

assure that fair and orderly markets are continued in the PMM's assigned options.<sup>17</sup>

The Commission also believes that the proposed financial requirements are comparable to the financial requirements at other options exchanges. For example, generally, on the American Stock Exchange ("Amex"), the financial requirement for options specialists is equal to a minimum of \$600,000, plus \$25,000 for each option issue in excess of the initial ten issues in which such specialist is registered,<sup>18</sup> while on CBOE, a designated primary market maker ("DPM") must maintain, in part, net liquidating equity in its DPM account of not less than \$100,000, as well as conform to guidelines established by the MTS Committee, which require \$350,000 plus \$25,000 in excess equity for each class or product allocated in excess of the initial eight products.<sup>19</sup> On the Pacific Exchange ("PCX"), lead market makers that perform the function of an Order Book Official ("OBO") must maintain, in part, a cash or liquid asset position of at least \$500,000 plus \$25,000 for each issue over five issues for which they perform the function of an OBO,<sup>20</sup> while LMMs that do not perform the function of an OBO must maintain a cash or liquid asset position of at least \$350,000 plus \$25,000 for each issue over eight issues that has been allocated to the LMM.<sup>21</sup> Finally, on the Philadelphia Stock Exchange ("Phlx") members that are exempt from Rule 15c3-1 must generally maintain net liquid assets of \$25,000.<sup>22</sup> Phlx also has specific provisions applicable to FLEX and foreign currency options FOTs. For example, a specialist in FLEX index options must maintain a minimum of \$1 million in net capital and an assigned ROT in foreign currency options must maintain a minimum \$1 million in net liquid assets.<sup>23</sup> Accordingly, the Commission believes that the proposal will help ISE market makers compete effectively with specialists at other exchanges. Increased competition, in turn, should benefit investors by producing a more efficient marketplace.

The Commission finds good cause for accelerating approval of Amendments Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after

the date of publication in the **Federal Register**. The Commission finds that Amendments Nos. 1 and 2 clarify ISE's proposal by providing additional information and representations regarding the operation of the proposed rule and guidance to be provided to members. Accordingly, the Commission believes that granting accelerated approval of Amendments Nos. 1 and 2 is appropriate and consistent with sections 6(b)(5) and 19(b)(2) of the Act,<sup>24</sup> in that it should promote just and equitable principles of trade and, in general, protect investors and the public interest.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2, including whether the Amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549-0609. 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. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR-ISE-00-22 and should be submitted by September 19, 2001.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule change (SR-NYSE-00-22), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44736; File No. SR-NSCC-2001-07]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Buy-In Rules and Procedures

August 22, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 27, 2001, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on April 30, 2001, amended the proposed rule change as 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 parties.

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

The proposed rule change (i) further automates the buy-in process of CNS positions, (ii) allows for a Notice of Intention to Buy-In ("Buy-In Notice") to be filed on successive days provided that the quantity of securities representing the sum of the Buy-In Notices does not exceed the member's total long position, and (iii) revises Retransmittal Notices to include the identity of the member with the long position ("originator").

#### 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 these statements.<sup>2</sup>

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

NSCC is modifying its buy-in rules and procedures to further automate and

<sup>17</sup> See *supra* note 5.

<sup>18</sup> See Amex Rule 950(h).

<sup>19</sup> See CBOE Rule 8.86 and CBOE DPM Equity Guidelines 00-111.

<sup>20</sup> See PCX Rule 6.82 Commentary .03.

<sup>21</sup> See PCX Rule 6.82(c)(11).

<sup>22</sup> See Phlx Rule 703.

<sup>23</sup> See Phlx Rule 1079(c)(2) and Phlx Rule 1069(d), respectively.

<sup>24</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by NSCC.

improve the processing of buy-ins of CNS positions.<sup>3</sup> The proposed procedures provide that a Buy-In Notice may be filed by an originator on successive days provided the succeeding Buy-In Notice does not specify a quantity of securities covered by the prior Buy-In Notice and the quantity of securities representing the sum of all Buy-In Notices does not exceed the member's total long position.<sup>4</sup>

The Retransmittal Notice would be revised to include the identity of the originator on the Retransmittal Notice so that the member owing securities can contact the originator to arrange delivery.<sup>5</sup> Regardless of any agreements that may have been entered into between a member owing securities and an originator, unless the originator notifies NSCC in a timely manner that its Buy-In Order should not be executed, members who receive Retransmittal Notices and do not satisfy them assume liability for the loss, if any, which occurs as a result of an originator's Buy-In Order.<sup>6</sup>

The proposed rule change also would require members to electronically transmit Buy-In Notices and Buy-In Orders through an automated format determined by NSCC thereby eliminating the practice of hand and facsimile deliveries. Similarly, NSCC proposes to transmit through an automated format Retransmittal Notices to members.<sup>7</sup>

NSCC has determined that subject to SEC approval it will target implementation of the proposed Buy-In changes for the third quarter of 2001. Members will be advised of the specific date prior to implementation.<sup>8</sup>

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>9</sup> and the rules and regulations thereunder applicable to NSCC because it will facilitate the prompt and accurate clearance and settlement of buy-in

transactions by automating and improving the processing of buy-ins.

*(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*

No written comments relating to the proposed rule change have been solicited or received.<sup>10</sup> 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 thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date 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 such 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20459-0609. 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 Section, 450 Fifth Street, NW.,

Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-2001-07 and should be submitted by September 19, 2001.

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. 34-44733; File No. SR-Phlx-99-52]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Adopting Rule 51, Enforcement of Capital Funding Fee**

August 22, 2001.

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 December 6, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Phlx filed an amendment to the proposal on August 9, 2001.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

*A. The Rule Language*

The Phlx proposes to adopt new Rule 51, enforcement of Capital Funding Fee, which relates to the ability of the Exchange to take certain specified

<sup>3</sup> Proposed changes to NSCC Rule 11, Sections 7(b) and (c); NSCC Procedure VII, Section J; and NSCC Procedure X, Section A. Also, proposed changes to NSCC Procedure VII, Section E3 to conform its language to the language proposed in NSCC Procedure VII, Section J.

<sup>4</sup> Proposed changes to NSCC Procedure VII, Section J.

<sup>5</sup> Proposed changes to NSCC Rule 11, Section 7(b).

<sup>6</sup> Proposed changes to NSCC Procedure X, Section A 1.

<sup>7</sup> Proposed changes to NSCC Rule 11, Sections 7(b) and (c).

<sup>8</sup> As originally filed, the proposed Buy-In changes were to be implemented by NSCC on June 8, 2001.

<sup>9</sup> 15 U.S.C. 78q-1.

<sup>11</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> See Letter from Cynthia Hoekstra, Counsel, Phlx, to Nancy Sanow, Assistant Director, dated August 8, 2001 ("Amendment No. 1"). In Amendment No. 1 the Phlx represented that the proposed Rule 51 complies with Delaware corporate law, Pennsylvania contract law, and the Exchange's Certificate of Incorporation, by-laws, and rules. In addition, the Phlx modified the timing of the enforcement procedures for failure to pay the capital funding fee and included a provision for equitable reversion.

<sup>10</sup> In 1998 the Securities Operations Division of the Securities Industry Association formed a committee that studied, worked with, and supported NSCC in its enhancement of the its buy-in rules and procedures.