

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**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").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on March 22, 2004.<sup>2</sup> 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."<sup>3</sup> 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 I<sup>4</sup> 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

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

<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

**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")<sup>1</sup> and Rule 19b-4<sup>2</sup> 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.<sup>3</sup> Amendment No. 1 completely replaces and supersedes the original filing. The Commission is

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>6</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 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").

<sup>15</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. 49422 (March 16, 2004), 69 FR 13344.

publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Phlx proposes to add a new subsection (B) to Exchange Rule 703(a)(v), which would establish a minimum net capital requirement of \$1,000,000 for specialists in Index Fund Shares. The text of the proposed rule change is below. Proposed new language is in italics.

#### Rule 703(a)

(i)–(iv) No change.

(v)(A) An assigned Specialist in Trust Shares, as defined in Rule 803(i), that are listed on the Exchange, shall be required to maintain a minimum of \$1,000,000 in net capital. The assigned Specialist shall immediately inform the Examinations Department upon failure to be in compliance with such requirement. *(B) An assigned Specialist in Index Fund Shares, as defined in Rule 803(l)(2)(A), that are listed on the Exchange, shall be required to maintain a minimum of \$1,000,000 in net capital. The assigned Specialist shall immediately inform the Examinations Department upon failure to be in compliance with such requirement.* The Exchange may waive the financial requirements of this Rule 703(a)(v) in unusual circumstances.

(vi)–(ix) 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, the Phlx 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. The Phlx 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

The purpose of the proposed rule change is to increase the minimum net capital requirement for specialists in Index Fund Shares because of the unique risks associated with Index Fund

Shares.<sup>4</sup> Currently, Exchange Rule 703(a)<sup>5</sup> sets forth certain categories of net capital requirements for various types of member organizations, based on the type of security or activity in which the member organization engages. For example, subsection (v) of Exchange Rule 703(a)<sup>6</sup> provides that an assigned specialist in Trust Shares is required to maintain a minimum of \$1,000,000 in net capital. Because of the potential risks associated with trading Trust Shares, specialists in Trust Shares are expected to make a greater financial commitment for the privilege of acting as a specialist in Trust Shares.<sup>7</sup>

Index Fund Shares that are to be listed on the Exchange, just as Trust Shares, are expected to entail a substantial financial commitment on the part of the specialist assigned to them because most, if not all, index fund shares are created and redeemed in large blocks called "creation units" which may be as large as 50,000 shares per unit. Because the potential risks associated with Index Fund Shares are no less than the risks associated with Trust Shares, the proposed rule change establishes a minimum net capital requirement of \$1,000,000 for specialists in Index Fund Shares. As such, proposed Rule 703(a)(v)(B) is substantially similar to current Rule 703(a)(v), which would be renumbered Rule 703(a)(v)(A). The Exchange believes that imposing a higher net capital requirement is one way to ensure that the Index Fund Share specialist can carry out his or her duties to maintain a fair and orderly market. Moreover, the Exchange believes that the higher minimum net capital requirement for Index Fund Shares pursuant to proposed Section 703(a)(v)(B) will ensure that only sufficiently capitalized

firms will apply to become specialists in Index Fund Shares.

The proposed higher minimum net capital requirement for specialists in Index Fund Shares listed and traded on the Phlx on a primary basis would not apply to Index Fund Shares traded on an unlisted trading privileges basis. This is due to the fact that specialists, in the case of Index Fund Shares traded on an unlisted trading privileges basis, do not generally undertake the same financial commitments to create and redeem Index Fund Shares as do specialists in their primary market.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

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

The Phlx does not believe that the proposed rule change would impose any inappropriate 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 were either solicited or received.

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

Within 35 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 90 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 Exchange 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.

<sup>4</sup> "Index Fund Share" is defined in Exchange Rule 803(l)(2)(A) as a "security (I) that is issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of specified foreign or domestic stock index; (II) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified number of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (III) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end management investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value."

<sup>5</sup> See Phlx Rule 703(a).

<sup>6</sup> See Phlx Rule 703(a)(v).

<sup>7</sup> See Securities Exchange Act Release No. 45129 (December 4, 2001), 66 FR 64331 (December 12, 2001) (SR-Phlx-99-41) (Order approving \$1 million minimum net capital requirement for specialists in Trust Shares).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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-2003-54 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2003-54. 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. 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 Phlx. 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-2003-54 and should be submitted on or before May 19, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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#### TENNESSEE VALLEY AUTHORITY

##### **Paperwork Reduction Act of 1995, as Amended by P.L. 104-13; Proposed Collection; Comment Request**

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Alice D. Witt, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402-2801; (423) 751-6832. (SC: 000XYDJ)

Comments should be sent to the Agency Clearance Officer no later June 28, 2004.

##### **SUPPLEMENTARY INFORMATION:**

*Type of Request:* Regular submission; proposal for an extension of a currently approved collection, with revisions, which will expire August 31, 2004. (OMB Control number: 3316-0105)

*Title of Information Collection:* TVA Police Customer Satisfaction Survey.

*Frequency of Use:* On occasion.

*Affected Public:* Individuals and Small Businesses.

*Small Business or Organizations Affected:* Yes.

*Estimated Number of Annual Responses:* 50.

*Estimated Total Annual Burden Hours:* 4.25.

*Estimated Average Burden Hours Per Response:* 5 minutes.

*Need For and Use of Information:* This information collection will be randomly distributed to individuals who use TVA facilities and come in contact with TVA Police Officers (*i.e.*, campers, boaters, marina operators, etc.) to provide feedback on the quality of the security and safety provided by TVA Police on TVA managed public lands. Individuals may also provide feedback by accessing the TVA Police Web site (<http://www.tva.gov>). The information collected will be used to evaluate current security and safety policies and

to identify new opportunities for improvements.

**Jacklyn J. Stephenson,**

*Senior Manager, Enterprise Operations, Information Services.*

[FR Doc. 04-9588 Filed 4-27-04; 8:45 am]

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#### DEPARTMENT OF TRANSPORTATION

##### **Office of the Secretary**

##### **Aviation Proceedings, Agreements Filed the Week Ending April 16, 2004**

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST-2004-17585.

*Date Filed:* April 16, 2004.

*Parties:* Members of the International Air Transport Association.

*Subject:* CSC/26/Meet/004/2004 dated April 14, 2004. Expedited Rescission of Resolutions r1-3. Intended effective date: expedited May 1, 2004.

**Andrea M. Jenkins,**

*Program Manager, Docket Operations, Federal Register Liaison.*

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#### DEPARTMENT OF TRANSPORTATION

##### **Federal Aviation Administration**

[Docket No. FAA-2003-14246]

##### **Airport Privatization Pilot Program**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice to reopen comment period for final application of New Orleans Lakefront Airport, New Orleans, Louisiana.

**SUMMARY:** The Federal Aviation Administration (FAA) is reopening the comment period for the Orleans Levee District's final application for participation of New Orleans Lakefront Airport (NEW) in the Airport Privatization Pilot Program. Specifically, the FAA is seeking information and comments from interested parties on the Operating Agreement of American Airports Lakefront, LLC, the proposed private sponsor. This agreement was not available to the FAA during the original public comment period, January 16, 2003, to May 23, 2003, published in the **Federal Register** as (68 FR 12969) and

<sup>10</sup> 17 CFR 200.30-3(a)(12).