

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, 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 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 such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-00-48 and should be submitted by May 22, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission believes that the proposal is consistent with sections 6(b)(5) of the Act,¹¹ which requires, among other things, that the rules of an Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The Commission notes that, under current PCX Rules 6.86 and 6.87, market-makers taking part in Auto-Ex are required to be firm for a minimum of twenty or more contracts at the bid or offer displayed as the disseminated market quote. By the operation of these rules, therefore, a limit order for a small number of contracts, priced better than the disseminated quote, would establish the best bid or offer on the Exchange, and thereby commit the Exchange's market-makers to electronically execute

large numbers of contracts at prices better than those at which they are willing to trade.

The proposed rule change would alter this situation by permitting certain small limit orders (those for five or fewer contracts) to be automatically executed through operation of the PCX's Auto-Ex system. Under the proposal, LMMs would be permitted, at their discretion, and upon giving five minutes notice to the crowd, to activate this function. While the function is active, market-makers logged on to the Auto-Ex system would be excused from compliance with Exchange Rule 6.87(e)(4) and, therefore, permitted to log off the system. Small limit orders that improve the best bid or offer would then be executed, at their limit prices, against those market-makers who opt to remain logged on to Auto-Ex, or against the lead LMM. The intended effect would be to execute a small limit order rather than to display it, which potentially would allow a larger contra-side order to enter the POETS system, execute against it, and trigger the execution of multiple contracts by market-makers at prices they did not quote.

The Commission believes that the proposed feature should foster a fair and orderly market by preserving booked order priority, allowing for efficient Auto-Ex executions, and limiting the opportunity for "small order baiting."¹² The Commission notes that, according to PCX,¹³ the proposed rule change would continue to permit limit orders in the Exchange's limit order book to trade against orders in the POETS/Auto-Ex system, thereby preserving the priority of booked orders.

The Commission finds good cause for approving the proposed rule change (SR-PCX-00-48) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The proposed rule change is designed to automatically execute small customer orders at prices better than the disseminated quote in certain circumstances. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,¹⁴ to approve the proposal on an accelerated basis.

¹² "Small order baiting" occurs when a customer limit order for a minimal number of contracts is entered on one side of the market at a better price than the disseminated quote, thereby improving the quote. A large customer order on the other side of the market is then sent to the Auto-Ex to obtain the better price set by the small limit order.

¹³ Telephone conversation between Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX, and Andrew Shipe, Attorney, Division of Market Regulation, SEC, April 24, 2001.

¹⁴ 15 U.S.C. 78f(b)(5).

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁵ that the proposed rule change, as amended, (SR-PCX-00-48) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44218; File No. SR-SCCP-00-06]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Stock Clearing Corporation of Philadelphia Relating to Proposed Fees for Processing of Units of Beneficial Interest in the Nasdaq 100 Trust, Series 1

April 25, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 8, 2000, Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") and on December 15, 2000, amended, 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

SCCP proposes to institute a fee for the processing of Units of Beneficial Interest in the Nasdaq 100 Trust, Series 1 ("Nasdaq-100 Index Tracking Stock").

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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

¹⁰ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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.²

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 enable SCCP to charge fees that will apply to trading of Units of Beneficial Interest in the Nasdaq-100 Index Tracking Stock. On December 13, 2000, the Commission granted accelerated approval of a proposed rule change submitted by the Philadelphia Stock Exchange, Inc. ("Phlx") that, among other things, amended Phlx's rules to permit the trading, pursuant to unlisted trading privileges ("UTP"), of the Nasdaq-100 Index Tracking Stock.³ In addition, Phlx has obtained a license to use the Nasdaq-100 Index in connection with the trading of the Nasdaq-100 Index Tracking Stock.

Specifically, SCCP will charge a fee of \$0.30 per trade for all participants while specialists will pay a \$0.50 fee per trade for the first 1,000 trades and \$0.25 for all subsequent trades. No other SCCP transaction fees will apply to trades in the Nasdaq-100 Index Tracking Stock. Upon initiation of trading, SCCP participants will be notified by means of a circular of the new fees applicable to trading in the Nasdaq-100 Index Tracking Stock.

The proposed fees for transactions in the Nasdaq-100 Index Tracking Stock are lower than the fees charged for other equities already processed through SCCP. It is SCCP's belief that the proposed lower fees should encourage trading of this new product while ensuring that the amounts collected will still cover SCCP's costs of processing Nasdaq-100 Index Tracking Stock.

SCCP believes that the proposed rule change is consistent with Section 17A of the Act⁴ because it equitably allocates reasonable fees among SCCP participants as the fees apply equally to all participants that trade Nasdaq-100 Index Tracking Stock.

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 solicited or received.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁵ and Rule 19b-4(f)(2)⁶ thereunder because the proposed rule change establishes a fee. At any time within sixty days of the filing of such 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.

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For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

Committee Re-Establishment

Re-establishment of Advisory Committees

We publish this notice following the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) to re-establish Small Business Administration (SBA) discretionary advisory committees. The General Services Administration's Committee Management Secretariat has determined that re-establishment is in the public interest.

1. National Advisory Council

The Council will provide advice, ideas and opinions on SBA programs and small business issues. The Council's scope of activities includes reviewing SBA programs and informing SBA of current small business issues. Its members provide an essential connection between SBA, SBA program participants, and the small business community nationwide.

2. District Advisory Councils

The District Advisory Councils provide advice and recommendations to the SBA regarding the effectiveness of and need for SBA programs, particularly within the local districts. Official designations include:

1. Alabama District Advisory Council (formerly Birmingham District Advisory Council).
2. Buffalo District Advisory Council.
3. Columbus District Advisory Council.
4. Connecticut District Advisory Council (formerly Hartford District Advisory Council).
5. Georgia District Advisory Council (formerly Atlanta District Advisory Council).
6. Hawaii District Advisory Council (formerly Honolulu District Advisory Council).
7. Houston District Advisory Council.
8. Indiana District Advisory Council (formerly Indianapolis District Advisory Council).
9. Louisiana District Advisory Council (formerly New Orleans District Advisory Council).
10. Maine District Advisory Council (formerly Augusta District Advisory Council).
11. Minnesota District Advisory Council (formerly Minneapolis District Advisory Council).
12. Montana District Advisory Council (formerly Helena District Advisory Council).
13. North Florida District Advisory Council.

² The Commission has modified the text of the summaries prepared by SCCP.

³ Securities Exchange Act Release No. 43717 (Dec. 13, 2000), 65 FR 80976 (Dec. 22, 2000) (File No. SR-Phlx-00-54).

⁴ 15 U.S.C. 78q-1.

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ 17 CFR 200.30-3(a)(12).