

Exchange Act because, among other things, Phlx “believes strongly that it should encourage such price discovery, and the removal of the [d]ifferentiation [p]rovision would help to achieve this and more generally, benefit investors by offering more opportunities for customers and non-customers to receive price improvement.”¹⁸ Thus, Phlx believes that removing the differentiation provision “will attract new order flow that might not currently be afforded any price improvement opportunity into PIXL.”¹⁹

In further support of its proposal, Phlx noted that other exchanges, including the International Securities Exchange and the BOX Options Exchange, do not guarantee price improvement over the NBBO today, and that Phlx is at a competitive disadvantage in continuing the differentiation provision.²⁰ Phlx also cited to the BOX Options Exchange as having rules that do not differentiate price improvement opportunities based on the order size.²¹

While Phlx’s proposal will eliminate the current guarantee of price improvement it provides to public customer orders of fewer than 50 contracts, the Commission notes that some other exchanges do not provide such benefit in their price improvement mechanisms.²² Phlx asserts that removal of the differentiation provision may remove this competitive disadvantage and may increase the likelihood of members entering orders into PIXL, which can benefit such orders by exposing them for price improvement. For example, a member may only be willing to trade with a PIXL Order at the NBBO but not better than the NBBO. In that scenario, Phlx’s proposal could remove the disincentive for such member to submit the order to a PIXL Auction, which ultimately could result in price improvement for the PIXL Order if a competitive responder to the Auction offers to trade with the PIXL Order at an improved price. The Commission therefore believes that, to the extent it may encourage greater submission of customer orders to the PIXL price improvement auction, Phlx’s proposal is designed to promote just and equitable principles of trade and protect investors and the public interest.

The Commission notes that Phlx is not proposing to change any other provision of PIXL in this proposal. For example, orders entered into PIXL will

continue to be exposed to all Phlx members before the initiating member can execute against the PIXL order. Further, Phlx is not proposing any changes to the fact that public customer orders are afforded priority at each price point in a PIXL Auction. Further, once an order is entered into PIXL, it may not be cancelled by the initiating member and thus is exposed for possible price improvement. In addition, the PIXL Order will still be guaranteed an execution price of at least the NBBO.

The Commission also notes that the proposal does not have any impact on the pilot program established in Phlx Rule 1080(n)(vii) regarding no required minimum size for orders to be eligible for the PIXL. Thus, the Commission and the Exchange will continue to have access to data that will help assess competition within the PIXL.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (SR-Phlx-2013-76) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Kevin M. O’Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70689; File No. SR-NSCC-2013-802]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing Amendment No. 3 to Advance Notice, as Previously Modified by Amendment Nos. 1 and 2, To Institute Supplemental Liquidity Deposits to Its Clearing Fund Designed To Increase Liquidity Resources To Meet Its Liquidity Needs

October 15, 2013.

On March 21, 2013, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) advance notice SR-NSCC-2013-802 (“Advance Notice”) pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”)¹ and Rule

19b-4(n)(1)(i)² thereunder.³ On April 19, 2013, NSCC filed with the Commission Amendment No. 1 to the Advance Notice, which the Commission published for comment in the **Federal Register** on May 1, 2013.⁴ On May 20, 2013, the Commission extended the period of review of the Advance Notice, as modified by Amendment No. 1.⁵ On June 11, 2013, NSCC filed with the Commission Amendment No. 2 to the Advance Notice, as previously modified by Amendment No. 1, which the Commission published for comment in the **Federal Register** on July 15, 2013.⁶ As of October 15, 2013, the Commission had received 22 comment letters on the proposal contained in the Advance Notice and its related Proposed Rule Change,⁷ including NSCC’s two responses to the comment letters received as of August 20, 2013.⁸

² 17 CFR 240.19b-4(n)(1)(i).

³ NSCC also filed the proposal contained in the Advance Notice as proposed rule change SR-NSCC-2013-02 (“Proposed Rule Change”) under Section 19(b)(1) of the Securities and Exchange Act of 1934 (“Exchange Act”) and Rule 19b-4 thereunder. Release No. 34-69313 (Apr. 4, 2013), 78 FR 21487 (Apr. 10, 2013). On April 19, 2013, NSCC filed Amendment No. 1 to the Proposed Rule Change, which, on May 22, 2013, the Commission published notice of and designated a longer period of review for Commission action on the Proposed Rule Change, as modified by Amendment No. 1. Release No. 34-69620 (May 22, 2013), 78 FR 32292 (May 29, 2013). On June 11, 2013, NSCC filed Amendment No. 2 to the Proposed Rule Change, which the Commission published notice of with an order instituting proceedings to determine whether to approve or disapprove the Proposed Rule Change (“Order Instituting Proceedings”). Release No. 34-69951 (Jul. 9, 2013), 78 FR 42140 (Jul. 15, 2013). On September 25, 2013, the Commission designated a longer period of review for Commission action on the Order Instituting Proceedings. Release No. 34-70501 (Sep. 25, 2013), 78 FR 60347 (Oct. 1, 2013). On October 7, 2013, NSCC filed Amendment No. 3 to the Proposed Rule Change, of which the Commission published notice. Release No. 34-70688 (Oct. 15, 2013). The proposal in the Advance Notice, as amended, and the Proposed Rule Change, as amended, shall not take effect until all regulatory actions required with respect to the proposal are completed.

⁴ Release No. 34-69451 (Apr. 25, 2013), 78 FR 25496 (May 1, 2013).

⁵ Release No. 34-69605 (May 20, 2013), 78 FR 31616 (May 24, 2013).

⁶ Release No. 34-69954 (Jul. 9, 2013), 78 FR 42127 (Jul. 15, 2013).

⁷ See Comments Received on File Nos. SR-NSCC-2013-02 (<http://sec.gov/comments/sr-nscc-2013-02/nscc201302.shtml>) and SR-NSCC-2013-802 (<http://sec.gov/comments/sr-nscc-2013-802/nscc2013802.shtml>). Since the proposal contained in the Advance Notice was also filed as a Proposed Rule Change, see Release No. 34-69313, *supra* note 3, the Commission is considering all public comments received on the proposal regardless of whether the comments are submitted to the Advance Notice, as amended, or the Proposed Rule Change, as amended.

⁸ NSCC also received a comment letter directly prior to filing the Advance Notice and related Proposed Rule Change with the Commission, which NSCC provided to the Commission in Amendment

Continued

¹⁸ *Id.*

¹⁹ *Id.* at 52992.

²⁰ See *id.* at 52993.

²¹ See *id.* at 52992.

²² See, e.g., BOX Rule 7150 and ISE Rule 723.

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 12 U.S.C. 5465(e)(1).

Pursuant to Section 806(e)(1) of the Clearing Supervision Act⁹ and Rule 19b-4(n)(1)(i)¹⁰ thereunder, notice is hereby given that on October 4, 2013, NSCC filed with the Commission Amendment No. 3 to the Advance Notice, as previously modified by Amendment Nos. 1 and 2, as described in Item I, II and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the Advance Notice, as modified by Amendment No. 3, from interested persons.¹¹

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

The Advance Notice, as modified by Amendments No. 1, No. 2, and No. 3, is a proposal by NSCC to amend its Rules & Procedures (the “NSCC Rules”) to provide for supplemental liquidity deposits to its Clearing Fund (the “NSCC Clearing Fund”) to ensure that NSCC has adequate liquidity resources to meet its liquidity needs (the “SLD Proposal” or sometimes the “Proposal”), as described below. NSCC filed Amendment No. 3 (this “Amendment”) to the Advance Notice, as previously modified by Amendment No. 1 and No. 2, in order to delete the provisions in the proposed Rule relating to Regular Activity Liquidity Obligations (as defined), to respond to concerns raised by Members. As a result the Proposal, as revised, would impose supplemental liquidity obligations on affected Members only with respect to activity relating to monthly options expiry periods (defined in the proposed Rule as “Special Activity Liquidity Obligations”).

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the Advance Notice, as modified by Amendment No. 3, and discussed any comments it received on the Advance Notice. 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,

No. 1 to the filings. See Exhibit 2 to File No. SR-NSCC-2013-802 (<http://sec.gov/rules/sro/nscc/2013/34-69451-ex2.pdf>).

⁹ 12 U.S.C. 5465(e)(1).

¹⁰ 17 CFR 240.19b-4(n)(1)(i).

¹¹ Defined terms that are not defined in this notice are defined in Amended Exhibit 5 to the Advance Notice, available at <http://sec.gov/rules/sro/nscc.shtml>, under File No. SR-NSCC-2013-802, Additional Materials.

and C below, of the most significant aspects of such statements.

(A) Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

1. Description of Change

Existing Proposal

As noted in the original proposal contained in the Advance Notice, as modified by Amendments No. 1 and No. 2, the SLD Proposal would modify the NSCC Rules to add a new Rule 4(A), to establish a supplemental liquidity funding obligation designed to cover the liquidity exposure attributable to those Members and families of affiliated Members (“Affiliated Families”) that regularly incur the largest gross settlement debits over a settlement cycle during both times of normal trading activity (“Regular Activity Periods”) and times of increased trading and settlement activity that arise around monthly options expiration dates (“Options Expiration Activity Periods”).

Under the existing Proposal, the Liquidity Obligation of a Member or Affiliated Family with respect to a Regular Activity Period (a “Regular Activity Liquidity Obligation”) or an Options Expiration Activity Period (a “Special Activity Liquidity Obligation”) would be imposed on the 30 Members or Affiliated Families who generate the largest aggregate liquidity needs over a settlement cycle that would apply in the event of a closeout (that is, over a period from date of default through the following three settlement days), based upon an historical look-back period. The calculations for both the Regular Activity Liquidity Obligation and the Special Activity Liquidity Obligation were designed so that NSCC has adequate liquidity resources to enable it to settle transactions, notwithstanding the default of one of these 30 largest Members or Affiliated Families during Regular Activity Periods, as well as during Options Expiration Activity Periods. The liquidity obligations imposed on Members of Affiliated Families would be apportioned among the Members in that Affiliated Family in proportion to the liquidity risk (or peak exposure) they present to NSCC. The Regular Activity Liquidity Obligation of an Unaffiliated Member or Affiliated Family that has a Regular Activity Liquidity Obligation (a Regular Activity Liquidity Provider) is satisfied by such Regular Activity Liquidity Provider

making a Regular Activity Supplemental Deposit to the Clearing Fund in the amount of its Regular Activity Liquidity Obligation, offset by (i) the total amount (if any) if its commitment and the

commitment of its “Designated Lender” under NSCC’s committed line of credit (the “Credit Facility”) and (ii) a share of the unallocated commitments of other lenders under the Credit Facility.

The cash deposit in respect of a Special Activity Liquidity Obligation (a “Special Activity Supplemental Deposit”) is structured in the existing SLD Proposal to address any additional liquidity shortfalls (over and above NSCC’s other available liquidity resources) that arise during the heightened activity period around monthly options expiration. As such, these additional Special Activity Supplemental Deposits would be required to be maintained on deposit with NSCC only through the completion of the related settlement cycle and for a few days thereafter.

Objections From Commenters

The key concerns raised by commenters with respect to the existing SLD Proposal were as follows:

First, commenters claimed that Members were not sufficiently consulted or involved during the development of the Proposal (even though NSCC management conducted significant Member outreach), so that the Proposal lacked input that could have potentially resulted in a less burdensome approach.

Second, commenters claimed that the Proposal was anticompetitive or discriminatory because the obligation to provide supplemental liquidity was imposed on only the 30 largest Unaffiliated Members or Affiliated Families (even though those Members collectively represent approximately 85% of NSCC’s total membership by peak liquidity needs), rather than all Members of NSCC. This concern was raised in the context of Regular Activity Supplemental Deposits.

Third, commenters claimed that the existing Proposal was anticompetitive or discriminatory because, with respect to Regular Activity Supplemental Deposits, it gave a dollar for dollar credit for commitments made by Regular Activity Liquidity Providers or their Designated Lenders under the Credit Facility—supposedly favoring Regular Activity Liquidity Providers with affiliated banks.

NSCC believes that the proposed amendments and items described below address or mitigate all of these concerns.

Proposed Amendments

NSCC is proposing to amend the existing SLD Proposal by removing those provisions that, collectively, deal with the imposition of Regular Activity Liquidity Obligations, while

maintaining the provisions relating to Special Activity Liquidity Obligations. The proposed Rule, as so revised, would thus impose only Special Activity Liquidity Obligations with respect to the heightened activity of Options Expiration Activity Periods (that is, the four days beginning with the Friday that precedes the monthly expiration date for stock options, and ending on the third settlement day following). Under the revised Proposal, as under the existing Proposal as it relates to Special Activity Liquidity Obligations, only those Unaffiliated Members or Affiliated Families among the top 30 whose activity during monthly Options Expiration Activity Periods generate liquidity needs in excess of NSCC's then available liquidity resources will be obligated to fund such additional amounts. That is, the allocation formula ratably applies the additional amount needed during the relevant Options Expiration Activity Period based upon the affected Member's Special Activity Peak Liquidity Exposure. To the extent that a Member's Special Activity Peak Liquidity Exposure is less than or equal to NSCC's then available liquidity resources, its share of the Special Activity Peak Liquidity Need will be zero.

In addition, under the revised SLD Proposal, as under the existing Proposal as it relates to Special Activity Liquidity Obligations, Unaffiliated Members and Affiliated Families, will be able to manage their exposures by making Special Activities Prefund Deposits where they project their own activity will increase their liquidity exposure. For example, if a Special Activity Liquidity Provider anticipates that its Special Activity Peak Liquidity Exposure at any time during a particular Options Expiration Activity Period will be greater than the amount calculated by NSCC, it can make an additional cash deposit to the Clearing Fund (in excess of its Required Deposit) that it designates as a "Special Activity Prefund Deposit." However, to the extent that a Member fails to adequately prefund its activity, it may be subject to a Special Activity Liquidity Call in the same manner as provided in the existing Proposal.

With these changes, NSCC is removing those provisions of the existing SLD Proposal that generated most concern from commenters, while retaining those provisions that enable NSCC to collect additional liquidity resources to cover the heightened liquidity needs that arise during monthly Options Expiration Activity Periods. Every Unaffiliated Member and Affiliated Family among the top 30

whose activity causes a liquidity need in excess of NSCC's available liquidity resources will contribute ratably to such shortfall, so the Proposal fairly and equitably apportions the obligation among those Unaffiliated Members and Affiliated Families whose activity cause the need. The removal of those provisions relating to how commitments under the Credit Facility would be credited against the cash deposit obligations of Regular Activity Liquidity Providers render concerns about such allocation moot.

As indicated in NSCC's August 20, 2013 letter to the Commission, DTCC is separately establishing a standing member-based advisory group, the Clearing Agency Liquidity Council ("CALC"), as a forum for the discussion of liquidity and liquidity-related financing needs and trends. The CALC will initially focus on liquidity initiatives currently being considered by NSCC to address liquidity funding during periods of normal activity, including issues raised by commenters on the existing SLD Proposal. In response to commenters' more general concerns regarding NSCC's reliance on the Credit Facility and related refinancing risk, NSCC will review with the CALC the financing options available to NSCC to supplement the Clearing Fund as a liquidity resource, and the related costs of those options. Any new initiatives proposed as a result of the CALC review that require regulatory approval will be addressed in a separate filing.

Reporting. As noted in the previous amendment to the Advance Notice, NSCC agrees that Members have to be able to plan for their liquidity obligations. At the same time, NSCC also believes it is critical that Members understand the risks that their own activity presents to NSCC, and be prepared to monitor their activity and alter their behavior if they want to minimize the liquidity risk they present to NSCC. Accordingly, NSCC will make available to each Member a daily report showing the amount of liquidity NSCC would need in the event of the default of such Member. Separately, NSCC will provide, and continue to discuss with Special Activity Liquidity Providers, the reports regarding their Special Activity Liquidity Obligations as currently provided in the proposed Rule.

Finally, the amendment makes certain technical corrections and clarifies the time period for when Special Activity Liquidity Calls must be satisfied.

Implementation Timeframe. The SLD Proposal will be implemented on February 1, 2014. As a result, the first time that Members will be obligated to

fund any Special Activity Supplemental Deposits will be for the Options Expiration Activity Period in February 2014. NSCC Risk staff will provide to affected Members their Special Activity Peak Liquidity Exposures for the relevant Special Activity Lookback Period by no later than January 15, 2014.

2. Anticipated Effect on Management of Risk

As described in above, NSCC is proposing to amend the Advance Notice to address concerns raised by commenters, by removing provisions relating to Regular Activity Liquidity Obligations, while maintaining provisions relating to Special Activity Liquidity Obligations. NSCC believes that the SLD Proposal, as amended hereby, has been designed to mitigate any unintended impact on competition that may have been perceived by the existing SLD Proposal, while ameliorating liquidity risk by providing NSCC with a mechanism to cover peak liquidity needs relating to options expiry periods.

(B) Comments on Competition

NSCC believes that the revised SLD Proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities and Exchange Act of 1934, as amended ("Exchange Act"). The Special Activity Liquidity Obligations imposed on Special Activity Liquidity Providers will ensure that all Unaffiliated Members and Affiliated Families whose activity present liquidity exposure to NSCC during periods of heightened activity during Options Expiration Activity Periods fairly and equitably contribute to NSCC's liquidity resources for settlement. NSCC believes the changes that have been made to the existing Proposal fully address the concerns raised by commenters, and eliminate any impact that the SLD Proposal might have on competition. To the extent there remains any perceived burden on competition caused by the Proposal, NSCC believes that such burden is not unreasonable or inappropriate to prevent systemic risk given that the Proposal contributes to the goal of financial stability in the event of Member default.

(C) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

Written comments on the Advance Notice, including NSCC's formal response to the written comments, have

been filed with the Commission and are available on the Commission's Web site.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The clearing agency may implement the proposed change pursuant to Section 806(e)(1)(G) of the Clearing Supervision Act¹² if it has not received an objection to the proposed change within 60 days of the later of (i) the date that the Commission received the advance notice or (ii) the date the Commission receives any further information it requested for consideration of the notice. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date of receipt of the advance notice, or the date the Commission receives any further information it requested, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission. The clearing agency shall post notice on its Web site of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Advance Notice, as modified by Amendment No. 3, is consistent with the Clearing Supervision 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 No. SR-NSCC-2013-802 on the subject line.

¹² 12 U.S.C. 5465(e)(1)(G).

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 No. SR-NSCC-2013-802. 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 Advance Notice, as amended, that are filed with the Commission, and all written communications relating to the Advance Notice, as amended, 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 also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at http://dtcc.com/legal/rule_filings/nscc/2013.php. 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 No. SR-NSCC-2013-802 and should be submitted on or before November 5, 2013.

By the Commission.

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70663; File No. SR-BYX-2013-036]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 12.6 To Conform to FINRA Rule 5320 Relating to Trading Ahead of Customer Orders

October 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 3, 2013, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") 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 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 filed a proposal to amend Rule 12.6 to make it substantially the same as Financial Industry Regulatory Authority ("FINRA") Rule 5320.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.