

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Jonathan G. Katz,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44716; File No. SR-PHLX-2001-73]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., To Suspend Imposition of its Payment for Order Flow Fee

August 16, 2001.

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 2, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items the Phlx has prepared. 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 Phlx proposes to suspend imposition of its \$1.00 payment for order flow fee beginning with contracts settling on or after August 1, 2001.<sup>3</sup> The text of the proposed rule change is available at the principal offices of the Phlx and at the Commission.

#### 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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received. The text of

these statements may be examined at the places specified in Item IV below. The Phlx 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

The purpose of the proposed rule change is to suspend imposition of the Phlx's payment for order flow fee for contracts settling on or after August 1, 2001.

In August 2000, the Phlx imposed a \$1.00 per contract fee on transactions by Phlx specialists and Registered Options Traders ("ROTs") in the top 120 options traded on the Phlx.<sup>4</sup> The payment for order flow fee did not apply to index or currency options. In addition, transactions between: (1) A specialist and an ROT; (2) an ROT and an ROT; (3) a specialist and a firm; (4) an ROT and a firm; (5) a specialist and a broker-dealer; and (6) an ROT and a broker-dealer were excepted from the \$1.00 fee.<sup>5</sup>

The Phlx believes that its proposal to suspend imposition of the fee is consistent with Section 6(b) of the Act<sup>6</sup> and furthers the objectives of Sections 6(b)(4) and (5) of the Act<sup>7</sup> in that it is an equitable allocation of reasonable fees among the Phlx's members. The Phlx notes that, although it is suspending the imposition of its payment for order flow fee, members may continue to negotiate their own private arrangements with order flow providers to attract options orders to the Phlx.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

<sup>4</sup> The Phlx defines a top 120 option as one of the 120 most actively traded equity options in terms of the total number of contracts that are traded nationally based on volume reflected by the Options Clearing Corporation. The Phlx recalculates the top 120 options every six months. For the period from April 2, 2001 through June 30, 2001, when options on the Nasdaq-100 Trust (trading under the symbol QQQ) were added to the program, there were 121 options on the Phlx's list. See Securities Exchange Act Release No. 44237 (April 30, 2001), 66 FR 23308 (May 8, 2001) (SR-PHLX-2001-43).

<sup>5</sup> See Securities Exchange Act Release Nos. 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000) (SR-PHLX-00-77); 43480 (October 25, 2000), 65 FR 66275 (Nov. 3, 2000) (SR-PHLX-00-86 and SR-PHLX-00-87); and 43481 (Oct. 25, 2000), 65 FR 66277 (November 3, 2000) (SR-PHLX-00-88 and SR-PHLX-00-89).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Phlx neither solicited nor received any written comments with respect to the proposal.

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

The Phlx has designated the foregoing proposed rule change as a fee change pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder,<sup>9</sup> and therefore the proposal has become effective upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-PHLX-2001-73 and should be submitted by September 13, 2001.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</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> The Phlx would continue to provide Phlx specialists and order flow providers with reports regarding the quality of execution of options orders, and specialists or specialist units would continue to be governed by the books and records requirements of Phlx Rule 760. See Securities Exchange Act Release Nos. 43436 (October 11, 2000), 65 FR 63281 (October 23, 2000) (SR-PHLX-00-83) and 44405 (June 11, 2001), 66 FR 32859 (June 18, 2001) (SR-PHLX-2001-08).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44715; File No. SR-SCCP-2001-07]

### Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Waiver of PACE Trade Recording Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 29, 2001, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") and on August 6, 2001, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change amends SCCP's fee schedule to waive trade recording fees for orders that are electronically routed to the Philadelphia Stock Exchange, Inc. ("Phlx") through Phlx's automated communication and execution system ("PACE").<sup>2</sup> The waiver includes the Nasdaq-100 Index Tracking Stock<sup>SM</sup> ("QQQ") PACE user fees applicable to QQQ orders delivered through PACE. In addition, the proposal amends SCCP's fee schedule to codify the current fee schedule and to make minor technical amendments to clarify certain charges that appear on the schedule. The proposed waiver of fees was implemented on June 1, 2001.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of

these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>3</sup>

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

The purpose of the proposed rule change is to waive SCCP trade recording fees for orders that are electronically routed to Phlx through PACE.<sup>4</sup> Presently, orders routed through PACE, including QQQ orders, are charged a PACE trade recording fee of \$0.30 per side (except for certain orders executed on the opening).<sup>5</sup>

SCCP states that the proposed amendment is designed to promote SCCP's reputation as a cost effective clearing organization, which should, in turn, encourage additional order flow to Phlx. In addition, SCCP proposes to amend its fee schedule to make minor, technical amendments to the schedule.<sup>6</sup> Among other things, reference to VTS trades will be changed to "eVWAP" trades.<sup>7</sup>

For these reasons, SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act<sup>8</sup> which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues,

<sup>3</sup> The Commission has modified parts of these statements.

<sup>4</sup> Securities Exchange Act Release No. 44381 (June 1, 2001), 66 FR 31264 (June 11, 2001) (SR-Phlx-2001-57) provides for a waiver of Phlx equity transaction value charges for orders that are electronically routed to Phlx through PACE.

<sup>5</sup> Securities Exchange Act Release No. 44278 (May 8, 2001), 66 FR 27193 (May 16, 2001) (SR-SCCP-2001-05), which eliminated certain specialist fees for transactions with PACE orders entered before the opening.

<sup>6</sup> Although SCCP intended to implement SR-SCCP-2001-05 (the waiver of certain specialist fees for transactions with PACE orders entered before the opening) effective May 1, 2001, it has not done so because the fee schedule attached to that filing erroneously included asterisks indicating a waiver of two other fees. Specifically, SCCP did not intend to waive the trade recording fee for regular trades or PACE trades because (1) trade recording fees for PACE trades are paid by PACE users rather than specialists, who were the targets of SCCP's fee waivers in that rule change, and (2) trade recording fees for regular trades do not apply to PACE trades at all. Therefore, SCCP amended this filing to correct the errors in SR-SCCP-2001-05. Letters from Diana Tenenbaum, SCCP, dated August 3, 2001, to Jerry Carpenter Assistant Director, Commission.

<sup>7</sup> Securities Exchange Act Release No. 42702 (April 19, 2000), 65 FR 24528 (April 26, 2000) (SR-Phlx-00-19). "eVWAP", formerly known as "VWAP" and "VTS", is the Volume Weighted Average Price trading system ("VTS" stands for VWAP Trading System).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(D).

fees, and other charges for services which it provides to its participants.

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

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2) thereunder.<sup>10</sup> At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the File No. SR-SCCP-2001-07 and should be submitted by September 13, 2001.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> PACE is Phlx's order routing, delivery, execution, and reporting system for its equity trading floor.