

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49598; File No. SR-NSCC-2003-20]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Eliminate the Higher Capital Requirements Imposed on Members for Processing Investment Fund Transactions Through NSCC's Mutual Fund Services

April 22, 2004.

I. Introduction

On October 9, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on October 22, 2003, amended proposed rule change SR-NSCC-2003-20 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on March 22, 2004.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The purpose of the proposed rule change is to amend the standards of financial responsibility required for certain NSCC applicants and members using NSCC's Mutual Fund and Insurance Services. Specifically, the proposed rule change deletes Addendum V to NSCC's Rules thereby eliminating the higher capital requirements imposed on NSCC Mutual Fund/Insurance Services Members and Fund Members processing Investment Funds transactions through NSCC's Mutual Fund Services.

Mutual Fund Services are non-guaranteed services offered by NSCC under NSCC Rule 52. In November 2000, NSCC expanded the types of products eligible for processing through NSCC's Mutual Fund Services to

include "Investment Funds."³ An Investment Fund is defined in Rule 1 of NSCC's Rules as a "fund or investment entity subject to regulation under applicable Federal and State banking and/or insurance laws." Examples of such funds include stable value funds, guaranteed investment contracts which are regulated as group annuities, and collective bank investment trusts.

NSCC adopted Addendum V, "Financial Standards for Applicants and Participants Processing Investment Fund Transactions through Mutual Fund Services," in connection with making Investment Fund products eligible for processing at NSCC. Addendum V modified the standards of financial responsibility and operational capability set forth in Addenda B and I⁴ of NSCC's Rules to impose more stringent capital requirements on Mutual Fund/Insurance Services Members and Fund Members that process Investment Funds through NSCC's Mutual Fund Services. The more stringent financial standards were adopted because of NSCC's unfamiliarity with the product. Since its introduction, however, this service has been actively used and each day brings new requests by firms to become participants in order to take advantage of the services. NSCC has experienced no member defaults in the processing of Investment Funds through NSCC's Mutual Fund Services.

NSCC has determined that the current financial standards are an unnecessary barrier to entry. Based on NSCC's experience to date, the stringency of the financial criteria applicable to members doing transactions in Investment Funds is not commensurate with the associated risks.

Although NSCC is reducing the financial requirements imposed on all Mutual Fund/Insurance Services Member and Fund Member applicants and members seeking to process Investment Fund transactions at NSCC by deleting Addendum V, such applicants and members shall remain subject to the criteria set forth in Addenda B and I.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds

³ Securities Exchange Act Release No. 43606 (November 21, 2000), 65 FR 71182 (November 29, 2000) [File No. SR-NSCC-00-05].

⁴ Addendum B applies to Mutual Fund/Insurance Services Members processing mutual funds through NSCC's Mutual Fund Services, and Addendum I applies to Fund Members processing mutual funds through NSCC's Mutual Fund Services.

which are in the custody or control of the clearing agency or for which it is responsible.⁵ The Commission finds that NSCC's proposed rule change is consistent with this requirement because while it is reducing the financial requirement imposed on Mutual Fund/Insurance Services Members and Fund Members, it should not affect NSCC's ability to protect itself against the risk of member default.

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 section 17A of the Act 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-NSCC-2003-20) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49587; File No. SR-Phlx-2003-54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Amend Rules Relating to the Minimum Net Capital for Specialists in Index Fund Shares

April 21, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on October 20, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 29, 2004, the Phlx amended the proposal.³ Amendment No. 1 completely replaces and supersedes the original filing. The Commission is

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See March 26, 2004 letter from Mark I. Salvacion, Director and Counsel, Phlx, to Rachael Grad, Attorney, Division of Market Regulation, SEC and attachments ("Amendment No. 1").

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 49422 (March 16, 2004), 69 FR 13344.