

provisions of Section 6(b)(5),<sup>15</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and in general, to protect investors and the public interest.

The Linkage Plan, the purpose of which is to enable its participants to act jointly in planning, developing, operating and regulating the NMS Linkage System electronically linking the Linkage Plan Participant Markets to one another, is expected to become operative on October 1, 2006. The Linkage Plan provides for a mechanism for charging for orders executed in each Participant Market using the information about a clearing or Sponsoring Member. Certain markets have indicated that they may be unable to supply clearing or Sponsoring Member information on orders routed through the Linkage to other markets, thus under the proposed rule change, which the Commission understands will be adopted by each of the Linkage Plan participants, the participants have agreed to bill each other directly, based on data supplied by SIAC.

The Exchange has requested that the Commission approve the proposed rule change, as amended, on an accelerated basis. The Exchange notes that the Linkage Plan participants expect the Linkage Plan to become operative on October 1, 2006, and that accelerated approval would permit the Exchange to implement exchange to exchange billing procedures at the start of the Linkage Plan's operation, allowing Linkage Plan participants who do not have a Sponsoring Member at each destination market, to use the Linkage Plan and pay fees directly to the other Linkage Plan participant.<sup>16</sup>

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. Granting accelerated approval would permit the Exchange to implement exchange to exchange billing

procedures at the start of the Linkage Plan's operation enabling Linkage Plan participants who were not able to find a Sponsoring Member at each of the destination markets, to use the Linkage Plan and pay fees directly to another Linkage Plan participant.

Accordingly, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,<sup>18</sup> to approve the proposed rule change, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change, as amended, (SR-NYSE-2006-72) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54488; File No. SR-SCCP-2006-02]

### Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of a Proposed Rule Change Relating to the Definition of a Margin Member

September 22, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 14, 2006, 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 persons.

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

The proposed rule change would amend the definition of "margin member" in SCCP Rule 1, Definitions, to accommodate the proposed introduction of equity Market Makers on the Philadelphia Stock Exchange ("Phlx")

and to reflect the proposed introduction of Phlx's new equity trading system, XLE, which will replace Phlx's equity trading floor.<sup>2</sup>

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

In its filing with the Commission, SCCP 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. 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 conform SCCP's Rules to the proposed change that the Phlx is making to its market structure through the introduction of XLE and market makers. Phlx has proposed to eliminate its equity trading floor and to replace it with an electronic trading system, XLE, which will provide for the entry, display, ranking, routing, and execution of orders in NMS stocks<sup>4</sup> for its members and member organizations ("XLE Participants"). As proposed by Phlx, the current equity specialists would be replaced by market makers, a type of XLE Participant, which would be liquidity providers on XLE.<sup>5</sup>

SCCP Rule 1, Definitions, currently defines "margin members" as SCCP participants that are Phlx specialists, alternate specialists, or other Phlx floor members specifically approved by the National Securities Clearing Corporation to effect trading in a margin account. Margin members that clear and settle their transactions through SCCP's "omnibus clearance and settlement account" at NSCC receive margin accounts from SCCP.<sup>6</sup> SCCP expects that many of its current margin members

<sup>2</sup> Securities Exchange Act Release No. 54329 (August 17, 2006), 71 FR 50482, (August 25, 2006) [File No. SR-Phlx-2006-43].

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

<sup>4</sup> 17 CFR 242.600(b)(47).

<sup>5</sup> As proposed by Phlx, not every security on XLE will require a market maker. However, if a market maker or multiple market makers choose to register in a security, they must provide a two-sided market in that security on XLE during regular trading hours (usually 9:30 a.m. to 4 p.m.) of the security. Therefore, some securities on XLE may have no market makers or may have one or more market makers.

<sup>6</sup> SCCP Rule 9, Margin Accounts.

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

<sup>16</sup> The Commission understands that each of the Linkage Plan participants will file a proposed rule change similar to this one. To date, the Amex and the Phlx have done so. See file nos. SR-Amex-2006-85 and SR-Phlx-2006-58.

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

<sup>19</sup> See *id.*

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

that are Phlx specialists, alternate specialists, or other Phlx floor members would become XLE Participants, including market makers, upon approval of XLE. This proposed rule change would amend the definition of margin member in SCCP's rules to add the term market maker<sup>7</sup> and to remove the word floor from the term Phlx floor member. This would allow SCCP members that are currently margin members under Rule 1 of SCCP's rules to maintain their status as margin members following Phlx's transition to XLE.

SCCP believes that the proposed rule change is consistent with Section 17A of the Act<sup>8</sup> because the proposed rule change is designed to allow current SCCP Margin Members to maintain their status as they transition from the current floor based trading environment on Phlx to an electronic trading system, XLE, and would thereby promote the prompt and accurate clearance and settlement of securities transactions and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance of securities transactions.

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

SCCP does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*(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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**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-SCCP-2006-02 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-SCCP-2006-02. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP and on SCCP's Web site at [http://www.phlx.com/SCCP/memindex\\_sccpproposals.html](http://www.phlx.com/SCCP/memindex_sccpproposals.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-SCCP-2006-02 and should be submitted on or before October 20, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Nancy M. Morris,  
Secretary.

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BILLING CODE 8010-01-P

**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

[STB Finance Docket No. 34929]

**Jeffrey L. Sutch—Continuance in Control Exemption—SMS Rail Lines of New York, LLC**

Jeffrey L. Sutch (applicant) has filed a verified notice of exemption to continue in control of SMS Rail Lines of New York, LLC (SMSNY), upon SMSNY's becoming a Class III rail carrier.

The transaction was scheduled to be consummated on or after September 8, 2006.

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34928, *SMS Rail Lines of New York, LLC—Acquisition and Operation Exemption—Northeastern Industrial Park, Inc.* In that proceeding, SMSNY seeks to acquire by lease from Northeastern Industrial Park, Inc., and to operate approximately 15 miles of rail line in Albany County, NY.

Applicant is a noncarrier that currently controls SMS Rail Service, Inc. (SMSRS), a Class III rail carrier. Applicant states that: (1) The rail lines operated by SMSRS do not connect with the rail line being acquired by lease and operated by SMSNY; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail line being acquired by lease and operated by SMSNY with applicant's rail lines or with those of any other railroad within applicant's corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2). The purpose of the transaction is to allow applicant to continue in control of SMSNY after SMSNY becomes a Class III rail carrier.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve only Class III rail

<sup>7</sup> The proposed rule change File No. SR-Phlx-2006-43 would define the term "market maker" in Phlx Rule 1, Definitions, paragraph (m). It would also add new rules 170 through 174 to set forth the registration requirements, rights, and obligations of Phlx market makers.

<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 17 CFR 200.30-3(a)(12).