

SR-SCCP-2004-01

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

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Form 19b-4

Proposed Rule Change by  
STOCK CLEARING CORPORATION OF PHILADELPHIA

Pursuant to Rule 19b-4 under  
the Securities Exchange Act of 1934

1. Text of the Proposed Rule Change

The Stock Clearing Corporation of Philadelphia (“SCCP”), 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> proposes to extend SCCP’s current one-year pilot program for an additional one-year period (until January 23, 2005), 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>3</sup> The current pilot program is scheduled to expire on January 23, 2004.<sup>4</sup>

SCCP has implemented a fee waiver, since early 2001,<sup>5</sup> such that SCCP waives certain dues, fees and charges, including trade recording fees, value fees, treasury transaction charges and Nasdaq 100 Trust, Series 1 (“QQQ”) charges<sup>6</sup> for ECN trades,<sup>7</sup>

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

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

<sup>3</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>4</sup> See Securities Exchange Act Release No. 47924 (May 23, 2003), 68 FR 33558 (June 4, 2003) (SR-SCCP-2002-06).

<sup>5</sup> See Securities Exchange Act Release No. 45145 (December 10, 2001), 66 FR 65017 (December 17, 2001) (SR-SCCP-2001-01).

<sup>6</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

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, 2005.

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 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>8</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.

SCCP also intends to make minor changes to its definition of ECNs that appears on SCCP's fee schedule.

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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>7</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 QQQ charges, and SCCP Transaction Charge (Remote Specialists Only).

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

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of SCCP's Schedule of Fees, which includes the fees proposed to be waived for ECNs, is attached hereto as Exhibit 2.

2. Procedures of the Self-Regulatory Organization

The SCCP Board of Directors approved the proposal for filing with the Securities and Exchange Commission ("Commission") on December 10, 2003.

Questions and comments on the proposed rule change may be directed to Cynthia K. Hoekstra, Counsel, Phlx, at (215) 496-5066 or Edith Hallahan, Deputy General Counsel, Phlx, at (215) 496-5179.

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

a. Purpose

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

The purpose of making minor changes to the definition of ECNs that appears in the SCCP fee schedule is to conform the definition to Rule 11Ac1-1(a) (8) of the Securities and Exchange Act of 1934.

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.

b. Statutory Basis

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>9</sup> of the Act because it provides for the equitable allocation of reasonable dues, fees, and other charges in order to attract a new form of 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.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

SCCP does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder. Accordingly,

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<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>10</sup> 15 U.S.C. 78(s)(b)(3)(A)(ii).

the proposal will take effect upon filing with the Commission. 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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
2. SCCP Fee Schedule.

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<sup>11</sup> 17 CFR 240.19b-4(f)(2).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Stock Clearing Corporation of Philadelphia has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

STOCK CLEARING CORPORATION OF PHILADELPHIA

By: \_\_\_\_\_  
Murray Ross  
Vice President and Secretary

Date: \_\_\_\_\_

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-SCCP-2004-01

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 \_\_\_\_\_ 2004, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("SEC" or "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 Stock Clearing Corporation of Philadelphia ("SCCP"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes to extend SCCP's current one-year pilot program for an additional one-year period (until January 23, 2005), 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>5</sup> The current pilot program is scheduled to expire on January 23, 2004.<sup>6</sup>

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

<sup>5</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-

SCCP has implemented a fee waiver, since early 2001,<sup>7</sup> such that SCCP waives certain dues, fees and charges, including trade recording fees, value fees, treasury transaction charges and Nasdaq 100 Trust, Series 1 (“QQQ”) charges<sup>8</sup> for ECN trades,<sup>9</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, 2005.

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 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.

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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>6</sup> See Securities Exchange Act Release No. 47924 (May 23, 2003), 68 FR 33558 (June 4, 2003) (SR-SCCP-2002-06).

<sup>7</sup> See Securities Exchange Act Release No. 45145 (December 10, 2001), 66 FR 65017 (December 17, 2001) (SR-SCCP-2001-01).

<sup>8</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>9</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 QQQ charges, and SCCP Transaction Charge (Remote Specialists Only).

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>10</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.

SCCP also intends to make minor changes to its definition of ECNs that appears on SCCP's fee schedule.

A copy of SCCP's Schedule of Fees, which includes the fees proposed to be waived for ECNs, is attached hereto as Exhibit 2.

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.

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 extend SCCP's existing fee waiver for ECN trades for an additional one-year period (until January 23, 2005) with the intention of attracting equity order flow from ECNs to the Exchange.

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<sup>10</sup> For example, an ECN acting as a specialist would be subject to the trade recording fee for specialist trades matching with PACE trades.

The purpose of making minor changes to the definition of ECNs that appears in the SCCP fee schedule is to conform the definition to Rule 11Ac1-1(a) (8) of the Securities and Exchange Act of 1934.

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.

2. Statutory Basis

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>11</sup> of the Act because it provides for the equitable allocation of reasonable dues, fees, and other charges in order to attract a new form of 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 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.

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<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(D).

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 Act<sup>12</sup> and Rule 19b-4(f)(2) thereunder<sup>13</sup>. Accordingly, the proposal will take effect upon filing with the Commission. 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. 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](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-SCCP-2004-01. 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

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<sup>12</sup> 15 U.S.C. 78(s)(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR-SCCP-2004-01 and should be submitted by [insert 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

Exhibit 2*New Text Underlined; Deleted Text Bracketed***STOCK CLEARING CORPORATION OF PHILADELPHIA FEE SCHEDULE****1. ACCOUNT FEES**

Maintenance Fee	\$150.00 per month (20 or fewer trades per month) \$250.00 per month(over 20 trades per month) \$650.00 per month (specialist)
Additional Suffix	\$32.00 per month per suffix

**2. TRADE RECORDING FEES (except ECNs+, remote specialists, and QQQ fees)**

Regular Trades	\$ 0.47 per side
PACE Trades <sup>1</sup>	No Charge
Specialist Trades Matching With PACE Trades*	\$0.27 per side for the first 2,500 trades per month \$0.10 per side for trades in excess of 2,500 per month
eVWAP <sup>tm</sup> Trades	\$0.30 per side
Yellow Tickets	\$0.47 per side

**3. VALUE FEES (except ECNs+ and remote specialists)**

Rio Accounts	\$0.05 per \$1,000 of contract value
Margin Accounts*	\$0.035 per \$1,000 of contract value
PACE Trades <sup>1</sup>	None
Maximum Value Charge*	\$25.00 per trade per side

+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 [specified] 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.

<sup>1</sup> In connection with PACE trades, trade recording fees and value fees apply where an order, after being delivered to the Philadelphia Stock Exchange, Inc. by the PACE system is executed by way of an outbound ITS commitment, when such outbound ITS commitment reflects the PACE order’s clearing information, but do not apply where a PACE trade was executed against an inbound ITS commitment.

**STOCK CLEARING CORPORATION OF PHILADELPHIA FEE SCHEDULE****4. SPECIALIST (OTHER THAN REMOTE SPECIALISTS) DISCOUNTS FOR TRADES CLEARED THROUGH A SCCP MARGIN ACCOUNT<sup>2</sup>**

Volume Level Discount (including PACE trades)	Discount Per side
2,501 to 10,000 sides per month	\$0.05
10,001 to 15,000 sides per month	\$0.10
15,001 to 20,000 sides per month	\$0.15
20,001 to 25,000 sides per month	\$0.20
25,001 to 30,000 sides per month	\$0.25
30,001 to 35,000 sides per month	\$0.30
35,001 to 40,000 sides per month	\$0.35
40,001 and over	\$0.40

**5. TREASURY TRANSACTIONS (except ECNs+)**

Per trade transaction	\$40.00 (plus pass through costs)
Per transfer	\$10.00 (plus pass through costs)

**6. MARGIN ACCOUNT INTEREST**

Charge on net debit balances	½% above bank broker call rate
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**7. RESEARCH FEES**

Per photocopy of input forms	\$4.00
Per microfiche copy	\$4.00
Items less than 90 days old	No charge
Items 1 year old or less	\$15.00 per hour
Items over 1 year old	\$15.00 per hour, \$25.00 minimum, plus archive retrieval costs

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<sup>2</sup> For SCCP participant firms engaged in a merger, acquisition, consolidation or other similar business combination, such firms may combine their respective volumes when determining the applicable discount for the month. SCCP Participants eligible for the combined discounts are required to request the combined volume level discounts within 30 days after the issuance of the SCCP invoice for the month in which such business combination occurs.

**STOCK CLEARING CORPORATION OF PHILADELPHIA FEE SCHEDULE**

8. **COMPUTER TRANSMISSIONS/TAPES**

Purchase and Sale Trade Data (daily)	\$100.00 per month
Purchase and Sale Trades plus T+2 Settling Trades (daily)	\$150.00 per month
Miscellaneous	\$150.00 per month; includes 6 tapes/transmissions
	\$ 25.00 per additional tape/transmission

9. **P&L STATEMENT CHARGES**

\$0.01 per line

10. **BUY-INS**

\$5.00 per item

**STOCK CLEARING CORPORATION OF PHILADELPHIA FEE SCHEDULE**

**11. NASDAQ 100 TRUST, SERIES 1 (“QQQ”), and Standard & Poor’s Depository Receipts® (SPDRs) and DIAMONDS® Exchange Traded Funds (“DIAMONDS®”).# (except ECNs+)**

Non-Specialist	\$0.30 per trade side (Non-PACE Executions; No Charge for PACE Executions)
Specialist	\$0.50 per trade (for the first 1,000 trades)* \$0.25 per trade (for all subsequent trades, no further volume discounts)*

**12. SCCP TRANSACTION CHARGE (REMOTE SPECIALISTS ONLY)**

\$0.30/round lot trade per side.  
\$0.10/odd-lot trade per side.  
The combination of these fees is capped at \$100,000/month. For purposes of this fee, an odd-lot is defined as a trade under 100 shares, whereas a round-lot is defined as a trade of 100 shares or over.

\*Denotes fees not applicable to Specialist trades matching with PACE trades on the opening.

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Except as provided herein with respect to remote specialists, any fees, credits, discounts and other charges applicable to specialists in SCCP's fee schedule will apply to all equity specialists, including competing specialists.