

Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b); or (c) CBOE Volatility Index (VIX) futures. The Exchange is proposing to revise the definition of "Futures-Linked Securities" to provide that they are securities that pay at maturity a cash amount based on the performance or the leveraged (multiple or inverse) performance of an index or indexes of futures contracts or options or derivatives on futures contracts ("Futures Reference Asset"). All ETNs eligible for options trading must still be principally traded on a national securities exchange and an "NMS Stock."

### III. Commission Findings

After careful consideration, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>7</sup> and in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

#### *Leveraged ETN Options*

The Commission notes that the Exchange has represented that, similar to its imposition of higher margin requirements for options on leveraged ETFs,<sup>10</sup> the Exchange will impose higher margin requirements for leveraged ETNs, as allowed under CBOE Rules 12.3(h) and 12.10. The Exchange will also issue a Regulatory Circular announcing the new margin requirements prior to listing and trading options on leveraged ETNs.

In addition, pursuant to the proposed rule change, the Exchange represented

that the current listing standards for ETN options will continue to apply. The Exchange has also represented that its existing surveillance procedures applicable to trading options are adequate to properly monitor trading of options on leveraged ETNs.

The Commission believes that these representations are adequate to protect investors. Furthermore, the Commission believes that the ability to trade options on leveraged ETNs will provide investors with additional risk management tools. Therefore, the Commission believes that this proposed rule change is appropriate.

#### *Broaden the Definition of "Futures-Linked Securities"*

The Commission believes that this proposal will provide a more efficient process for the Exchange to list and trade options on ETNs. The Exchange will be able to list and trade options overlying newly introduced ETNs that do not fall within the current definition of "Futures-Linked Securities," without first filing a rule change proposal with the Commission to change the definition of "Futures-Linked Securities" to include each specific new product. The Commission notes that all ETNs that underlie options traded on the Exchange must still be principally traded on a national securities exchange and must be an "NMS stock." In addition, pursuant to the proposed rule change, the Exchange represented that the current listing standards for options on ETNs will continue to apply to options on ETNs that fall within the proposed definition of "Futures-Linked Securities." The Exchange has also represented that its existing surveillance procedures applicable to trading options are adequate to properly monitor trading of options on ETNs. Therefore, the Commission believes that this proposed rule change is appropriate.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the propose rule change (SR-CBOE-2010-080), as modified by Amendment No. 1, be, and is hereby, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63194; File No. SR-NSCC-2010-12]

### Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Procedures Related to the Automated Customer Account Transfer Service

October 27, 2010.

Pursuant to Section 19(b)(4) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 15, 2010, The National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. NSCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(4)<sup>3</sup> 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 purpose of the proposed rule change is to modify NSCC's Rules so that in certain circumstances shares delivered to a Member through NSCC's Continuous Net Settlement System ("CNS") would be allocated to a Member's buy-in delivery obligation in a security before being allocated to satisfy an Automated Customer Account Transfer Service ("ACATS") delivery obligation in the same security.

#### 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 such statements.<sup>4</sup>

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

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(4).

<sup>4</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

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

<sup>10</sup> See CBOE Regulatory Circulars RG09-97 (August 31, 2009), RG09-132 (November 20, 2009). See also FINRA Regulatory Notices 09-53 (August 2009), 09-65 (November 2009).

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

NSCC's ACATS enables Members to effect automated transfers of customers' accounts among themselves.<sup>5</sup> For ACATS transfers processed through CNS,<sup>6</sup> long and short positions are passed against Members' positions at The Depository Trust Company ("DTC") and available securities are delivered by book-entry movements from short Members' accounts at DTC and to long Members' accounts at DTC. On August 16, 2010, the Commission approved enhancements to ACATS.<sup>7</sup> Pursuant to Procedure VII of NSCC's Rules, except with respect to securities that are subject to certain corporate action events, Members with failing long positions in a particular security may issue a Notice of Intention to Buy-In ("Buy-In Notice") that specifies a quantity of securities not exceeding such long positions that it intends to buy-in. Generally, deliveries of securities to fulfill CNS long positions, which represent securities NSCC owes Members, are processed in an order determined by an algorithm and are allocated to Members' long positions as they are received by NSCC. A Buy-In Notice affects the priority in which securities are allocated, and Members with long CNS positions that have issued Buy-In Notices have high priority to receive shares of the security. Members with short CNS positions, which represent securities those Members owe NSCC, are passed the liability for the shares subject to the Buy-In Notice and have the opportunity to deliver the shares to CNS to avoid being subject to a buy-in execution.

<sup>5</sup> ACATS complements a Financial Industry Regulatory Authority ("FINRA") rule requiring FINRA members to use automated clearing agency customer account transfer services and to effect customer account transfers within specified time frames.

<sup>6</sup> CNS is an ongoing accounting system which nets today's settling trades with yesterday's closing positions to produce a net short or long position for a particular security for a particular Member. NSCC is the counter party in all transactions. The positions are then passed against the Member's designated depository positions and available securities are allocated by book-entry movement. This allocation of securities is accomplished through an evening cycle followed by a day cycle. Positions which remain open after the evening cycle may be changed as a result of trades accepted for settlement that day. CNS allocates deliveries in both the night and day cycles using an algorithm based on such things as priority groups, age of position within a priority group, and random numbers within age groups.

<sup>7</sup> Securities Exchange Act Release No. 34-62726 (August 16, 2010), 75 FR 162 (August 23, 2010) (SR-NSCC-2010-05).

Upon implementation of the enhancements to ACATS, deliveries or receives in a particular security processed through CNS will be deemed by NSCC to satisfy a Member's ACATS receive or deliver obligation before satisfying other CNS-related obligations for that Member in the same security. However, in the limited situation where a Member is receiving securities being delivered pursuant to a Buy-In Notice it has issued and that Member also has an ACATS receive obligation in that same security on that same day, deliveries of the security to the Member will first satisfy its ACATS receive obligation. Any remaining shares in the security being delivered to the Member will then be applied to satisfy the delivery obligation under the Buy-In Notice. If the number of remaining shares delivered in the security are insufficient to cover the obligation under the Buy-In Notice but do satisfy the delivering Member's CNS short position, then the delivering Member will be deemed to have satisfied its buy-in obligation. Consequently, if the receiving Member elects to execute the buy-in for the security as permitted in the Rules, NSCC as the central counterparty will have a market exposure in that security equal to the amount of shares that were first allocated to satisfy the ACATS delivery obligation.

To address this scenario, NSCC is amending Procedure VII to make clear that for either (a) long positions against which a Buy-In Notice is due to expire that day but for which positions were not satisfied the previous day and (b) long positions against which a buy-in notice is due to expire the following day, deliveries of securities through CNS will be applied first to satisfy the buy-in delivery obligation for the security. Only after the buy-in delivery obligation is satisfied will shares in the security be deemed to satisfy any ACATS delivery obligation. Any additional shares delivered in the security will then be applied to remaining delivery obligations.<sup>8</sup>

NSCC intends to implement enhancement to ACATS as approved in Exchange Act Release 34-62726<sup>9</sup> and as modified by this proposed rule change on or about October 29, 2010. The date of implementation would be announced by Important Notice.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the

<sup>8</sup> The proposed changes to NSCC's Rules can be found in Exhibit 5 to proposed rule change SR-NSCC-2010-12 at [http://www.dtcc.com/downloads/legal/rule\\_filings/2010/nsc/2010-12.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2010/nsc/2010-12.pdf).

<sup>9</sup> *Supra* note 7.

Act<sup>10</sup> and the rules and regulations thereunder applicable to NSCC because the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in its possession or control or for which it is responsible and, in general, protect investors and the public interest by modifying NSCC's Rules so that in certain circumstances shares delivered to a Member through CNS would be allocated to a Member's buy-in delivery obligation in a security before being allocated to satisfy an ACATS delivery obligation in the same security.

*(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 yet 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 rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(4)<sup>12</sup> thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission summarily may 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

<sup>10</sup> 15 U.S.C. 78q-1.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(4).

#### 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*

- Electronic comments may be submitted by using 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 No. SR-NSCC-2010-12 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-2010-12. 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. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at [http://www.dtcc.com/downloads/legal/rule\\_filings/2010/nsccl/2010-12.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2010/nsccl/2010-12.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-2010-12 and should be submitted on or before November 24, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-63198; File No. SR-Phlx-2010-151]**

#### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees**

October 27, 2010.

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 October 25, 2010, NASDAQ OMX PHLX LLC ("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 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 is proposing to amend its fees governing pricing for Exchange members using the Phlx XL II system,<sup>3</sup> for routing standardized equity and index option Customer and Professional orders to away markets for execution.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative upon the effectiveness of SR-C2-2010-006.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>13</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> For a complete description of Phlx XL II, see Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The instant proposed fees will apply only to option orders entered into, and routed by, the Phlx XL II system.

#### **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

The purpose of the proposed rule change is to recoup costs that the Exchange incurs for routing and executing Customer and Professional orders in equity and index options to away markets.

In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC ("NOS"), a member of the Exchange, as the Exchange's exclusive order router.<sup>4</sup> NOS is utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets.

Currently, the Exchange's Fee Schedule includes Routing Fees for both Customer and Professional orders. The Exchange proposes to assess a Routing Fee of \$.21 per contract in Customer option orders and \$.46 per contract in Professional option orders that are routed to C2 Options Exchange, Inc. ("C2"). The Exchange is proposing to caption these proposed fees "C2."

The Exchange is proposing these fees in order to recoup most clearing charges which are incurred by the Exchange when orders are routed to these away markets as well as a transaction charge which is assessed by C2.<sup>5</sup>

The Exchange is proposing these fees to recoup the majority of transaction and clearing costs associated with routing Customer and Professional orders to each destination market. The Exchange believes that the routing fees proposed will enable the Exchange to recover the transaction fees assessed by away markets, where applicable, plus clearing fees for the execution of

<sup>4</sup> See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

<sup>5</sup> See C2 Fees Schedule.