

relating specifically to letters of credit furnished to NSCC.

NSCC expects that modifications may be made to the ULC in the future. If and when that occurs, NSCC will require its members to use the revised form.<sup>5</sup>

## II. Discussion

Section 17A(b)(3)(F)<sup>6</sup> of the Act requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. NSCC and the other members of the UCG developed the ULC to foster uniformity among the various U.S. securities and futures clearing organizations with respect to letters of credit that are deposited as collateral. This uniformity will help reduce operational burdens for securities and futures industry participants and their letter of credit issuers. It should also enhance the legal certainty that the letters of credit received by NSCC and other UCG members as collateral will be enforceable. Accordingly, the Commission finds that the rule change is consistent with NSCC's obligations under the Act.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will permit NSCC to implement the ULC by September 1, 1999, at which time its previous letters of credit expire. Since September 1, 1999, is the scheduled implementation date of the ULC by certain UCG members, accelerated approval will also provide for a more coordinated implementation of the ULC. Furthermore, the Commission has not received any comment letters and does not expect to receive any comment letters on the proposal.

## III. 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-99-05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41800; File No. SR-NSCC-99-10]

### Self-Regulatory Organizations; The National Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Arrangements to Integrate the National Securities Clearing Corporation and The Depository Trust Company

August 27, 1999.

On August 5, 1999, the National Securities Clearing Corporation filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NSCC-99-10) 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 August 16, 1999.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

### I. Description

The rule change involves arrangements to integrate NSCC and The Depository Trust Company ("DTC"). Under the rule change, NSCC and DTC will form a New York corporation ("Holding Company") that will own directly all of the outstanding stock of NSCC and will own indirectly through a Delaware subsidiary of the Holding Company all of the outstanding stock of DTC.

The Holding Company will issue two classes of stock: common and preferred. The Holding Company will conduct two exchange offers in which (1) current DTC stockholders will have the opportunity to exchange their DTC shares for Holding Company common stock on a one-for-one basis and (2) the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD"), the two current stockholders of NSCC, will be offered shares of Holding Company

preferred stock on a one-for-one basis in exchange for their NSCC shares.

In connection with the exchange for shares of DTC stock, the current DTC Stockholders Agreement has been amended to provide that if a specified super majority of DTC stockholders tender their shares of DTC stock for shares of Holding Company common stock: (1) any DTC stockholders that fail to tender their shares DTC stock will cease to be qualified holders of DTC stock; (2) their shares of DTC stock will automatically be transferred to NSCC; (3) NSCC will tender such shares of DTC stock to the Holding Company in exchange for an equivalent number of shares of Holding Company common stock; and (4) the non-tendering DTC stockholders will be paid DTC book value for their shares of DTC stock as and when NSCC, in accordance with procedures set forth in the Holding Company Shareholders Agreement, sells or transfers its shares of Holding Company common stock to other participant or members of DTC and NSCC.<sup>3</sup>

The Holding Company's Articles of Incorporation, By-Laws, and Shareholders Agreement ("Basic Documents")<sup>4</sup> contain provisions designed to preserve the rights that the stockholders of NSCC and DTC currently have in particular to satisfy the fair representation requirement of Section 17A(b)(3)(C) of the Act.<sup>5</sup> Specifically, the Basic Documents provide for the following:

- As owners of Holding Company preferred stock, the NYSE and the NASD each will have the right to put one person on the Board of Directors of the Holding Company. All other directors will be elected annually by the owners of Holding Company common stock. The Holding Company will elect as the directors of NSCC and DTC the persons that the stockholders of the Holding Company elect as the directors of the Holding Company.
- The rights to purchase Holding Company common stock will be reallocated to the users of NSCC and DTC based upon the users' usage of the clearing agencies' services and facilities. Under the Basic Documents, these rights will be reallocated initially in 2000 and again in 2001. Thereafter, depending

<sup>3</sup> NSCC has informed the Commission that the procedures to be used by NSCC to sell or transfer Holding Company common stock are in all material respects the same as the procedures set forth in DTC's Stockholders Agreement applicable to the sale by a stockholder of DTC shares.

<sup>4</sup> NSCC included the Basic Documents as exhibits to its filing, which is available for inspection and copying in the Commission's public reference room and through NSCC.

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

<sup>5</sup> NSCC will file a proposed rule change with the Commission prior to requiring members to comply with any substantive changes made to the ULC.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</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. 41719 (August 9, 1999), 64 FR 44569.

upon whether there are significant changes in entitlements and stock purchases, the Board of the Holding Company will be permitted to schedule reallocations every other year or every third year rather than annually.

- The owners of Holding Company common stock will be able to exercise cumulative voting in the election of Holding Company directors.

Each year the Holding Company's Board of Directors will appoint a nominating committee that may include both members and non-members of the Board. After soliciting suggestions from all users of the clearing agencies of possible nominees to fill vacancies on the Board, the nominating committee will recommend a slate of nominees to the full Board. The Board may make changes in that slate before submitting nominations to the holders of Holding Company common stock for election. The election ballot included in the proxy materials will provide an opportunity for stockholders to vote for a person not listed as a nominee. Because the Basic Documents provide for cumulative voting, it will be possible for one or more owners of Holding Company common stock to arrange to elect a person not on the slate nominated for election by the Board.

NSCC and DTC will continue to operate as they do currently, and each will offer its own services to its own participants and members pursuant to separate legal arrangements and separate risk management procedures. NSCC has informed the Commission that the Holding Company will not engage in any clearing agency activities but that it will provide certain support functions, including human resources, finance, audit, general administration, corporate communications, and legal, which support functions will be centralized in the Holding Company, to NSCC and DTC pursuant to service contracts.

## II. Discussion

Section 17A(b)(3)(C) of the Act<sup>6</sup> requires that the rules of a clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission believes that the proposed rule change is consistent with NSCC's obligations under Section 17A(b)(3)(C) because it should provide NSCC's members with a reasonable opportunity to acquire common stock in the Holding Company in proportion to their use of NSCC and DTC and should provide NSCC's members through their

holding of Holding Company stock with adequate and fair representation in the selection of NSCC's directors and in the administration of NSCC's affairs.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow NSCC to proceed with the exchange offer to its shareholders in which the shareholders may exchange their shares in NSCC for preferred stock in the Holding Company.

## III. Conclusion

On the basis of the foregoing, the Commission finds that NSCC's proposal is consistent with the requirements of the Act and in particular with the requirements of 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-99-10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41788; File No. SR-Phlx-99-29]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Mandatory Trading Floor Training Requirements

August 25, 1999.

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 August 5, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") 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 by the Exchange. 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 Exchange proposes to amend Phlx Rule 625, Options Trading Floor Training, to include equity floor members.<sup>3</sup> The proposal will require all equity floor members and their respective personnel to complete mandatory training related to that employee's function on the trading floor. The Exchange proposes to adopt new Equity Floor Procedure Advice, F-30, Equity Trading Floor Training, and an accompanying fine schedule, such that a minor rule violation enforcement and reporting plan ("minor rule plan") citation could be issued.<sup>4</sup> The text of amended Rule 625 and new Equity Floor Procedure Advice is presented below. Deleted text is brackets, and new text in italics.

#### F-30 EQUITY TRADING FLOOR TRAINING

*All new equity floor members, whether specialists or floor brokers, and their respective personnel, shall successfully complete mandatory training related to that employee's function on the trading floor. All current members and their respective personnel shall be subject to continuing mandatory training requirements in order to instruct these individuals on changes in existing automated systems or any new technology that is utilized by the Exchange.*

*Failure to attend the scheduled mandatory training described above may result in the issuance of a fine in accordance with the fine schedule below.*

*Fine Schedule (Implemented on a three year running calendar basis)*

*F-30*

<i>1st Occurrence</i>	<i>\$250.00</i>
<i>2nd Occurrence</i>	<i>\$350.00</i>
<i>3rd Occurrence</i>	<i>\$500.00</i>

<sup>3</sup> On March 22, 1999, the Commission approved a similar proposal with respect to equity option and index option floor members. See Securities Exchange Act Release No. 41201 (March 22, 1999) 64 FR 15391 (March 31, 1999) (SR-Phlx-99-06).

<sup>4</sup> The Phlx's minor rule plan, codified in Phlx Rule 970, contains floor procedure advices with accompanying fine schedules. Rule 19d-1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d-1(c)(1) requires prompt filing with the Commission of any final disciplinary actions. However, minor rule violations not exceeding \$2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>7</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.