

on October 11, 1996.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The proposed rule change adds subparagraph (4) to Rule 604(d) to permit clearing members to deposit as margin with OCC publicly traded units of beneficial interest ("trust units") in unit investment trusts that hold portfolios or baskets of common stocks. These classes of trust units are traded and cleared like shares of common stock and are typically held in book entry form at a securities depository. The trust units must meet the requirements applicable to stocks under Rule 604(d). Rule 604(d) requires that to be eligible as margin deposits, stock must have a market value greater than \$10 per share and must either (a) be traded on a national securities exchange and have last sale reports collected and disseminated pursuant to a consolidated transaction reporting plan or (b) be traded in the over-the-counter market and designated as a national market system security pursuant to the Commission's Rule 11Aa2-1.³ Pursuant to Rule 604(d)(1), trust units will be valued on a daily basis at 60% of currently market value.

In order to be eligible for deposit, the trust units must be of a class approved by OCC's Membership/Margin Committee ("Committee") for deposit as margin. At the present time, the Committee has approved Standard & Poor's ("S&P") depository receipts on the S&P 500 Index and S&P MidCap 400 Index as being classes approved for deposit as margin.

In addition, the proposed rule change replaces the term "stocks" with the term "securities" in subparagraphs (2) and (3) to Rule 604(d). Subparagraphs (2) and (3) of Rule 604(d) limit the use of customer securities as margin and prescribe the method of depositing margin securities. The amendment clarifies that such sections apply not only to stocks but also corporate bonds eligible as margin deposits under rule 604(d)(1).

II. Discussion

Section 17A(b)(3)(F)⁴ of the Act requires that the rules of a clearing agency be designed to safeguard securities and funds in its custody or control. Because the trust units must be

either traded on a national securities exchange or designated as a national market system security to be eligible as collateral, the proposal ensures that only very liquid securities will be accepted. Furthermore, by initially limiting eligibility to S&P depository receipts on the S&P 500 Index and the S&P MidCap 400 Index, OCC will be able to gain experience in accepting trust units before expanding the types of trust units it will accept. Therefore, the Commission believes that OCC's acceptance of these classes of trusts units is consistent with OCC's obligation to safeguard securities and funds.

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-OCC-96-13) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-38099; File Nos. SR-Philadep-96-20 and SR-SCCP-96-09]

Self-Regulatory Organizations; Philadelphia Depository Trust Company and Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Permanent Approval on an Accelerated Basis of Proposed Rule Changes Concerning the Adoption of Article 8 of the New York Uniform Commercial Code to Govern Certain Transactions

December 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 15, 1996, the Philadelphia Depository Trust Company ("Philadep") and the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR-Philadep-96-20 and SR-SCCP-96-09) as described in Items I and II below, which Items have been prepared primarily by Philadep

and SCCP. The Commission is publishing this notice and order to solicit comments from interested persons and to grant permanent approval of the proposed rule changes on an accelerated basis.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

Philadep and SCCP request permanent approval for their respective adoption of Article 8 of the State of New York's Uniform Commercial Code ("UCC") to govern certain transactions involving Philadep, SCCP, their participants, and pledgees. On June 28, 1996, the Commission temporarily approved through December 31, 1996, Philadep's and SCCP's adoption of New York's U.C.C. Article 8.²

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, Philadep and SCCP included statements concerning the purpose of and the basis for the proposed rule changes and discussed any comments received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. Philadep and SCCP have prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organizations' Statements of the Purpose of, and the Statutory Basis for, the Proposed Rule Changes

Philadep and SCCP propose to permanently adopt Rule 32 and Rule 41, respectively, and to permanently amend Rule 1 of their rules. The proposed rule change codifies Philadep's and SCCP's decision to elect Article 8 of the New York UCC to govern certain transactions for the purpose of providing a uniform, consistent, and predictable body of law. Specifically, Rule 32 and Rule 41 will assure that the rights and obligations of Philadep and SCCP, their participants, and their pledgees with respect to transfers and pledges of securities, to the extent Article 8 of the UCC applies thereto, will be governed by and construed in accordance with Article 8 of the UCC of New York in effect from

² Securities Exchange Act Release Nos. 36781 (January 26, 1996), 61 FR 3958 [Files Nos. SR-SCCP-96-01 and SR-Philadep-96-01] and 37382 (June 28, 1996), 61 FR 35291 [File Nos. SR-Philadep-96-08 and SR-SCCP-96-04] (orders granting accelerated approval on a temporary basis of proposed rule changes to provide for the application of Article 8 of the New York UCC).

² Securities Exchange Act release No. 37793 (October 7, 1996), 61 FR 53477.

³ 17 CFR 240.11Aa2-1.

⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

time to time. Rule 1 will define the term "security" by citing the definition of security in Article 8 of New York's UCC.

Philadep and SCCP note that uncertainty exists as to whether New York law or Pennsylvania law applies to particular transfers and as to whether some transfers within Philadep's or SCCP's systems may be governed by Pennsylvania's UCC Article 8 while other transaction within such systems may be governed by New York's UCC Article 8. With so many of the transactions for which Philadep and SCCP provide depository, clearance, and settlement services potentially being affected [e.g., those transactions effected through interface with broker-dealers, banks, and other institutions which are participants in The Depository Trust Company ("DTC") and National Securities Clearing Corporation ("NSCC")], it is problematic that different rules of law under Article 8 of the UCC may govern the rights and obligations of parties to such transfers. Therefore, Philadep and SCCP have chosen to elect the application of New York's UCC Article 8 rather than Pennsylvania's UCC Article 8. The choice of New York law also assures that DTC, NSCC, and their respective participants and pledgees will find harmonious commercial code provisions governing their extensive dealings with Philadep and SCCP, their participants, and pledgees in this area as the New York based groups already are subject to New York law.

Philadep and SCCP state that they believe the proposed rule changes are consistent with Section 17A of the Act and the rules and regulations thereunder because the rules are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities, to remove impediments to and perfect the mechanism of a national market system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organizations' Statements on Burden on Competition

Philadep and SCCP do not believe that the proposed rule changes will impact or impose a burden on competition.

(C) Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments have been solicited or received.

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

Section 17A(b)(3)(F) of the Act³ requires the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities. As stated in previous orders,⁴ the Commission believes the proposed rule changes are consistent with this requirement because the adoption of Article 8 of the New York UCC should help provide certainty with respect to the substantive rights and obligations under UCC Article 8 that are applicable to Philadep and SCCP and their participants particularly with respect to transactions with broker-dealers, banks, and other institutions that are participants of other foreign or domestic clearing entities.

Philadep and SCCP have 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. Currently, the Canadian Depository for Securities ("CDS") acts as a corresponding depository for Philadep and is a participant of SCCP so that transactions in certain Canadian and U.S. brokers-dealers can be cleared and settled through the facilities of Philadep and SCCP.⁵ According to the Philadep and SCCP, their arrangement with CDS is possible because Article 8 of New York's UCC, unlike Article 8 of Pennsylvania's UCC, provides for book-entry transfers of securities when the certificated security is in the custody of certain foreign clearing organizations. Therefore, to enable Philadep and SCCP to continue to provide without any disruption clearance, settlement, and depository services for certain securities transactions between U.S. broker-dealers and Canadian broker-dealers, the Commission finds good cause for so approving the proposed rule change prior to the thirtieth day after the date

³ 15 U.S.C. 78q-1(b)(3)(F).

⁴ Securities Exchange Act Release Nos. 36781 and 37382, *supra* note 2.

⁵ For a complete description of the clearance and settlement activities among CDS, Philadep, and SCCP, refer to Securities Exchange Act Release No. 37918 (November 8, 1996), 61 FR 57938 [File No. SR-Philadep-96-17] (order granting accelerated approval on a temporary basis of a proposed rule change to appoint CDS as a correspondent depository).

of publication of the notice of the filing.⁶ The Commission also notes that during the previous temporary approval periods neither SCCP, Philadep, nor the Commission have received any adverse comments regarding the adoption of Article 8 of the New York UCC.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making such submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal offices of Philadep and SCCP. All submissions should refer to File Nos. SR-Philadep-96-20 SR-SCCP-96-09 and should be submitted by January 28, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-Philadep-96-20 and SR-SCCP-96-09) be, and hereby are, approved on an accelerated basis.

For the Commission by the Division of Market Regulation pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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⁶ The staff of the Board of Governors of the Federal Reserve System has concurred with the Commission's granting of accelerated approval. Telephone conversation between John Rudolph, Board of Governors of the Federal Reserve System, and Chris Concannon, Staff Attorney, Division of Market Regulation, Commission (December 30, 1996).

⁷ 17 CFR 200.30-3(a)(12).