

performing any function as a Stock Execution Clerk, comply with the registration requirement(s) set forth in Exchange Rule 604, where applicable, disclose in detail to the Exchange, on an annual basis, the specific nature of such additional function(s), and submit to the Exchange written supervisory procedures relating to such activities as a Stock Execution Clerk in accordance with Exchange Rule 748. The Exchange believes that this provision would serve to assist the Exchange in regulating Stock Execution Clerks, and would subject Exchange members and member organizations to possible disciplinary action for failure to supervise their employee Stock Execution Clerks.

The Exchange proposes to require that Stock Execution Clerks clear transactions through an NASD member firm, and determine whether their activities as Stock Execution Clerks require them to be registered as NASD members.<sup>11</sup> The purpose of this provision is to ensure that the activities of Stock Execution Clerks are conducted consistently with the Act and the rules and regulations thereunder. According to the Exchange, the ability of the Exchange's Market Surveillance Department to surveil the activities of Stock Execution Clerks on an exchange floor other than its own is limited. The Exchange believes that this is the primary reason for the Commission's rule requiring NASD membership (and compliance with NASD rules, subject to NASD disciplinary jurisdiction), except in limited circumstances.

Finally, the Exchange proposes to provide that no Stock Execution Clerk may act as an intermediary in any transaction other than under the direct supervision of a member; enter into any clearing transaction or participate in any clearing process; nor have discretion or independent authority over any account or transaction. The purpose of this provision is to ensure that Stock Execution Clerks would not perform

<sup>11</sup> Section 15(b)(8) of the Act requires every broker-dealer registered with the Commission to become a member of the NASD unless the broker-dealer effects transactions in securities solely on a national securities exchange of which it is a member. 15 U.S.C. 78o(b)(8). Section 15(b)(9) of the Act provides the Commission with authority to exempt any class of broker-dealers from the requirement to become a member of the NASD. 15 U.S.C. 78o(b)(9). Rule 15b9-1 under the Act exempts members of a national securities exchange from becoming a member of the NASD if the entity (i) carries no customer accounts; and (ii) earns no more than \$1,000 annual gross income from securities transactions carried out otherwise than on an exchange of which it is a member. The gross income limitation does not apply to income derived from transactions (A) for the dealer's own account with or through another registered broker or dealer; or (B) through the Intermarket Trading System. 17 CFR 240.15b9-1.

duties customarily performed by a Registered Representative (necessitating NASD Series 7 qualification)<sup>12</sup> and to ensure that Stock Execution Clerks comply with applicable federal securities laws.<sup>13</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect the investors and the public interest, and to promote just and equitable principles of trade by regulating the conduct of Clerks on the Exchange's Options Floor.

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

The Phlx 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**

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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

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

<sup>12</sup> Exchange Rule 604(a) provides that no member organization shall permit any natural persons to conduct a public business or duties customarily performed by a registered representative unless such person is registered and qualified as a Registered Representative. Exchange Rule 604(a)(ii) provides that a person is deemed to be a qualified Registered Representative if he or she maintains an effective Series 7 "Full Registration/General Securities Representative" registration or an equivalent predecessor of this examination/registration.

<sup>13</sup> Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Frank N. Genco, Attorney, Division, Commission.

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

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

## **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, 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 will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR-Phlx-2001-104 and should be submitted by October 16, 2002.

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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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46513; File No. SR-SCCP-2002-03]

### **Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for Remote Competing Specialists**

September 18, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 6, 2002, 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 SSCP. The Commission is publishing this notice to solicit comments on the

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

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

proposed rule change from interested parties.

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

The proposed rule change amends SCCP's fee schedule to adopt new fees relating to remote competing specialists on the Philadelphia Stock Exchange ("Phlx") and to provide that certain existing fees and discounts applicable to Phlx specialists will not apply to remote competing specialists.<sup>2</sup>

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

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for 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*

On December 21, 2001, the Commission approved a Phlx proposed rule change to adopt rules designed to facilitate the establishment of Phlx's remote competing specialist program.<sup>4</sup> The new rules provide for the approval by Phlx's Equity Allocation, Evaluation, and Securities Committee of applications by qualified specialist units to act as competing specialists in one or more equity securities from locations other than Phlx's physical trading floor.<sup>5</sup> SCCP is revising its schedule of

<sup>2</sup> See also Securities Exchange Act Release No. 46392 (August 21, 2002), 67 FR 55294 (August 28, 2002) (amending Phlx fees to be charged in connection with the commencement of the remote competing specialist program.)

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

<sup>4</sup> Securities Exchange Act Release No. 45184 (December 21, 2001), 67 FR 622 (January 4, 2002).

<sup>5</sup> Phlx notes that for most purposes under its rules a remote competing specialist is considered to be transacting business on the floor. For example, Exchange Rule 461(f) provides, "All rule, by-law and certificate of incorporation references pertaining to the trading floor of the Exchange shall be deemed to include any bids, offers, orders and trading done remotely, and all such bids, offers, orders and trades shall be deemed to be Phlx bids, offers, orders and executions on the Exchange." Additionally, the proposed rule change proposing Phlx Rule 461 states that remote specialists would be subject to the jurisdiction of the Floor Procedure Committee in the same manner they would if their operations were conducted on the physical trading floor and that remote specialists would be eligible to serve on the Board of Governors and in committee positions reserved for persons associated

with member organizations primarily engaged in business on Phlx's equity floor. Securities Exchange Act Release No. 45014 (November 2, 2001), 66 FR 56888 (November 13, 2001), footnote 6. Telephone conversation between Carla Behnfeldt, Director, Legal Department new Product Development Group, Phlx, and Lori Bucci, Special Counsel, Division of Market Regulation, Commission (August 30, 2002).

dues, fees, and charges in anticipation of the commencement of trading by remote competing specialists. Under the revised fee schedule, the existing trade recording fees and value fees will not apply to trades by Phlx remote competing specialists. The specialist discounts for trades cleared through a SCCP margin account will not apply to trades by remote competing specialists. The PACE specialist credit will not apply to remote competing specialists unless and until the PACE specialist charge (a fee assessed by Phlx) is effective with respect to remote competing specialists.

In place of the trade recording fees and value fees, SCCP proposes to apply a new fee, the SCCP transaction charge, applicable only to transactions involving Phlx remote competing specialists. The SCCP transaction charge of \$.30 per remote competing specialist trade will apply to SCCP participants which are, or which clear for, Phlx remote competing specialists. This fee will be capped at \$100,000 per month per remote competing specialist.

Except as described herein, all other SCCP fees, dues, discounts, credits, and charges applicable to Phlx floor-based competing specialists (including the PACE specialist credit and account fees, including suffix charges) will also apply to Phlx remote competing specialists.

SCCP believes that the proposed rule change is consistent with 17A(b)(3)(D) of the Act<sup>6</sup> which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants because the fee structure proposed herein applies equally to all SCCP participants with remote competing specialist operations or which clear for remote competing specialists.

#### *(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.

with member organizations primarily engaged in business on Phlx's equity floor. Securities Exchange Act Release No. 45014 (November 2, 2001), 66 FR 56888 (November 13, 2001), footnote 6. Telephone conversation between Carla Behnfeldt, Director, Legal Department new Product Development Group, Phlx, and Lori Bucci, Special Counsel, Division of Market Regulation, Commission (August 30, 2002).

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(D).

### **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 Act<sup>7</sup> and Rule 19b-4(f)(2) thereunder.<sup>8</sup> 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. 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 will also be available for inspection and copying at SCCP. All submissions should refer to the File No. SR-SCCP-2002-03 and should be submitted by October 16, 2002.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

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