

research fees, computer transmission/tape charges, or miscellaneous charges on its fee schedule.⁷ At this time, SCCP proposes to continue the existing fee schedule for ECNs through January 24, 2004.

This rule change affects ECN trades not related to an 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 its non-ECN floor operation.⁸ 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. 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 as an ECN, would be eligible for this waiver.

The proposed rule change extends SCCP's existing fee schedule for ECNs for an additional one year period in order to have the opportunity to fully review and evaluate the overall structure of the ECN program, including whether to impose volume threshold requirements.

SCCP believes that its current ECN fee schedule provides competitive fees with appropriate incentives thus proving a reasonable method to attract large order flow providers such as ECNs to Phlx and SCCP. Additional order flow should enhance liquidity and improve Phlx's and therefore SCCP's competitive position in equity trading and clearing.

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⁷ 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, PACE specialist credit, and specialist QQQ charges. At this time, SCCP is also adding to its fee schedule the language "except ECNs" next to the fees applicable to trades in the QQQs, which was missing due to an oversight; the waiver has applied to these QQQ fees because the ECN fee waiver has always applied to transaction fees.

⁸ For example, an ECN acting as a specialist would be subject to the trade recording fee for specialist trades matching with PACE trades.

SCCP believes that its proposal to extend its current pilot program for one year, thereby continuing the existing SCCP fee waivers described above for ECNs, is consistent with section 17A(b)(3)(D) of the Act⁹ because it provides for the equitable allocation of reasonable dues, fees, and other charges. SCCP believes that structuring this fee for ECNs is appropriate, as ECNs are unique in their role as order flow providers to Phlx. Specifically, SCCP points out that 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 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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2) thereunder.¹¹ At any time within sixty 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No.

⁹ 15 U.S.C. 78q-1(b)(3)(D).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

SR-SCCP-2002-06. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 the principal office of SCCP.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹²

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47923; File No. SR-SCCP-2003-02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for Processing Transactions in DIAMONDS® Exchange Traded Funds

May 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 24, 2003, 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.

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).