

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59031; File No. SR-SCCP-2008-02)

December 1, 2008

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Collection of Financial Industry Regulatory Authority Section 3 Regulatory Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on October 3, 2008, 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. SCCP filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act² and Rule 19b-4(f)(2) thereunder³ so that the proposal was effective upon filing with the Commission. 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

SCCP proposes to amend the SCCP fee schedule to accommodate the collection of fees by the Financial Industry Regulatory Authority (“FINRA”)⁴ pursuant to Section 3 of Schedule A to the FINRA By-Laws (“Section 3 Fees”) from certain SCCP Margin Members that are also FINRA members (“Joint Members”) through an agreement (“Agreement”) that will be entered into among SCCP, FINRA and The NASDAQ OMX Group, Inc. (“NASDAQ”).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(i).

³ 17 CFR 240.19b-4(f)(1).

⁴ FINRA is a national securities association pursuant to 15 U.S.C. 78o-3.

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.⁵

(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 amend the SCCP fee schedule to allow SCCP to collect Section 31 Fees from the Joint Members. Rule 31⁶ under Section 31 of the Act⁷ requires national securities associations and national securities exchanges to pay transaction fees (“Section 31 Fees”) to the Commission that are designed to recover the costs related to the government’s supervision and regulation of the securities markets and security professionals. Currently SCCP members submit transactions to SCCP for clearance of equity trades executed through XLE, which is the equity trading system of NASDAQ OMX PHLX, Inc., (“PHLX”). Because all SCCP members’ transactions executed on XLE must be submitted to SCCP for trade recording and confirmation,⁸ SCCP creates and transmits to PHLX a monthly billing file of the Section 31 Fees for the SCCP members based on the “covered sales” executed through PHLX

⁵ The Commission has modified the text of the summaries prepared by SCCP.

⁶ 17 CFR 240.31.

⁷ 15 USC 7ee.

⁸ See SCCP Rule 6, Trade Recording and Confirmation of Transactions.

XLE.⁹ As of result of the acquisition of PHLX by NASDAQ,¹⁰ XLE will cease operations as of October 24, 2008.¹¹ Because certain SCCP Members who clear through SCCP will no longer be able to use XLE, they have decided to become members of FINRA. FINRA obtains the funds used to pay Section 31 Fees from its membership in accordance with Section 3 of Schedule A to the FINRA By-Laws. FINRA's Section 3 Fees apply to "covered sales" transactions effected otherwise than on a national securities exchange. FINRA members are required to report transactions subject to Section 3 Fees to FINRA in an automated manner using FINRA facilities, including among others, the FINRA/NASDAQ Trade Reporting Facility ("FINRA/NASDAQ TRF").¹² FINRA uses the transaction data reported to its automated facilities to bill member firms at the self-clearing and clearing firm level. However, SCCP is not a member firm of FINRA. Therefore, SCCP, FINRA and NASDAQ will enter into the Agreement allowing FINRA to obtain Section 3 fees from certain Joint Members by debiting SCCP's omnibus account at the National Securities Clearing Corporation ("NSCC") on a monthly basis for the aggregate amount of covered sales reported to the FINRA/NASDAQ TRF by such Joint Members. Because the Section 3 Fees are ultimately obligations of the Joint Member and not

⁹ "Covered sales" means a sale of a security, other than an exempt sale or a sale of a security future, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange. 17 CFR 31(6).

¹⁰ See Securities Exchange Act Release Nos. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) [SR-Phlx-2008-31]; 58180 (July 17, 2008), 73 FR 42890 (July 23, 2008) [SR-SCCP-2008-01]; and 58183 (July 17, 2008), 73 FR 42850 (July 23, 2008) [SR-NASDAQ-2008-035].

¹¹ See Securities Exchange Act Release No. 58613 (September 22, 2008), 73 FR 57181 (October 1, 2008) [SR-Phlx-2008-65].

¹² See generally Securities Exchange Act Release No. 53977 (June 12, 2006), 71 FR 34976 (June 16, 2006) [SR-NASD-2006-055]. Also, in limited instances FINRA members may report trades to FINRA using Form T.

SCCP, the proposed rule filing will allow SCCP to recover the Section 3 Fees obtained by FINRA from SCCP's NSCC omnibus account directly from the Joint Member based on the transaction data reported to the FINRA/NASDAQ TRF.

2. Statutory Basis

SCCP believes that its proposal is consistent with Section 17A of the Act¹³ in general, and with Section 17A(b)(3)(D) of the Act,¹⁴ which requires that the rules of a registered clearing agency provide for the equitable allocation of reasonable fees and other charges among its participants. The filing will allow SCCP to provide a mechanism for collecting and remitting to FINRA the Section 3 Fees that FINRA charges to Joint Members.

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

SCCP does not believe that the proposed rule change will impose any burden on competition 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 either solicited or received.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁵ and Rule 19b-4(f)(2)¹⁶ thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the

¹³ 15 U.S.C. 78q-1.

¹⁴ 15 U.S.C. 78q-1(b)(3)(D).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

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. 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. Please include File Number SR-SCCP-2008-02 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-SCCP-2008-02. 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 Room, 100 F Street,

NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. The text of the proposed rule change is available at SCCP, the Commission's Public Reference Room, and <http://www.phlx.com/about/sccprulechanges.aspx>. 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-2008-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon
Acting Secretary

¹⁷ 17 CFR 200.30-3(a)(12).