

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68269; File No. SR-NSCC-2012-09]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Addendum A (Fee Structure) of Its Rules and Procedures Relating to Fund/SERV® Fees

November 20, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 14, 2012, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by NSCC. NSCC filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2)⁴ thereunder so that the proposal was effective upon filing with the Commission. 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

The proposed rule change modifies Addendum A (NSCC’s Fee Structure) of NSCC’s Rules relating to Fund/SERV® fees.

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 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

NSCC’s Fund/SERV® is the industry standard for processing and settling mutual fund transactions. Through automated, standardized formats and a centralized platform, fund companies, banks and trust companies, third-party administrators, broker/dealers and other distribution firms can complete order entry—purchases, exchanges and redemptions—as well as confirmations, registrations and money settlement.

Recently, there has been a growing trend in the mutual fund industry toward omnibus processing, a practice where distribution firms bundle multiple client transactions into aggregated orders. As a result of this aggregation, the average number of daily trades processed through Fund/SERV® has declined. NSCC expects the trend toward omnibus processing to continue into the foreseeable future. Accordingly, NSCC is increasing the Fund/SERV transaction fee from \$0.06 per transaction to \$0.07 per transaction to align the fees associated with Fund/SERV with the cost of delivering this service. This increase will be implemented on January 1, 2013.

NSCC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations issued thereunder applicable to NSCC because it updates NSCC’s fee schedule and provides for the equitable allocation of fees among NSCC’s members.

(B) Self-Regulatory Organization’s Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. 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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act⁵ and Rule 19b-4(f)(2)⁶ thereunder

because it establishes fees charged by NSCC on any person. The implementation date for this proposed rule change will be January 1, 2013.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 email to rule-comments@sec.gov. Please include File Number SR-NSCC-2012-09 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-NSCC-2012-09. 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 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of NSCC and NSCC’s Web site: <http://www.dtcc.com/downloads/legal/>

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

rule_filings/2012/nscs/SR-NSCC-2012-09.pdf.

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-NSCC-2012-09 and should be submitted on or before December 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-28681 Filed 11-26-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68267; File No. SR-Phlx-2012-133]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 3218

November 20, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 15, 2012, NASDAQ OMX PHLX LLC (“Phlx” or the “Exchange”) 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 Phlx. On November 15, 2012, Phlx filed Amendment No. 1 to the proposed rule change.³ Phlx filed the proposal pursuant to Section 19(b)(3)(A)⁴ and Rule 19b-4(f)(6)⁵ thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Phlx deleted “October __, 2012” and inserted “November 1, 2012” on page 9 of 19 of the original filing, concerning when Phlx provided the Commission with written notice of the proposed rule change.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

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

Phlx is filing this proposed rule change to amend Rule 3218. The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

3218. Clearance and Settlement

(a) All transactions through the facilities of PSX shall be cleared and settled through a registered clearing agency using a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, [or] by entry into a correspondent clearing arrangement with another member *organization* that clears trades through such a[n] *clearing* agency[.], *or by use of the services of CDS Clearing and Depository Services, Inc. in its capacity as a member of such a clearing agency.*

(b) 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 Exchange 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 Exchange 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

Phlx proposes to modify Rule 3218 to clarify that the use of a long-standing arrangement between National Securities Clearing Corporation (“NSCC”) and CDS Clearing and Depository Services, Inc. (“CDS”)⁶ for clearing transactions in US securities provides an acceptable method for clearing transactions executed on Phlx’s NASDAQ OMX PSX trading system (“PSX”). Among other things, CDS operates Canada’s national clearance and settlement operations for cash equities trading, performing a role analogous to NSCC in the US. CDS is regulated by the Ontario and Quebec securities commissions and the Bank of Canada, with working and reporting relationships with the Canadian Securities Administrators (CSA), other Canadian provincial securities

⁶ CDS was formerly known as The Canadian Depository for Securities Limited.

commissions, and the Canadian Office of the Superintendent of Financial Institutions. CDS is also a full service member of NSCC and a participant in the Depository Trust Company (“DTC”).

Currently, a Canadian broker-dealer seeking to buy or sell US securities may do so through a US registered broker-dealer with which it establishes a relationship for that purpose. In such a relationship, the US broker-dealer manages the clearance and settlement of the resulting trades, either through direct membership at NSCC or indirectly through a clearing broker with which it has established a relationship. Under the proposed change, a Canadian broker-dealer that is a member of CDS may make use of CDS, and its direct membership in NSCC, to clear and settle the resulting trades. Specifically, the clearing report for the trade will “lock in” CDS, with reference to the CDS membership of the Canadian broker-dealer, as a party to the trade.⁷ NSCC then looks to CDS for satisfaction of clearance and settlement obligations of the Canadian broker-dealer. NSCC requires CDS to commit collateral to the NSCC clearing fund like any other NSCC member, the amount of which is based on a risk-based margining methodology. In a similar manner, CDS requires its participants to commit collateral to CDS. The sole risk incurred by Phlx and then by NSCC in the arrangement is the highly remote risk that CDS itself might default on its obligations to clear and settle on behalf of the Canadian broker-dealer. This risk is conceptually indistinguishable from the risk of a clearing broker default; moreover, because the value of Canadian trades cleared through the mechanism is likely to be small in comparison to the values cleared through many large US clearing brokers, the magnitude of this risk is correspondingly smaller.

The relationship between NSCC and CDS was established more than two decades ago, and various aspects of the relationship have been recognized through several prior filings⁸ and no-

⁷ As an NSCC member, CDS is responsible for the settling and clearing of its participants’ trades conducted with US broker-dealers. For purposes of “locking-in” parties, certain CDS participants have discrete NSCC participant codes that identify the Canadian broker-dealer and its participation in the NSCC/CDS clearing arrangement. On midnight of T+1, NSCC takes on the buyer’s credit risk and the seller’s delivery risk.

⁸ See Securities Exchange Act Release No. 36918 (March 4, 1996), 61 FR 9739 (March 11, 1996) (SR-NASD-95-49) (approving access to Automated Confirmation Transaction Service for CDS members); Securities Exchange Act Release No. 40523 (October 6, 1998), 63 FR 54739 (October 13, 1998) (approving establishment of a CDS omnibus account at DTC to facilitate cross-border clearing).