

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

The purpose of the proposed rule change is to facilitate the efficient clearance and settlement of securities transactions by SCCP participants that have made their own arrangements to transmit such transactions directly to NSCC. SCCP anticipates that certain members of the Philadelphia Stock Exchange ("Phlx") that participate in Phlx's program to trade Nasdaq securities will make arrangements for the clearing and settlement of their Nasdaq securities trading at Phlx directly with NSCC. SCCP intends to offer such Phlx members the use of an ex-clearing account for this purpose. Currently, SCCP uses ex-clearing accounts in situations where both sides have agreed to settle a transaction outside any registered clearing agency mechanism such as NSCC. This is in addition to other accounts offered by SCCP, such as a RIO account<sup>3</sup> and a margin account.<sup>4</sup>

SCCP now proposes to amend SCCP Rule 11 to add transactions whereby both sides have agreed not to transmit the transaction to NSCC for clearing and settlement via SCCP. Accordingly, both sides could agree to submit a transaction directly to NSCC instead of SCCP doing so. A SCCP ex-clearing account would then be available for the following two scenarios, where both sides have agreed to settle a transaction: (1) Outside of NSCC and (2) at NSCC but without SCCP submitting the transaction there.<sup>5</sup>

SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>6</sup> which requires that the rules of a clearing agency be designed to promote the prompt and accurate settlement of securities transactions, to remove impediments to

<sup>3</sup> RIO means regional interface organization, which is the system through which SCCP transmits to and receives trade data from NSCC. In a RIO account, SCCP records, confirms, and transmits transactions to the RIO participant's NSCC account or its correspondent account that ultimately settles directly with NSCC. SCCP makes no trade guarantees respecting RIO account transactions. SCCP is solely a trade recording, confirmation, and transmission agent of RIO account participants' transaction activity.

<sup>4</sup> Phlx specialists, alternate specialists, and other Phlx floor members may be specifically approved by NSCC to effect trading in a margin account. SCCP will provide margin accounts for margin members that clear and settle their transactions through SCCP's omnibus clearance and settlement account at NSCC.

<sup>5</sup> The use of ex-clearing accounts as proposed in this proposed rule change is not limited to trading in Nasdaq securities and may be used in any situation that otherwise meets the criteria for the use of ex-clearing accounts in this manner.

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

and perfect the mechanism of a national system, and to protect SCCP, its members, investors, and the public interest.

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

SCCP does not believe that the proposed rule 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*

SCCP has not solicited or received written comments on the proposed rule change.

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

Within thirty-five 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 ninety 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 SCCP consents, the Commission will:

- (a) By order approve the proposed rule change or
- (b) institute proceedings to determine whether the proposed rule change should be disapproved.

**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-2002-07. 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, 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 SCCP's principal office and on SCCP's Website at [http://www.phlx.com/exchange/memindex\\_sccpproposals.html](http://www.phlx.com/exchange/memindex_sccpproposals.html). All submissions should refer to File No. SR-SCCP-2002-07 and should be submitted by February 4, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49036; File No. SR-SCCP-2003-06]

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

January 7, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on November 21, 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 persons.

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

SCCP proposes to amend its schedule of dues, fees, and charges to provide that the fees, credits and discounts that apply to Philadelphia Stock Exchange ("Phlx") remote competing specialists will also be applicable to Phlx primary remote specialists.<sup>2</sup> The amendments to

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Phlx has filed a proposed rule change regarding fees to be charged in connection with the proposed expansion of the remote specialist program to

SCCP's fees proposed in this proposed rule change will be implemented by SCCP upon Commission approval of Phlx's proposed rule change to permit primary remote specialists.<sup>3</sup>

## 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.<sup>4</sup>

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

On August 6, 2002, SCCP amended its fee schedule to: (1) Adopt new fees relating to remote competing specialists on the Phlx and (2) provide that certain existing fees and discounts applicable to Phlx specialists would not apply to remote competing specialists.<sup>5</sup> Because at that time the Phlx's remote specialist program was to be limited to remote competing (as opposed to primary) specialists, that proposed rule change applied only to Phlx remote competing specialists.<sup>6</sup>

Phlx now proposes to change its rules to expand its remote specialist program to include remote primary specialists in addition to remote competing specialists. The purpose of this SCCP proposed rule change is to apply the same fees, credits and discounts applicable to remote competing specialists to remote primary specialists. Accordingly, the text of SCCP's fee schedule is amended by the deletion of the word "competing" in items 2, 3, 4, and 13 and the first time that the word appears in the final sentence of the schedule. All existing references to "remote specialists" on SCCP's fee schedule will now be construed to

include both remote primary specialists and remote competing specialists.<sup>7</sup>

SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act<sup>8</sup> because it provides for the equitable allocation of reasonable dues, fees, and other charges among its participants, in that the fees apply equally to all SCCP participants with remote specialist operations or which clear for remote 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.

## 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>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder because it establishes or changes a due, fee, or other charge. 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 5th Street NW., Washington, DC 20549-0069. 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-2003-06. 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, 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 rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at SCCP's principal office and on SCCP's Web site at [http://www.phlx.com/exchange/memos/SCCP/sccp\\_rules/010604.pdf](http://www.phlx.com/exchange/memos/SCCP/sccp_rules/010604.pdf). All submissions should refer to File No. SR-SCCP-2003-06 and should be submitted by February 4, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

J. Lynn Taylor,

Assistant Secretary.

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## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments. Notice of public hearing.

**SUMMARY:** Pursuant to section 994(a), (o), and (p) of title 28, United States Code, and section 4(b) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the "CAN-SPAM Act of 2003"), Public Law 108-187, the United States Sentencing Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. This notice also provides multiple issues for comment, some of which are contained within proposed amendments.

The specific proposed amendments and issues for comment in this notice

include remote primary specialists (File No. SR-Phlx-2003-78).

<sup>3</sup> Securities Exchange Act Release No. 48515 (Sept. 22, 2003), 68 FR 56031 (Sept. 29, 2003) [File No. SR-Phlx-2003-10].

<sup>4</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>5</sup> Securities Exchange Act Release No. 46513 (Sept. 18, 2002), 67 FR 60276 (Sept. 25, 2002) [File No. SR-SCCP-2002-03].

<sup>6</sup> Phlx Rule 461, PACE Remote Specialist, and Securities Exchange Act Release No. 45184 (Dec. 21, 2001), 67 FR 622 (Jan. 4, 2002) (approving SR-Phlx-2001-98).

<sup>7</sup> This filing also makes a technical correction by changing the footnote number from "1" to "2" in the caption to Item 4 of the fee schedule.

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).