

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51153; File No. SR-SCCP-2005-01)

February 8, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Stock Clearing Corporation of Philadelphia Relating to the Extension of Its Fee Waiver for Electronic Communications Networks

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 January 20, 2005, 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 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 purpose of the proposed rule change is to extend SCCP's existing fee waiver for ECN trades for an additional one-year period, through January 23, 2006, with the intention of attracting equity order flow from ECNs to the Exchange.

SCCP believes that its current program is a reasonable method to attract large order flow providers such as ECNs to the Exchange and SCCP. Additional order flow should enhance liquidity and improve the Exchange's, and therefore SCCP's, competitive position in equity trading and processing.

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

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

<sup>2</sup> 17 CFR 240.19b-4.

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.

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

SCCP, pursuant to Section 19(b)(1) and Rule 19b-4 thereunder,<sup>3</sup> proposes to amend its schedule of fees to extend SCCP's current one-year pilot program for an additional one-year period, through January 23, 2006, in order to continue the existing SCCP fee waivers for SCCP participants for trades executed on the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") for Electronic Communications Networks ("ECNs").<sup>4</sup> The current pilot program is scheduled to expire on January 23, 2005.<sup>5</sup>

SCCP has implemented a fee waiver, since early 2001,<sup>6</sup> such that SCCP

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<sup>3</sup> 17 CFR 240.19b-4

<sup>4</sup> As stated on the SCCP fee schedule, 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 single price set by the ECN (by 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. See SEC Rule 11Ac1-1(a)(8).

<sup>5</sup> Securities Exchange Act Release No. 49189 (February 4, 2004), 69 FR 6713 (February 11, 2004) [File No. SR-SCCP-2004-01].

<sup>6</sup> Securities Exchange Act Release No. 45145 (December 10, 2001), 66 FR 65017 (December 17, 2001) [File No. SR-SCCP-2001-01].

waives certain fees and charges, including trade recording fees, value fees, treasury transaction charges, charges for non-specialist 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> (collectively “ETF charges”) for ECN trades,<sup>10</sup> but not account fees, research fees, computer transmission/tape charges, or other charges on its fee schedule. At this time, SCCP proposes to continue this fee waiver through January 23, 2006.

This proposal affects ECN trades not related to such ECN acting as a Phlx specialist or floor broker on the Phlx. Currently, no ECN operates from the Exchange’s equity trading floor

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<sup>7</sup> The Nasdaq-100®, 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 Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, 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 Philadelphia Stock Exchange, Inc., in connection with the listing and trading of SPDRs, on the Phlx. These products are not sponsored, sold or endorsed by 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 Philadelphia Stock Exchange, Inc., 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> 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, buy-ins, specialist ETF charges, and SCCP Transaction Charge (Remote Specialists Only).

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 its non-ECN floor operation. In addition, an ECN's transactions as a floor broker would be subject to the applicable SCCP fee, as would any ECN's specialist trades.<sup>11</sup> Even if the ECN is acting as a floor broker or specialist with respect to some trades, those trades for which it is not acting as a floor broker or specialist, but rather an ECN, would be eligible for this fee waiver.

A copy of SCCP's schedule of fees which includes the fees proposed to be waived for ECNs to the filing of proposed rule change as Exhibit 5.<sup>12</sup>

SCCP believes that its proposal to extend its current pilot program for one year, thereby continuing to implement the existing SCCP fee waivers described above for ECNs, is consistent with Section 17A(b)(3)(D)<sup>13</sup> of the Act because it provides for the equitable allocation of reasonable dues, fees, and other charges in order to attract new order flow to Phlx and SCCP. SCCP believes that structuring this fee for ECNs is appropriate, as ECNs are unique in their role as order flow providers to the Exchange. Specifically, ECNs operate a unique electronic agency business, similar to a securities exchange, as opposed to directly executing orders for their own customers as principal or agent.

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

SCCP does not believe that the proposed rule change will impose any inappropriate

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<sup>11</sup> For example, an ECN acting as a specialist would be subject to the trade recording fee for specialist trades matching with PACE trades.

<sup>12</sup> No changes are being made to the SCCP fee schedule in connection with the ECN fee as described in this proposal. The Exchange, however, proposes to make a minor, technical change to delete a reference to a date when the fee schedule was last updated ("December 2004") in order to minimize any member confusion.

<sup>13</sup> 15 U.S.C. 78q-1(b)(3)(D).

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 either solicited or received

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and Rule 19b-4(f)(2)<sup>15</sup> thereunder because it establishes or changes a due, fee, or other charge. At any time within 60 days of the 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](mailto:rule-comments@sec.gov). Please include File Number SR-SCCP-2005-01 on the subject line.

Paper comments:

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<sup>14</sup> 15 U.S.C. 78(s)(b)(3)(A)(ii).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

- 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-SCCP-2005-01](#). 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. Copies of the filing also will be available for inspection and copying at the principal office of SCCC. 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-2005-01](#) and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).