

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

The proposed rule change amends SCCP's schedule of dues, fees, and charges to adopt fees for the processing of participant transactions in DIAMONDS® Exchange Traded Funds ("DIAMONDS®").

## 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>2</sup>

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

The proposed rule change provides for SCCP fees that will apply to trading of DIAMONDS®. The proposed rule change amends SCCP's fee schedule to adopt: (1) a non-specialist charge of \$0.30 per trade side for non-PACE executions with no charge for PACE executions and (2) a specialist charge of \$0.50 per trade for the first 1,000 trades and \$0.25 per trade for all subsequent trades with no further volume discounts.<sup>3</sup> No other SCCP transaction fees will apply to trades in DIAMONDS®. This proposal is scheduled to become effective for transactions upon the implementation of trading in DIAMONDS®.

SCCP believes that these competitively priced fees should encourage trading of DIAMONDS®, which should provide market participants with a more affordable market for the trading of this product. SCCP further believes that a more affordable, competitive market for trading should attract more order flow in the DIAMONDS® to the Philadelphia Stock Exchange, Inc., which should, in turn, further increase liquidity of DIAMONDS® and create a tighter, more liquid market. Increased market

<sup>2</sup> The Commission has modified parts of these statements.

<sup>3</sup> This is the same fee schedule that is currently in effect for the processing of Units of Beneficial Interest in the Nasdaq 100 Trust, Series 1, traded under the symbol and widely known as QQQ and Standard & Poor's Depository Receipts". See Securities Exchange Act Release No. 44218 (April 25, 2001), 66 FR 21803 (May 1, 2001) (SR-SCCP-00-06) and SR-SCCP-2003-01.

competition should both benefit investors and protect the public interest in general.

SCCP believes that the proposed rule change is consistent with 17A(b)(3)(D) of the Act<sup>4</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 to all participants that would be trading the DIAMONDS®.

### (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 Act<sup>5</sup> and Rule 19b-4(f)(2) thereunder.<sup>6</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. 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-2003-02. 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

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

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.<sup>7</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47922; File No. SR-SCCP-2002-08]

### Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Recording Fees and Value Fees for Pace Trades

May 23, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 31, 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 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 proposed rule change would amend SCCP's schedule of dues, fees, and charges to clarify the definition of a PACE trade as it relates to the imposition of SCCP's trade recording

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

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

fees and value fees.<sup>2</sup> Currently, SCCP does not charge trade recording fees or value fees for PACE trades. SCCP proposes to define a PACE trade with greater specificity in order to clarify the imposition of trade recording fees and value fees as they relate to PACE trades only.

## 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>3</sup>

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

First, the proposed rule change clarifies that the trade recording fees and value fees apply in situations where an order, after being delivered to Phlx by the PACE system, is executed by way of an outbound Intermarket Trading System ("ITS") commitment<sup>4</sup> when such outbound ITS commitment reflects the PACE order's clearing information. In this situation, the trade is not considered to be a PACE trade for purposes of the imposition of trade recording fees and value fees and thus becomes subject to both charges.

Secondly, the proposed rule change clarifies that the trade recording fees and value fees do not apply where a PACE trade was executed against an inbound ITS commitment. The execution on the Phlx against an inbound ITS commitment is considered a PACE trade and therefore, SCCP trade recording fees and value fees do not apply to these transactions.

Lastly, the proposed rule change rebates to any participants that were charged trade recording fees or value fees for PACE trades that were executed against an inbound ITS commitment for

the months of September, October, November, and December 2002.

SCCP believes that not charging SCCP participants these fees for PACE trades that are executed against an inbound ITS commitment should encourage greater use of the PACE system which in turn should promote a more active and liquid equities market. Also, SCCP believes that this clarification should help to avoid any participant confusion.

Previously, SCCP's billing system charged trade recording fees and value fees for PACE trades executed against an inbound ITS commitment due to the difficulties in identifying executions of orders in this manner. Due to advances in billing, SCCP can now more readily identify PACE trades that are executed against inbound ITS commitments. SCCP believes that by not charging trade recording fees and value fees and by providing a rebate, as described above for the months of September through December 2002, it will encourage future use of the PACE system and will reimburse participants who were charged the trade recording fees and value fees when the application of these charges may not have been clear. Also, SCCP believes that going forward for trades settling on or after January 2, 2003, there should be no charge for these PACE trades due to the fact that the method of execution of these trades is outside of the customer's control.

SCCP believes that its proposal is consistent with Section 17A(b)(3)(D) of the Act<sup>5</sup> because it provides for the equitable allocation of reasonable dues, fees, and other charges among its participants.

### 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

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, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and Rule 19b-4(f)(2) thereunder.<sup>7</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. 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-2002-08. 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.<sup>8</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>2</sup> PACE is the acronym for the Philadelphia Stock Exchange Inc.'s ("Phlx") automated communication and execution system. It is Phlx's order routing, delivery, execution, and reporting system for its equity trading floor. See Phlx Rules 229 and 229A.

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

<sup>4</sup> ITS means the application of the system that permits intraday trading in eligible listed securities between participant markets as set forth in the ITS Plan. See Phlx Rule 2001.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).