

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51177; File No. SR-NSCC-2004-11]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amending the Fee Schedule of the Insurance Processing Service

February 9, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 20, 2004, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. 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 proposed rule change will revise the transaction fees for NSCC's Insurance Processing Service ("IPS").

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>2</sup>

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

Pursuant to this rule change, fees for the Positions and Valuations ("POV") product of IPS, which enables carriers to send annuity and life insurance contract details to their distributors, will be adjusted as follows (each fee is for 1,000 items):

- For zero to 500,000 items per month (the previous range was zero to 49,999

items per month), there will be a price increase from \$6.00 to \$8.00;

- For 500,001 to 2,000,000 items per month (the previous range was 50,000 to 249,999 items per month), there will be a price decrease from \$5.00 to \$4.50;

- For 2,000,001 to 4,000,000 items per month (the previous range was 250,000 to 999,999 items per month), there will be a price decrease from \$4.00 to \$3.75; and

- For 4,000,001 or more items per month (the previous range was 1,000,000 or more items per month), there will be a price increase from \$2.00 to \$3.50.

The effective date for these fee adjustments was January 1, 2005. NSCC represents that these proposed fee revisions are consistent with NSCC's overall pricing philosophy to align service fees and underlying cost.

NSCC believes that the proposed rule change is consistent with the requirements of the Section 17A of the Act<sup>3</sup> and the rules and regulations thereunder because it provides for a reasonable fee to cover the clearing agency's costs and as such it promotes the prompt and accurate clearance and settlement of securities transactions.

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

NSCC believes that the proposed rule change will not impact or impose any burden on competition.

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

NSCC has not solicited or received written comments relating to the proposed rule change. NSCC will notify the Commission of any written comments it receives.

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

The foregoing rule change took effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2)<sup>5</sup> thereunder because the proposed rule change changes a due, fee, or other charge imposed by NSCC. At any time within sixty days of the filing of such 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. 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2004-11 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NSCC-2004-11. This file number should be included on the subject line if e-mail 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 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 also will be available for inspection and copying at NSCC's principal office and on NSCC's Web site at <http://www.nsc.com/legal/index2004.html>. 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 Number SR-NSCC-2004-11 and should be submitted on or before March 9, 2005.

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>3</sup> 15 U.S.C. 78q-1.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51179; File No. SR-Phlx-2004-95]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Relating to Limitation of the Net Inbound ITS Credit to Certain Phlx and SCCP Fees and Transaction-Related Charges

February 9, 2005.

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 December 30, 2004, 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 Phlx. On January 24, 2005, the Exchange filed Amendment No. 1.<sup>3</sup> 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 revise its schedule of fees to limit the Net Inbound Intermarket Trading System ("ITS")<sup>4</sup> Credit ("ITS Credit")<sup>5</sup> to

certain Phlx and Stock Clearing Corporation of Philadelphia ("SCCP")<sup>6</sup> fees and transaction-related charges. Specifically, the proposal limits the ITS Credit to the amount of Phlx Permit Fees, Phlx Outbound ITS Fees, SCCP Trade Recording Fees, SCCP Value Fees, SCCP Transaction Charges (Remote Specialist Only), SCCP ETF Fees (related to NASDAQ-100 Trust, Series 1 ("QQQ")),<sup>7</sup> Standard & Poor's Depository Receipts® ("SPDRs"),<sup>8</sup> and DIAMONDS® Exchange Traded Funds ("DIAMONDS®")<sup>9</sup> incurred in the same month that the credit is earned.<sup>10</sup> On a monthly basis, ITS Credit in excess of the amount charged for the fees may not be used for any other purpose and may not be carried forward.<sup>11</sup> The proposed amendment is scheduled to become effective for transactions occurring in February, 2005.

No. 45388 (February 4, 2002), 67 FR 6310 (February 11, 2002) SR-Phlx-2001-121).

<sup>6</sup> SCCP, a subsidiary of Phlx, is a registered clearing agency.

<sup>7</sup> The Nasdaq-100®, The Nasdaq-100 Index®, Nasdaq® The Nasdaq Stock Market®, Nasdaq 100 Shares<sup>sm</sup>, Nasdaq-100 Trust<sup>sm</sup>, Nasdaq-100 Index Tracking Stock<sup>sm</sup> and QQQ<sup>sm</sup> are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-200 Index® ("Index") is determined, composed, and calculated by Nasdaq without regard to the licensee of the product, the Nasdaq-100 Trust<sup>sm</sup>, or the beneficial owners of Nasdaq-100 Shares<sup>sm</sup>. Nasdaq has complete control and sole discretion in determining, comprising or calculating the Index or in modifying in any way its method for determining, comprising or calculating the Index in the future.

<sup>8</sup> "Standard & Poor's®," "S&P®," "S&P 500®," "Standard & Poor's 500®", and "500" are trademarks of The McGraw-Hill Companies, Inc., and have been licensed for use by the Phlx, in connection with the listing and trading of SPDRs, on the Phlx. These products are not sponsored, sold or endorsed by Standard & Poor's ("S&P"), a division of The McGraw-Hill Companies, Inc., and S&P makes no representation regarding the advisability of investing SPDRs.

<sup>9</sup> "Dow Jones ®," "The Dow<sup>SM</sup>," "Dow 30<sup>SM</sup>," "Dow Jones Industrial Average<sup>SM</sup>," "Dow Jones Industrials<sup>SM</sup>," "DJIA<sup>SM</sup>," "DIAMONDS®," and "The Market's Measure®" are trademarks of Dow Jones & Company, Inc. ("Dow Jones") and have been licensed for use for certain purposes by the Phlx, pursuant to a License Agreement with Dow Jones. The DIAMONDS Trust, based on the DJIA, is not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in the DIAMONDS Trust.

<sup>10</sup> SCCP is simultaneously submitting a proposed rule change that adds reference to the ITS Credit in the SCCP Fee Schedule and also renames fees related to certain products as "ETF Fees." See SR-SCCP-2004-05.

<sup>11</sup> Thus, for example, if an equity specialist had a monthly ITS Credit of \$30,000 and monthly Phlx and SCCP charges that were eligible to be reduced by the ITS Credit of \$5,000 and \$20,000, respectively, the equity specialist would receive a credit of \$25,000, and the unused credit amount of \$5,000 could not be used for any purpose.

The text of the proposed rule change is available on the Phlx's Web site <http://www.phlx.com>, at the Phlx's Office of the Secretary, 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 Phlx 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 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

###### 1. Purpose

The purpose of the proposed rule change is to continue encouraging ITS trades by allowing equity specialists to get an ITS Credit, but to limit the credit in a reasonable fashion so as not to financially burden the Exchange, particularly in light of the change in equity business on the Exchange. Specifically, while the current ITS Fee and ITS Credit methodology was practical when instituted in 2002,<sup>12</sup> the equity business mix on the Exchange has changed, such that the ITS Credit is now substantially greater than the ITS Fee, with the Exchange generally having to credit substantial amounts to equity specialists. The Exchange is therefore constricting the amount of the ITS Credit, which will continue to be calculated on a monthly basis, such that the credit is limited as described above. The fees to which the ITS Credit is now limited reflect the most fundamental fees applicable to equity specialists.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</sup> in particular, in that it is an equitable allocation of reasonable fees among Exchange members.

<sup>12</sup> See Securities Exchange Act Release No. 45388 (February 4, 2002), 67 FR 6310 (February 11, 2002) (SR-Phlx-2001-121).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>6</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> Amendment No. 1 clarified certain terminology used in the proposed rule change and slightly changed the text of the rule.

<sup>4</sup> ITS is an order routing network designed to facilitate intermarket trading in exchange-listed equity securities among participating self-regulatory organizations based on current quotation information emanating from their markets.

<sup>5</sup> Currently, the ITS Credit (which is calculated on a monthly basis) is: \$0.30 per 100 shares on the excess, if any, of the number of inbound ITS shares executed compared to the number of outbound ITS shares sent and executed on a monthly basis. The outbound ITS fee ("Outbound ITS Fee") for PACE orders (PACE is the Exchange's electronic order routing, delivery, execution, and reporting system for equities) sent over ITS and containing customer clearing information is: \$0.60 per 100 shares for up to 501 shares and \$0.30 per 100 shares for 501 to 4,999 shares. See Securities Exchange Act Release