

the Secretary, PCX 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 PCX included statements concerning the purpose of and basis for the proposed rule change, as amended, 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 Exchange is proposing to establish a fee to deal with various operational problems and costs resulting from the practice of immediately following orders routed through the Exchange's automated MFI with a cancel request. Since these orders frequently come in large numbers, components, of the MFI, such as the Floor Broker Hand Held Terminals ("HHTs"), can very quickly become backlogged, which increases Exchange costs and adversely impacts public customers, their clearing firms, and Lead Market Makers by making the execution of other customer orders less timely. A high volume of cancellations sent through the MFI to HHTs or to the Exchange's Limit Order Book also increases Exchange costs by requiring the Exchange to spend increased amounts on systems and other hardware to process increased order traffic flow.⁵

Under the proposed fee, the executing Clearing Member would be charged \$1.00 for every order that it cancels through the MFI in any month where the total number of cancellations sent by the executing Clearing Member exceeds the total number of orders that same firm executed through the MFI in that same month. This fee will not apply to executing Clearing Members that cancel fewer than 500 orders through the MFI in a given month. The Exchange believes that the fee will help ease backlogs on the MFI and particularly HHTs.

⁵ This sentence was clarified to reflect a telephone conversation between Cindy L. Sink, Senior Attorney, PCX, and Gordon Fuller, Counsel to the Assistant Director and Frank N. Genco, Attorney, Division, Commission, (January 3, 2002).

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,⁶ in general, and section 6(b)(4) of the Act,⁷ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any 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 solicited nor received.

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

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4⁹ thereunder, because it establishes or changes a due, fee, or other charge.¹⁰ At any time within 60 days of December 26, 2001, the Commission may summarily abrogate such proposed rule change, as amended, 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.¹¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ The Exchange's proposed rule change is substantially similar to a fee instituted by the Chicago Board Options Exchange, Inc., which became immediately effective on July 27, 2001, and a fee instituted by the American Stock Exchange LLC, which became immediately effective on November 27, 2001. See Securities Exchange Act Release Nos. 44607 (July 27, 2001), 66 FR 40757 (August 3, 2001), (Notice of Filing and Immediate Effectiveness, SR-CBOE-2001-40); and 45110 (November 27, 2001), 66 FR 63080 (December 4, 2001), (Notice of Filing and Immediate Effectiveness, SR-Amex-2001-90).

¹¹ See 15 U.S.C. 78(b)(3)(C).

Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, 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 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 PCX.

All submissions should refer to File No. SR-PCX-2001-47 and should be submitted by February 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45255; File No. SR-SCCP-00-01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Approving a Proposed Rule Change Relating to the Eligibility of Holders of Equity Trading Permits Issued by the Philadelphia Stock Exchange, Inc. To Be Participants of the Stock Clearing Corporation of Philadelphia

January 9, 2002.

On January 12, 2000, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") and on May 31, 2000, amended a proposed rule change (File No. SR-SCCP-00-01) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on September 1, 2000.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends SSCP's rules to permit holders of Equity Trading Permits ("ETPs") issued by the

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 43210 (August 25, 2000), 64 FR 53259.

Philadelphia Stock Exchange, Inc. ("PHLX") to be eligible to become SCCP participants. SCCP Rule 3 provides that, subject to certain conditions,³ any person who is a broker-dealer registered under the Act and a member in good standing of PHLX is eligible to be a SCCP participant.⁴ The rule change amends SCCP Rule 3 to permit holders of PHLX ETPs to be considered "members" of PHLX for purposes of SCCP's participant qualification requirements.⁵ ETP holders would thus be eligible to apply to be participants in SCCP.

The rule change also makes a corresponding amendment to Article 2 of SCCP's Articles of Incorporation. Article 2 currently includes as one of SCCP's corporate purpose the carrying of securities "for members, member firms and/or member corporation of the Philadelphia Stock Exchange. * * *" The rule change amends Article 2 to add a statement that SCCP's Board of Directors may determine by rule the identity of PHLX "members, member firms and/or member corporations."

II. Discussion

PHLX has proposed the creation of ETPs in order to reduce the cost of

³ SCCP approves applicants for participant status only upon a determination that the applicant meets certain standards of financial condition, operational capability, and character set forth in SCCP's rules. Each participant is required to make a contribution to the SCCP Participant's Fund and to comply with SCCP's By-laws and Rules as well as with a participant's agreement. ETP holders must apply for SCCP membership and will be subject to the same admission criteria as PHLX members.

⁴ The Commission has approved two rule changes proposed by PHLX. PHLX 00-02 adds new Article Twenty-First to PHLX's Certificate of Incorporation which enables PHLX to issue ETPs. PHLX 00-03 implements PHLX Rule 23 which sets forth the terms and conditions of the ETPs. Under PHLX Rule 23, holders of ETPs generally have the same rights under PHLX rules as PHLX members without options privileges except that ETP holders do not have the right to vote. ETPs are not transferable and their holders are not entitled to any residual interest in PHLX assets upon a liquidation of PHLX. Holders of ETPs are generally subject to the same obligations as PHLX members, except with respect to certain fees. Securities Exchange Act Release No. 45254 (January 9, 2002).

⁵ The amendment to SCCP Rule 3 states, "For purposes of this Rule 3 as well as all provisions of the Corporation's Certificate of Incorporation, By-laws, rules, regulations, requirements, orders, directions and decisions adopted or made in accordance therewith, holders of Equity Trading Permits ("ETPs") issued pursuant to PHLX Rule 23 shall be deemed to be members of PHLX, and holders of Regular ETPs issued pursuant to PHLX Rule 23 who transact business from a location on the PHLX's equity floor shall be deemed to be PHLX floor members." Off-Floor ETPs, the other class of ETPs, allows holders electronic and telephone access, but not physical access, to the Exchange floor. Accordingly, SCCP would treat ETP holders, regardless of class, just like PHLX members both in terms of SCCP participant qualification requirements and privileges of SCCP participant status.

access to the exchange's equity trading floor as well as to provide an opportunity to attract additional order flow and new business and services. All trades on the PHLX in equity securities are processed through SCCP and require a SCCP participant to be involved. ETP holders will not be required to be SCCP participants themselves. Like PHLX members, ETP holders may elect instead to enter into a correspondent arrangement with another SCCP participant whereby the SCCP participant assumes responsibility for the clearance and settlement of the ETP holder's trades. The herein approved amendments to SCCP Rule 3 and SCCP's Articles of Incorporation simply assure that those ETP holders wishing to become SCCP participants themselves will be treated by SCCP in the same fashion as SCCP participants who are PHLX members. In doing so, the amendments also provide a clear basis upon which the SCCP board of directors can determine by rule, as and when future circumstances may warrant, the identity of such "members, member firms and/or member corporations."

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.⁶ The Commission believes that the approval of SCCP's Rule 3 change and Article 2 amendment is consistent with this section because these changes allow holders of ETPs issued by the PHLX to be eligible to become SCCP participants just as PHLX members are. As a result, more broker-dealers will have access to and be able to utilize SCCP.

III. Conclusion

On the basis of the foregoing, the Commission finds that the 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-SCCP-00-01) be and hereby is approved.⁷

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

Margaret H. McFarland,

Deputy Secretary.

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⁶ 15 U.S.C. 8q-1(b)(3)(F).

⁷ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45265; File No. SR-SCCP-2001-06]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Approving a Proposed Rule Change to Increase the Margin Threshold for Margin Members in Certain Nasdaq National Market Securities

January 10, 2002.

On April 30, 2001, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-SCCP-00-06) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on July 26, 2001.² On July 26, 2001, SCCP amended the proposed rule change.³ No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

SCCP Rule 9 provides in part that SCCP will provide margin accounts for margin members that clear and settle their transactions through SCCP's omnibus clearance and settlement account. SCCP provides margin for such accounts based on SCCP's Rule 9 and other relevant SCCP rules, by-laws, and procedures and Regulation T of the Board of Governors of the Federal Reserve System. Currently, margin members who are designated as specialists or alternate specialists in an exchange listed security have a margin financing threshold rate of 15 percent for positions in those securities held in their specialist accounts. Members holding positions for which they are not designated as specialist or alternative specialist have a non-specialist margin rate of 50 percent. Pursuant to Rule 9, SCCP may issue margin calls to any margin member when the margin requirement exceeds the account equity.

The rule change amends SCCP's providers to specify a margin financing threshold rate of 25 percent for members registered as specialists and alternate specialists in Nasdaq NM securities. It should be noted that the Philadelphia Stock Exchange, Inc. ("Phlx") has recently reinstated its over the counter/

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 44582 (July 20, 2001), 66 FR 39071.

³ The amendment was technical in nature and did not require republication of the notice.