critical of the proposal without stating the basis of the criticism.[20] The principal substantive comments are discussed below.

The majority of the commenters were seat owners predicting, and objecting to, a decline in seat prices and dilution in the value of memberships as a result of the issuance of permits.[21] Certain commenters predicted lawsuits against the Exchange if ETPs were issued,[22] and one commenter stated that a campaign to hurt one lessor in particular has ''blinded'' people.[23] Another commenter suggested that if they are issued, ETPs should be ''phased in.''[24] The Exchange has determined in its business judgment, however, that the potential benefits to the Exchange of the trading permits, including the potential for increased access and enhanced competition on the trading floor and the opportunity to attract additional order flow and new business, justify any possible dilution of memberships and may, in the longer term, result in higher prices for regular memberships. The Exchange is also of the view that the benefits of the ETP program to the Exchange are such that a phasing-in approach would not be desirable. The Exchange further believes that it is proceeding appropriately with respect to ETPs and that any lawsuit of the kind alluded to by certain commenters would be groundless. The Exchange believes that ETPs are in the best interests of the Exchange and its membership as a whole (including both lessee members and lessor owners), and notes that the Exchange's stated purpose in Article Third of its Certificate of Incorporation is ''[t]o act as and to provide a securities exchange where [its] members and other persons authorized it'' can deal in securities.

The Petition submitted by George E. Snyder III demanded that any proposed rules regarding the issuance of trading permits be put to a vote of owner-members. One comment letter stated that seat owners should be eligible to vote on all issues that come before the membership,[25] and another stated that creation of ETPs requires a membership vote.[26] However, neither the Certificate of Incorporation nor the By-laws require a vote to be taken by either seat owners or members on the subject of issuance of trading permits. Further, practically all voting rights are vested in ''members''[27] rather than seat owners under Phlx's Certificate Incorporation and By-laws.[28]

One commenter stated that the Exchange's Certificate of Incorporation and By-law do not permit the creation of ETPs, and that creation of ETPs requires a By-law amendment.[29] The Exchange believes that the Certificate of Incorporation already permits ETPs, and that a By-law amendment is therefore not required.[30] The Exchange notes that the amendment to the Certificate of Incorporation proposed in Article Twenty-First would clearly authorize permits in any event and would supersede any inconsistent provision in the By-laws as a matter of basic corporate law.

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

Within 35 days 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 its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such 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. 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 Phlx. All submissions should refer to File No. SR–Phlx–00–03 and should be submitted by September 22, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–22482 Filed 8–31–00; 8:45 am]

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1999, enclosing an outline of remarks delivered by Matthew D. Wayne on behalf of Paul Liang at the September 22, 1999 Phlx Board of Governors meeting (''Liang Letter''). A number of these written comments dealt generally with both trading permits and the Exchange's proposed capital funding fee and were filed with the Commission on October 27, 1999 in connection with SR–Phlx–99–43, the Exchange's original proposed rule change regarding the capital funding fee.

[20] *See e.g.* PBL Letter (stating without elaboration that issuing ETPs is flawed on both business and legal grounds).

[21] *See* Benton Letter, Elwell Letter, First and Second Green Letters, Janney Letter, Snyder Letter dated July 20, 1999, Taylor Letter, Wayne Letter, and First and Second Leff E-mails.

[22] *See* Benton Letter, Wayne Letter, and First Kramer E-mail.

[23] *See* Second Kramer E-mail.

[24] *See* Taylor Letter and Taylor E-mail.

[25] *See* Second Green Letter.

[26] *See* Liang Letter.

[27] In this instance, the term ''member'' refers to the holder of legal title of the seat.

[28] *See,* Article Thirteenth of the Exchange's Certificate of Incorporation and Phlx By-law Article XII, Section 12–6. Seat owners, (*i.e,* holders of ''equitable'' title to an Exchange membership) are entitled to vote in any decision relating to a compromise or arrangement between the Phlx and its creditors or its members, or relating to a reorganization of the Phlx. Other voting rights belong to the members (*i.e.,* holders of legal title to an Exchange membership).

[29] *See* Liang Letter.

[30] As noted above, the Exchange's stated purpose in Article Third of its Certificate of Incorporation is ''[t]o act as and to provide a securities exchange where [its] members and other persons authorized by it'' can deal in securities. Phlx's Foreign Currency Options Participants, for example, have traded on the Exchange since the early 1980's.

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43213; File No. SR–Phlx–00–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Issuance of Equity Trading Permits and Establishment of Related Fees and Amendment No. 1 Thereto

August 25, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') 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 the Exchange. On May 30, 2000, the Exchange filed Amendment No. 1 to the proposal.[3] 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 Exchange proposes to amend its schedule of dues, fees and charges in connection with its proposal to issue equity trading permits. A copy of the proposed schedule is available at the Exchange and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Attorney, Division of Market Regulation, Commission, dated May 25, 2000. (''Amendment No. 1''). In Amendment No. 1, among other things, the Exchange clarified the circumstances under which, and to whom, the Application Fee and the Initiation Fee will be charged.

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

In its filing with the Commission, the Exchange 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. The Exchange 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 Exchange has proposed, in a separate filing with the Commission, to adopt new Rule 23 relating to the issuance by the Exchange of equity trading permits (''ETPs'').[4] ETPs would confer access privileges to the Exchange's equity trading floor and certain of the rights of members of the Exchange to ETP holders. In this filing, the Exchange proposes to apply the Exchange's existing application fee to all applicants for ETPs, and to apply an initiation fee to those applicants who become ETP holders who are not Exchange members at the time of application.[5] The Exchange also proposed to amend its schedule of fees, dues and other charges to include monthly ETP fees.[6]

Backbground. In SR–Phlx–00–03, the Exchange proposes to issue two classes of ETPs: Regular Equity Trading Permits (''Regular ETPs'') and Off-Floor Equity Trading Permits (''Off-Floor ETPs''). Regular ETPs would confer the rights held by members of the Exchange without options privileges, except as provided in Rule 23 or in other Exchange rules. Consequently, Regular ETPs would permit their holders to trade equity securities on any facility of the Exchange, including as a specialist. Off-Floor ETPs would confer the same rights as Regular ETPs, except for physical access to the Exchange floor. Holders of ETPs would have no voting rights, and ETPs would be transferable except as provided in proposed Rule 23.

Application Fee. The Exchange proposes to charge a $200 application fee for every ETP application submitted to the Exchange. This charge would apply whether the application is made by a current Exchange member, foreign currency options participant (''FCO Participant''), or by an individual with no pre-existing relationship with the Exchange.

Initiation Fee. The Exchange further proposes to charge ETP applicants who are not Exchange members when the ETP application is submitted, a $1,500 initiation fee. The initiation fee will be charged if the applicant is admitted as an ETP holder pursuant to the Exchange's established procedures in place for new members.[7] The $1,500 initiation fee will be imposed on ETP holders when admitted, to the same extent it is imposed on members when elected to membership.[7]

Monthly ETP Fee. The Exchange proposes to charge a monthly fee of $2,000 for each Regular ETP and $500 for each Off-Floor ETP (''Monthly ETP Fee''). To limit the Exchange's administrative costs in connection with ETPs, the Monthly ETP Fee would not be prorated in the event an ETP is issued or terminated in the middle of a month. The review from the Monthly ETP Fee is intended to help fund the Exchange's costs of providing a marketplace for its members and other qualified persons using its trading facilities. The Exchange believes that the higher Monthly ETP Fee for Regular ETP holders is appropriate in view of the greater privileges conferred by a Regular ETP (including the right to apply for specialist privileges) and because the Exchange will incur higher costs in connection with those ETP holders who may be physically present on the trading floor while conducting their Exchange business.

Other Fees and Charges. ETP holders would be subject to the same fees as other Phlx members except for membership dues and the technology fee.[9] Additionally, ETP holders would not be subject to any capital assessments the Exchange may impose.[10] The Exchange notes that all Exchange fees may be modified from time to time in accordance with Exchange procedures and the provisions of the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act[11] in general, and with section 6(b)(4),[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using Phlx's facilities. The proposed rule change takes into account the nature of the differing interests of holders of legal and equitable titles to exchange memberships and ETP holders.

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

Written comments were neither solicited nor received from members, participants or others regarding this proposed amendment to the schedule of dues, fees and other charges.[13]

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[4] *See* SR–Phlx–00–03, filed with the Commission concurrently with this filing. In connection with proposed Rule 23, the Exchange has also proposed to add Article Twenty-First (''Article Twenty-First'') to the Exchange's Certificate of Incorporation which would generally authorize the issuance of permits to conduct business on the Exchange. *See* SR–Phlx–00–02.

[5] The Exchange currently charges a $200 application fee for membership and foreign currency options participation applications. An initiation fee of $1,500 is imposed on members upon their election to membership and on non-member foreign currency options participants upon the purchase of foreign currency options participations.

[6] The Commission recently granted permanent approval to the $1,500 monthly capital funding fee. *See* Securities Exchange Act Release No. 42993 (June 29, 2000), 65 FR 42415 (July 10, 2000).

[7] *See* SR–Phlx–00–03 proposing the issuance of ETPs pursuant to proposed Rule 23, and Phlx By-law 12–4 which describes the process of application for election to membership.

[8] *See* Phlx By-law 12–8(a) which imposes the $1,500 initiation fee on members upon their election to membership.

[9] Membership dues would not be assessed on ETP holders because they would not have a voting membership interest in the Exchange. Also, the Exchange's technology fee was intended to cover system software modifications, Year 2000 modifications, specific system development and maintenance costs, SIAC and OPRA communication charges, and ongoing system maintenance charges. *See* Securities Exchange Act Release No. 38349 (March 12, 1997), 1997 SEC LEXIS 576 (March 12, 1997). ETP holders would not be assessed the technology fee because the Exchange intends the Monthly ETP Fee to be a single charge covering all overhead costs attributable to ETP holders.

[10] The Exchange notes that ETP holders would not, by virtue of the ETP, be holders of equitable title to Exchange memberships and thus would not be subject, by virtue of the ETP, to the Exchange's $1,500 capital funding fee. *See* Securities Exchange Act Release No. 42993 (June 29, 2000), 65 FR 42415 (July 10, 2000). An ETP holder by definition cannot be an owner-member, lessee or party to an A–B–C Agreement with a member organization. Therefore, ETP holders will not be entitled to the monthly credit of up to $1,000 to be applied against certain fees, dues, charges and other amounts owed to the Exchange in connection with the ETP. *See* Securities Exchange Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] Written comments were received in connection with the Exchange's proposal to issue ETPs and have been provided to the Commission as part of SR–Phlx–00–03, filed concurrently with this filing.

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 Phlx consents, the Commission will:

(A) By order approve such 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. 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 Phlx.

All submissions should refer to File No. SR–Phlx–00–04 and should be submitted September 22, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–22483 Filed 8–31–00; 8:45 am]

BILLING CODE 8010–01–M

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43210; File No. SR–SCCP–00–01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Proposed Rule Change Relating to the Eligibility of Holders of Equity Trading Permits Issued by the Philadelphia Stock Exchange, Inc. to be Participants of the Stock Clearing Corporation of Philadelphia

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1]notice is hereby given that on January 12, 2000, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') and on May 31, 2000, amended 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 parties.

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

The proposed rule change allows holders of Equity Trading Permits (''ETPs'') issued by the Philadelphia Stock Exchange, Inc. (''PHLX'') to be eligible to become SCCP participants.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filings 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 these statements.[2]

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

SCCP Rule 3 currently provides that, subject to certain conditions, any person who is a broker-dealer registered under the Act and a member in good standing of PHLX is eligible to be a SCCP participant.[3] The proposed rule change would amend SCCP Rule 3 to permit holders of PHLX EPTs to be considered ''members'' of PHLX for purposes of SCCP's Certificate of Incorporation, By-laws, and Rules.[4] ETP holders would thus be eligible to apply to be participants in SCCP.[5]

The proposed rule change would make a corresponding change to Article 2 of SCCP's; Articles of Incorporation. Article 2 currently includes as one of SCCP's corporate purposes the carrying of securities ''for members, member firms and/or member corporations of the Philadelphia Stock Exchange * * *.'' The proposal would amend Article 2 to add a statement that SCCP's Board of Directors may determine by rule the identity of PHLX ''members, member firms and/or member corporations.'' The purpose of the proposed language is to make the providing of clearing services to PHLX ETP holders fall within SCCP's corporate purposes. The proposed rule change will also provide a clear basis upon which the SCCP board of directors can determine by rule, as and when future circumstances may warrant, the identify of such ''members, member firms and/or member corporations.''

All trades on the PHLX in equity securities are processed through SCCP and require a SCCP participant to be involved. ETP holders will not be required to be SCCP participants themselves. Like PHLX members, ETP holders may elect instead to enter into a correspondent arrangement with another SCCP participant whereby the SCCP participant assumes responsibility for the clearance and settlement of the EIP holder's trades. The proposed

[1] 15 U.S.C. 78s(b)(1).

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

[3] Concurrently with SCCP's filing PHLX has filed with the Commission two proposed rule changes. PHLX 00–02 will add new Article Twenty-First to PHLX's Certificate of Incorporation which will enable PHLX to issue ETPs. PHLX 00–03 will implement PHLX Rule 23 which would set forth the terms and conditions of the proposed FTPs. Under PHLX Rule 23, holders of ETPs would generally have the same rights under PHLX rules as PHLX members without options privileges except that ETP holders would not have the right to vote. ETPs would not be transferable and their holders would not be entitled to any residual interests in PHLX assets upon a liquidation of PHLX. Holders of ETPs would generally be subject to the same obligations as PHLX members, except with respect to certain fees. Securities Exchange Act Release Nos. 43211 (August 25, 2000) and 43212 (August 25, 2000).

[4] Accordingly, SCCP would treat ETP holders just like PHLX members both in terms of SCCP participant qualification requirements and privileges of SCCP participant status.

[5] SCCP approves applicants for participant status only upon a determination that the applicant meets certain standards of financial condition, operational capability, and character set forth in SCCP's rules. Each participant is required to make a contribution to the SCCP's By-laws and Rules as well as with a participant's agreement. ETP holders must apply for SCCP membership and will be subject to the same admission criteria as PHXL members.