

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 also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-2001-18 and should be submitted by April 5, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45523; File No. SR-Phlx-2002-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Proposing To Adopt an Application Fee for Equity Trading Permits

March 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 11, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") 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 Exchange filed Amendment No. 1 on March 1, 2002.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to apply a \$200 Application Fee to applicants for Equity Trading Permits ("ETPs") who, at the time application is made, are not Exchange members or foreign currency

options ("FCO") participants. The Exchange states that it would not charge the \$200 ETP Application Fee to ETP applicants who, at the time the application is made, are Exchange members or FCO participants. The text of the proposed rule change is available at the Phlx's Office of the Secretary 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 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 III 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

On January 9, 2002, the Commission approved a proposed rule change to adopt Exchange Rule 23 which provides for ETPs.⁴ The Exchange anticipates commencing an ETP program in the near future. Accordingly, the purpose of the proposed rule change is to amend the Exchange's Schedule of Dues, Fees and Charges, to establish that a \$200 ETP Application Fee will be charged to applicants for ETPs who, at the time application is made, are not Exchange members or FCO participants.⁵ The Exchange proposes this new ETP application fee to defray the Exchange's administrative costs of review and processing such applications.

Exchange Rule 23(b) provides that ETP holders must meet all qualifications that are required for membership in the Exchange. It provides that applications must be approved by the Exchange, and that applicants who are not Exchange

members must be admitted by the Exchange. Exchange Rule 23(b) also states that the admissions process for applicants who are not members of the Exchange will be the same as that required for membership applicants for admission, and that the decision to grant or deny an application for admission will be made by the Admissions Committee. The Exchange noted in its filing proposing Exchange Rule 23, that ETP applicants who are members of the Exchange when they apply for an ETP will have already received a favorable admissions determination by the Exchange's Admissions Committee when they became a member. Consequently, they will not be charged the ETP Application Fee. The Exchange now proposes that a \$200 ETP Application Fee apply to ETP applicants who are not members or FCO participants at the time of application in order to defray the administrative costs associated with processing applications made by individuals who have not previously been evaluated by the Exchange as applicants for membership or FCO participation.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁶ in general, and furthers the objectives of section 6(b)(4) of the Act,⁷ in particular, by providing for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange believes that the \$200 ETP Application Fee is reasonable and equitable, because it is charged to all ETP applicants who are not members or FCO participants.

In addition, the Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,⁸ in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Exchange believes that application of the \$200 ETP Application Fee to ETP applicants who are not members or FCO participants when they apply will defray administrative costs involved in the review and processing of an ETP application when made by an individual with respect to whom this has not previously been done in the

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On March 1, 2002, the Exchange filed a new Form 19b-4, which replaces and supercedes the original filing in its entirety ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 45254 (January 9, 2002), 67 FR 2720 (January 18, 2002) (approving SR-Phlx-00-02 and SR-Phlx-00-03).

⁵ The Exchange has separately filed pursuant to section 19(b)(3)(A) of the Act, SR-Phlx-2002-10, a proposed rule change amending Appendix A to its Schedule of Dues, Fees and Charges to establish fees applicable to ETP holders and ETP organizations. See Securities Exchange Act Release No. 44213 (April 23, 2001), 66 FR 22058 (May 2, 2001) (SR-Phlx-2001-01). That filing does not address the \$200 ETP Application Fee that is proposed here. The Exchange now files this proposed rule change pursuant to section 19(b)(2) of the Act.

context of an application for a membership or FCO participation.

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

The Exchange 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 solicited or received with respect to the proposed rule change.

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

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and Rule 19b-4(f)(2) hereunder.¹⁰ At any time within 60 days of the filing of Amendment No. 1 to 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 purpose 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, 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 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No.

SR-Phlx-2002-12 and should be submitted by April 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45533; File No. SR-SCCP-2002-02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Extension of Its Pilot Program To Implement Its Existing Fee Schedule for Electronic Communications Networks

March 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 17, 2002, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") 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 extends SCCP's pilot program for an additional one year period thereby continuing to implement the existing SCCP fee waivers for SCCP participants for trades executed on the Philadelphia Stock Exchange, Inc. ("Phlx") for Electronic Communications Networks ("ECNs").²

¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter ("OTC") market maker and permits such orders to be executed against in whole or in part except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times or any system operated by or on behalf of an OTC market maker or exchange market maker that executes customer orders primarily against the account of such market maker as principal other than riskless principal.

The current pilot program expired on January 23, 2002.

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.³

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

SCCP previously filed with the Commission a proposed rule change to adopt a fee schedule for ECNs.⁴ Pursuant to that proposed rule change, SCCP waived certain dues, fees, and charges, including trade recording fees, value fees, and treasury transaction charges but not account fees, research fees, computer transmission/tape charges, or miscellaneous charges on its fee schedule.⁵ The fee schedule was to operate as a pilot program for one year. It was intended that after the initial pilot period, the ECN would be eligible for the SCCP fee schedule rates for ECNs only if the ECN achieved certain average daily equity volume on the Phlx.⁶ At this time, SCCP proposes to continue to implement the existing fee schedule for ECNs, as described above, without imposing volume requirements.

This rule change affects ECN trades not related to such ECN acting as a Phlx specialist or floor broker. Thus, an ECN may incur specialist or floor brokerage transaction fees if it acts in that capacity. Currently, no ECN operates from Phlx's equity trading floor as a floor broker or specialist unit. If, however, an ECN did operate from the Phlx equity trading floor, it could be subject to various SCCP fees respecting

³ The Commission has modified parts of these statements.

⁴ Securities Exchange Act Release No. 45145 (December 10, 2001), 66 FR 65017 (December 17, 2001) (SR-SCCP-2001-01).

⁵ Certain provisions of the SCCP fee schedule do not apply to ECNs because they apply to specialists and/or relate to margin financing, such as specialist discount, margin account interest, P&L statement charges and buy-ins.

⁶ The average daily equity volume requirements on the Phlx were initially at least 5,000 trades and 5,000,000 shares in the twelfth month after the ECN first became subject to the ECN fee schedule.

⁹ 15 U.S.C. 78(s)(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).