis only in a complex manner. The volatility charge for such positions is determined by multiplying the absolute value of the positions by a predetermined percentage ("haircut"), which shall not be less than 2%.

<sup>3</sup>In addition to those described in this filing, Clearing Fund components also include (i) a mark-to-market component that takes into account the difference between the contract price and market price for the net position of each security in a member's portfolio through settlement; (ii) the Market Maker Domination component ("MMDOM") is charged to Market Makers or firms that clear for them; (iii) a "special charge" in view of price fluctuations in or volatility or lack of liquidity of any security; (iv) an additional charge between 5–10% of a member's outstanding fail positions; (v) a "specified activity charge" for transactions scheduled to settle on a shortened settlement cycle (*i.e.*, less than T+3 or T+3 for "as-of" transactions); (vi) an additional charge that NSCC may require of members on surveillance status; and (vii) an "Excess Capital Premium" that takes into account the degree to which a member's collateral requirement compares to the member's excess net capital by applying a charge if a member's Required Deposit minus amounts applied from the charges described in (ii) and (iii) above is above its required capital.

In connection with its ongoing review of the adequacy and appropriateness of its margining methodologies, NSCC is amending Procedure XV of its Rules so that NSCC will apply this haircut-based margining methodology at a rate of no less than 2% as is currently permitted by Procedure XV to all municipal and corporate bonds processed through NSCC. The proposed rule change will make clear that to the extent NSCC deems appropriate NSCC may apply this haircut to any of the municipal and corporate bonds that it processes. As NSCC continues its ongoing review of the adequacy of its margining methodology in achieving the desired coverage, the proposed rule change will allow NSCC to apply a margin requirement to these instruments that it deems appropriate.

NSCC reviews its risk management processes against applicable regulatory and industry standards, including, but not limited to: (i) The Recommendations for Central Counterparties ("Recommendations") of the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions ("IOSCO") and (ii) the securities laws and rulemaking promulgated by the Commission. In conformance with Recommendations 3 and 4 of the IOSCO Recommendations and with the Commission rules proposed under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, specifically proposed Rule 17Ad-22(b)(1) addressing measurement and management of credit exposures, this proposed rule change will assist NSCC in its continuous efforts to ensure the reliability of its margining methodology and will limit NSCC's exposures to losses by allowing NSCC to apply a margin requirement to the corporate and municipal bonds it clears that captures the risk characteristics, which are asset class specific, of these instruments, including historical price volatility, market liquidity, and idiosyncratic risk.

### *Implementation Timeframe*

Members will be advised of the implementation date through issuance of an NSCC Important Notice.

### *Proposed Rule Changes*

In order to make clear that to the extent NSCC deems appropriate it may apply a haircut-based margining methodology to all municipal and corporate bonds processed at NSCC, NSCC is amending Sections I(A)(1)(a)(ii) and I(A)(2)(a)(ii) of Procedure XV, as marked on Exhibit 5 to the proposed rule filing, by removing the qualifier

"illiquid" before "municipal or corporate bonds." No other changes to the Rules are contemplated by this proposed rule change.

## III. 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 assure the safeguarding of securities and funds which are in the custody or control of such clearing agency or for which it is responsible and in general to protect investors and the public interest.

As a central counterparty, NSCC occupies an important role in the securities settlement system by interposing itself between counterparties to financial transactions, thereby reducing the risk faced by members and contributing to global financial stability. The effectiveness of a central counterparty's risk controls and the adequacy of its financial resources are critical to achieving these risk-reducing goals. Because the proposed rule change will assist NSCC in its continuous efforts to ensure the reliability of its margining methodology and will limit NSCC's exposures to losses by allowing it to apply a margin requirement to corporate and municipal bonds cleared at NSCC that better addresses the risk characteristics of these instruments, the proposed rule change should help assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, and in general, protect investors and the public interest and therefore is consistent with the requirements of Section 17A(b)(3)(F) of the Act. The proposed rule change is not inconsistent with the existing rules of NSCC, including any other rules proposed to be amended.

## IV. 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,<sup>6</sup> that the proposed rule change (File No. SR-NSCC-2012-02) be, and hereby is, approved.<sup>7</sup>

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66724; File No. SR-NASDAQ-2012-044]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Fees Applicable to Non-Display Usage of Certain NASDAQ Depth-of-Book Market Data

April 3, 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 March 26, 2012, The NASDAQ Stock Market LLC (“NASDAQ”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 is filing this proposed change to modify the fees applicable to Non-Display Usage of certain NASDAQ Depth-of-Book market data. The text of the proposed rule change is available at [nasdaq.cchwallstreet.com](http://nasdaq.cchwallstreet.com), at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

#### 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

*Growth in Use of Non-Displayed Data.* The implementation of Regulation NMS in 2006 and 2007 triggered a dramatic change in the composition, speed, and consumption of market data products in U.S. equities trading. Regulation NMS spurred the development and proliferation of proprietary data products by liberalizing SEC Rule 603, allowing self-regulatory organizations to offer on a proprietary basis data that previously was confined to national market system plans, and permit investors to use this proprietary data in circumstances where consolidated data previously was required. Regulation NMS also drove market participants to increase trading speed and, by necessity, the speed of market data feeds by requiring in Rule 611 that all market participants compete to access a limited set of protected quotations. As a result, some market participants and exchanges have used Depth-of-Book data to identify liquidity in fragmented markets.

Technological advancements and their use by increasingly sophisticated market participants have intensified the changes brought about by Regulation NMS. For example, the prevalence and importance of co-location has grown rapidly as market participants seek to access protected quotes faster than their competitors. Also, markets and market participants continually seek expanded bandwidth options to communicate an ever-increasing number of trading messages without significant latencies and improvement of determinism. Connectivity offerings have multiplied as new networks and technologies come on line.

As technology, automation, speed, and other aspects of trading have evolved, so too has market data consumption. No longer is trading and investing dominated by individuals responding to market data displayed on trading screens by manually entering quotes and trades into the markets. Instead, the vast majority of trading is done by firms leveraging powerful servers running sophisticated algorithms and consuming massive quantities of data without displaying that data to individual traders. While certain groups of investors, including retail investors, continue to view traditional market data displays, their orders are generally processed, delivered, and executed by firm servers using non-displayed data. Non-Display

Usage is used not only for automated order generation and program trading, but also to provide reference prices for algorithmic trading and order routing; and for various back office processes, including surveillance, order verification, and risk management functions.

*NASDAQ Market Data Pricing.* NASDAQ’s pricing model for market data products must keep pace with changes in data consumption patterns in order to allocate fees and charges fairly among Subscribers. NASDAQ’s pricing has evolved over time in response to previous changes in market data consumption, and it now includes numerous factors for setting fees. Generally, NASDAQ allocates market data fees among Subscribers based on the data elements consumed, including top-of-book,<sup>3</sup> Depth-of-Book,<sup>4</sup> and other, more sophisticated data products.<sup>5</sup> NASDAQ also distinguishes between different sets of securities, NASDAQ-listed securities versus securities listed on other markets for which NASDAQ’s data plays a different, often more limited, role. Moreover, NASDAQ has long followed industry practice by distinguishing between real-time and delayed data, allocating higher fees to real-time usage and lower or no fees to delayed data usage. Also, since 1999 NASDAQ has distinguished between Professional and Non-Professional Subscribers, offering lower fees to Non-Professional Subscribers in order to encourage use by average investors and also recognizing that Professional Subscribers make heavier use of the same data feeds.<sup>6</sup> These four distinctions have existed in tandem for many years.

Since the mid-2000s, in response to changes driven by Regulation NMS, NASDAQ has added new considerations to its pricing. Thus, in 2005, NASDAQ amended its Distributor fee schedule to distinguish between distributions [sic] that is Internal (redistribution within an entity that receives NASDAQ market data) versus External (redistribution outside that entity) to the Distributor.<sup>7</sup> Also, in 2005 NASDAQ began differentiating between Direct Access and Indirect Access, charging more for firms that access data directly from NASDAQ based on the enhanced speed and simplicity for Subscribers and the

<sup>3</sup> Compare NASDAQ Rule 7011 (top-of-book consolidated data) and NASDAQ Rule 7047 (top-of-book NASDAQ-only data).

<sup>4</sup> See NASDAQ Rule 7023.

<sup>5</sup> See NASDAQ Rules 7044 (Market Pathfinders), 7048 (Custom Data Feeds), and 7057 (NASDAQ MatchView).

<sup>6</sup> See NASDAQ Rule 7023(a)(3)(A).

<sup>7</sup> See NASDAQ Rule 7023(a)(4).

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

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