

*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 adjust the fees that NSCC charges for the APP feature of its IPS. The effective date for the adjustment is (i) June 1, 2003, for changes resulting in a decrease in fees and (ii) July 1, 2003, for all other changes. The proposed rule change also establishes APP fees for members for whom settlement is not available. These fees are effective June 16, 2003.

The current fee for APP for member for whom settlement is available is as follows: 0 to 499 items per month, \$5.00 per item; 500 to 1,249 items per month, \$4.00 per item; 1,250 to 2,499 items per month, \$2.00 per item; and for more than 2,499 items per month, \$1.00 per item. Pursuant to this rule change, the new APP fees will be as follows: 0 to 1,999 items per month, \$3.00 per item; 2,000 to 3,499 items per month, \$2.00 per item and for more than 3,499 items per month, \$1.00 per item. The fee for APP for members for whom settlement is not available will be: 0 to 1,999 items per month, \$1.50 per item and for more than 1,999 items per month, \$1.00 per item.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>3</sup> and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

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

NSCC does not believe that the proposed rule change will have an impact on or impose a 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 relating to the proposed rule change have been solicited or received. NSCC has notified participants who use IPS of the fee changes. NSCC will notify the Commission of any written comments it receives.

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

The foregoing rule change has become effective pursuant to Section

19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2)<sup>5</sup> because it establishes or changes a due, fee, or other charge of NSCC. At any time within sixty days of the filing of such 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-NSCC-2003-13. 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 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 NSCC's principal office. All submissions should refer to File No. SR-NSCC-2003-13 and should be submitted by September 3, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-20544 Filed 8-12-03; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48299; File No. SR-NYSE-2002-36]

**Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 2 and 3 to Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt Amendments to Exchange Rule 342 ("Offices—Approval, Supervision and Control") and its Interpretation, Rule 401 ("Business Conduct"), Rule 408 ("Discretionary Power in Customers' Accounts"), and Rule 410 ("Records of Orders")**

August 7, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 16, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change. On November 20, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for public comment in the **Federal Register** on November 27, 2002.<sup>4</sup> On April 28, 2003, the Exchange submitted Amendment No. 2 to the proposed rule change.<sup>5</sup> On August 7, 2003, the Exchange filed Amendment No. 3 to the proposed rule change.<sup>6</sup> Amendment Nos. 2 and 3 are described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on Amendment Nos. 2 and 3 to 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 amendments address several issues involving the

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

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

<sup>3</sup> See letter to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, from Darla Stuckey, Corporate Secretary, NYSE, dated November 18, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange added "customer changes of investment objectives" to the list of enumerated activities with regard to which Exchange members must maintain written policies and procedures.

<sup>4</sup> See Securities Exchange Act Release No. 46858 (November 20, 2002), 67 FR 70994 ("Original Notice").

<sup>5</sup> In Amendment No. 2, the Exchange submitted a response to comments received in response to the Original Notice. Also, the Exchange amended the rule text to address certain of the commenters' concerns.

<sup>6</sup> Amendment No. 3 replaces and supercedes Amendment No. 2 in its entirety.

<sup>3</sup> 15 U.S.C. 78q-1.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

establishment, maintenance, and testing of internal controls as well as several supervisory issues. Included are amendments to NYSE Rule 342 ("Offices—Approval, Supervision and Control") and its Interpretation, NYSE Rule 401 ("Business Conduct"), NYSE Rule 408 ("Discretionary Power in Customers' Accounts"), and NYSE Rule 410 ("Records of Orders").

The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in *brackets*.

\* \* \* \* \*

#### **Offices—Approval, Supervision and Control**

Rule 342. (a) through (e) unchanged. Supplementary Material:

.10 through .18 unchanged.

.19 *Supervision of Managers.*—*Members and member organizations must develop and implement written policies and procedures reasonably designed to independently review and supervise customer account activity conducted by each Branch Office Manager, Sales Manager, Regional/District Sales Manager, or by any person performing a similar supervisory function. Such supervisory reviews must be performed by a qualified person pursuant to Rule 342.13 who is senior to the Manager under review.*

.20 through .22 unchanged.

.23 *Internal Controls—Pursuant to paragraphs (a) and (b) of this Rule, members and member organizations must develop and maintain adequate controls over each of its business activities. Such controls must provide for the establishment of procedures for independent verification and testing of those business activities. An ongoing analysis, based upon appropriate criteria, may be employed to assess and prioritize those business activities requiring independent verification and testing. A review of each member's or member organization's efforts with respect to internal controls, including a summary of tests conducted and significant exceptions identified, must be included in the Annual Report required by .30 of this Rule.*

*The independent verification and testing procedures shall not apply to members and member organizations that do not conduct a public business, or that have a capital requirement of \$5,000 or less, or that employ 10 or fewer registered representatives.*

*(See also Rule 401(b))*

.30 *Annual Report.*—By April 1 of each year, each member not associated with a member organization and each member organization shall prepare, and each member organization shall submit

to its chief executive officer or managing partner, a report on the member's or member organization's supervision and compliance effort during the preceding year. The report shall include:

(a) A tabulation of the reports pertaining to customer complaints and internal investigations made to the Exchange during the preceding year pursuant to Rules 351(d) and (e)(ii).

(b) Identification and analysis of significant compliance problems, plans for future systems or procedures to prevent and detect violations and problems, and an assessment of the preceding year's efforts of this nature, and

(c) Discussion of the preceding year's compliance efforts, new procedures, educational programs, etc. in each of the following areas:

- (i) Antifraud and trading practices,
- (ii) Investment banking activities,
- (iii) Sales practices,
- (iv) Books and records,
- (v) Finance and operations, [and]
- (vi) Supervision[.], and
- (vii) *Internal controls.*

If any of these areas do not apply to the member or member organization, the report should so state.

#### **Business Conduct**

Rule 401. (a) Every member, allied member and member organization shall at all times adhere to the principles of good business practice in the conduct of his or its business affairs.

(b) *Each member and member organization shall maintain written policies and procedures, administered pursuant to the internal control requirements prescribed under Rule 342.23, specifically with respect to the following activities:*

(1) *Transmittals of funds (e.g., wires, checks, etc.) or securities:*

(i) *from customer accounts to third party accounts (i.e., a transmittal that would result in a change of beneficial ownership);*

(ii) *from customer accounts to outside entities (e.g., banks, investment companies, etc.);*

(iii) *from customer accounts to locations other than a customer's primary residence (e.g., post office box, "in care of" accounts, alternate address, etc.); and*

(iv) *between customers and registered representatives (including the hand-delivery of checks).*

(2) *Customer changes of address.*

(3) *Customer changes of investment objectives.*

*The policies and procedures required under (b)(1), (b)(2), and (b)(3) above must include a means/method of customer confirmation, notification, or follow-up that can be documented.*

#### **Discretionary Power in Customers' Accounts**

Rule 408

(a) through (c) unchanged.

(d) The provisions of this rule shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed. *The authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent a specific, written, contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised by Floor brokers pursuant to valid Good-Till-Cancelled instructions issued on a "not-held" basis. Any exercise of time and price discretion must be reflected on the order ticket.*

#### **Records of Orders**

Rule 410. (a) Every member or [his] member organization *must* [shall] preserve for at least three years the first two years in an easily accessible place, a record of:

[Transmitted to Floor]

(1) Every order transmitted directly or indirectly by such member or organization to the Floor, which record shall include the name and amount of the security, the terms of the order, the time when it was so transmitted, and the time at which a report of execution was received.

Carried to the Floor]

[(2)] (1) every order received by such member or member organization, either orally or in writing, [and carried by such member to the Floor,] which record *must* [shall] include the name and amount of the security, the terms of the order, the time when it was so received and the time at [as] which a report of execution was received.

[Entered Off Hours]

[(3)] (2) every order entered by such member or member organization into the Off-Hours Trading Facility (as Rule 900 (Off-Hours Trading: Applicability and Definitions) defines that term), which record *must* [shall] include the name and amount of the security, the terms of the order, the time when it was so entered, and the time at which a report of execution was received.

[Cancellation]

[(4)] (3) the time of the entry of every cancellation of an order covered by (1)[,] and (2) [and (3)] above.

[By Accounts] *Changes In Account Name or Designation*

Before any order covered by (1)[,] or (2) [or (3)] above is executed, there *must*

[shall] be placed upon the order slip or other *similar* record of the member[, ] or [his] *member* organization the name or designation of the account for which such order is to be executed. No change in such account name (*including related accounts*) or designation (*including error accounts*) shall be made unless the change has been authorized by [the] a member, [or another member,] allied member, or a person or persons designated under the provisions of Rule 342(b)(1). [in his organization who shall,] *Such person must*, prior to giving his or her approval of [such] the *account designation* change, be personally informed of the essential facts relative thereto and [shall] indicate his or her approval of such change in writing on the order or other *similar* record of the member or member organization. *The essential facts relied upon by the person approving the change must be documented in writing and maintained with the order or other similar record for at least three years, the first two in an easily accessible place as that term is used in Securities Exchange Act Rule 17a-4.*

#### Exceptions

Under exceptional circumstances, the Exchange may upon written request waive the requirements contained in (1), (2) and (3) above.

(b) Every order in any manner transmitted or carried to the Floor and [covered by (1) or (2) above to be] executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder *must* [shall] be identified in a manner that will enable the executing member to disclose to other members that the order is subject to those provisions.

(See also Rules 112A.10 and 123A.45.)

*10 For purposes of this Rule, a person designated under the provisions of Rule 342(b)(1) to approve account name or designation changes must pass an examination acceptable to the Exchange.*

#### INTERPRETATION

##### Rule 342 OFFICES—APPROVAL, SUPERVISION AND CONTROL

###### (a)(b)

##### .03 Annual Branch Office Inspection

[At least annual b]Branch office inspections by members and member organizations are expected to be conducted at least annually pursuant to this Rule, unless it has been demonstrated to the satisfaction of the Exchange that because of proximity, special reporting or supervisory practice, other arrangements[, ] may

*satisfy the Rule's requirements.* [certain offices may not warrant an annual inspection.] *All required inspections must be conducted by a person who is independent of the direct supervision or control of the branch office (i.e., not the Branch Office Manager, or any person who reports to such Manager, or any person to whom such Manager directly reports).* Written reports of these inspections, or the written authorization of an alternative arrangement, are to be kept on file by the organization for a minimum period of three years.

*An annual branch office inspection program must include, but is not limited to, testing and independent verification of internal controls related to the following areas:*

- 1) Safeguarding of customer funds and securities,*
- 2) Maintaining books and records,*
- 3) Supervision of customer accounts serviced by Branch Office Managers,*
- 4) Transmittal of funds between customers and registered representatives and between customers and third parties,*
- 5) Validation of customer address changes, and*
- 6) Validation of changes in customer account information.*

For purposes of this interpretation, “annually” means once in a calendar year.

\* \* \* \* \*

#### 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

On August 15, 2002, the Exchange submitted to the Commission File No. SR-NYSE-2002-36, which proposed several rule amendments intended to strengthen members' and member organizations' supervisory procedures and internal controls. Included are amendments to NYSE Rule 342 (“Offices—Approval, Supervision and

Control”) and the Interpretation to that Rule, NYSE Rule 401 (“Business Conduct”), NYSE Rule 408 (“Discretionary Power in Customers' Accounts”), and NYSE Rule 410 (“Records of Orders”).

On November 18, 2002, Amendment No. 1 was submitted to the SEC, which added paragraph (b)(3) to NYSE Rule 401 to include “customer changes of investment objectives” with the enumeration of business activities subject to written policies and procedures.

The filing was published in the **Federal Register** for comment on November 27, 2002.<sup>7</sup> The comment period, which ended January 17, 2003, resulted in letters from two NYSE member organizations (A.G. Edwards & Sons, Inc. and Charles Schwab & Co.), a letter from a non-NYSE member organization (Cadaret, Grant & Co.),<sup>8</sup> and a letter from the Securities Industry Association (“SIA”).<sup>9</sup> Proposed rule text amendments representing the Exchange's response to industry comments were submitted to the Commission on April 25, 2003 as Amendment No. 2. Amendment No. 3 subsumes Amendment No. 2 and includes additional amendments requested by Commission staff. Several comments and concerns expressed in the A.G. Edwards, Schwab, and SIA letters are very similar and thus will be addressed collectively in this filing as remarks from the “Commenters.” When an issue is unique to a particular letter, it will be noted. Amendments to SR-NYSE-2002-36 proposed by the Exchange in response to this collective commentary, as well as discussion of the issues raised, follow:

##### General Issue

The SIA suggests that, given implementation costs and business model differences, the proposed rule amendments should be adopted in the form of “principles for effective

<sup>7</sup> See note 4 *supra*.

<sup>8</sup> While this letter references the NYSE filing, its comments substantively address the comparable NASD filing (SR-NASD-2002-162), and therefore the comments made in this letter will not be discussed herein.

<sup>9</sup> See letters from Brian Underwood, Senior Vice President, Director of Compliance, A.G. Edwards & Sons, Inc., dated December 18, 2002 (“A.G. Edwards Letter”); Christopher R. Franke, Chairman, Self-Regulation and Supervisory Practices Committee, Securities Industry Association, dated December 18, 2002 (“SIA Letter”); Selwyn J. Noteovitz, Senior Vice President, Global Compliance, Charles Schwab & Co., Inc., dated February 25, 2003 (“Schwab Letter”), collectively (“Commenters”); and Arthur Grant, President, Cadaret, Grant & Co (“Cadaret Letter”), dated December 17, 2002, to Jonathan G. Katz, Secretary, Commission.

supervision” or “best practices” that could be tailored to various business models rather than “prescriptive rules that apply to firms across the board.”

The Exchange does not agree that the proposed rules should be adopted in the form of “principles” or “best practices.” The degree of authority carried by rules and their interpretations is deemed to be the appropriate impetus to encourage the conduct intended by the amendments. However, as discussed in detail below, the Exchange agrees that greater flexibility is needed in certain respects to account for variations in member organization business models.

#### Independent Supervision of Managers’ Activity

Proposed NYSE Rule 342.19 requires written policies and procedures reasonably designed to independently supervise the customer account activity of Sales Managers. The Commenters seek clarification of the “independence” standard. It is contended that individuals within a firm at equal or higher organizational levels, peripherally involved, or who receive an indirect benefit from the activity being reviewed may, nevertheless, have sufficient independence to perform this function.

In response, the proposed amendments to NYSE Rule 342.19 have been revised to provide greater flexibility by clarifying that reviews of Sales Managers’ customer activity may be conducted by a “qualified person,” provided such person is senior to the manager (*i.e.*, not the manager him/herself, or any person with the same job function as such manager,<sup>10</sup> or any person subordinate to the manager). The proposed rule has also been revised to make clear that the “qualified person” standard, in the context of NYSE Rule 342.19, is defined by NYSE Rule 342.13, which requires passing specified supervisory qualification examinations (*e.g.*, Series 9/10).

#### Supervisory Controls and Independent Testing and Verification

Proposed NYSE Rule 342.23 requires members and member organizations to develop adequate controls over each of their business activities. The Rule further requires that such controls provide for the establishment of procedures for independent verification and testing of those business activities. The Commenters sought clarification as to who would be sufficiently

“independent” to perform these “verification and testing” functions.

While Commenters acknowledge that supervisors lack sufficient independence to verify and test procedures they personally implement, flexibility to accommodate a variety of supervisory structures beyond self-supervision is sought. Commenters contended that senior supervisors in a hierarchical supervisory structure should not be excluded because they may derive an “indirect benefit” from the activity under review.

The Exchange recognizes the far-ranging scope and variety of activities subject to the verification and testing requirements. Accordingly, the requirement that internal control procedures be “separate and apart from the day-to-day supervision of such functions” has been deleted from the proposed amendments to NYSE Rule 342.23 to allow greater flexibility in establishing such internal controls. However, firms will be expected to make an informed determination that persons responsible for verification and testing of business activities are sufficiently independent and qualified to do so effectively.

Commenters also seek clarification and assurance that the proposed requirements do not create an obligation for firms to annually test and verify “every aspect” of their supervisory procedures but rather allow for a “risk-based approach” based upon ongoing assessments of the firm’s business.

In response, the proposed amendments to NYSE Rule 342.23 have been revised to allow for an ongoing analysis, based upon appropriate criteria, to assess and prioritize those business activities requiring independent verification and testing.

#### Designated Internal Control Requirements

Proposed NYSE Rule 401(b) (“Business Conduct”) requires that written policies and procedures, administered pursuant to the internal control requirements prescribed under proposed NYSE Rule 343.23, must specifically address transmittals of funds between accounts, changes in investment objectives, and changes of address. These designated policies and procedures must include a means/method of customer confirmation, notification, or follow-up that can be documented.

The SIA has proposed that these requirements should apply only to retail accounts. An “institutional carve-out” is sought, given that much of such business is done DVP or through Prime Brokerage accounts.

The Exchange believes that an exemption for institutional accounts is inappropriate. In order for an internal controls policy to be effective, it must be comprehensive. Accordingly, it is reasonable and appropriate that regulatory oversight in the sensitive areas designated in proposed NYSE Rule 401(b) should extend to institutional account activity.

#### Time and Price Discretion

Proposed amendments to paragraph (d) of NYSE Rule 408 (“Discretionary Power in Customers’ Accounts”) require that time and price discretionary authority be limited to the day it is granted, absent written customer authorization to the contrary.

Commenters suggest consideration of an “institutional exemption” from the requirement on the basis that requiring such written authorization would be inconvenient and unnecessary for sophisticated institutional clients who do not need the same level of protection as retail clients. Such clients are accustomed to entering orders that are “worked” over one or more days on a Good-Till-Cancelled/Not Held basis.

The Exchange believes that a general institutional exemption is inappropriate. However, the amendments have been revised to clarify that written authorization need not be obtained for the exercise of time and price discretion beyond the day a customer grants such discretion for orders exercised by Floor brokers pursuant to valid Good-Till-Cancelled instructions issued on a “not held” basis.

In addition, Commenters seek clarification as to whether the written authorization for the exercise of time and price discretion beyond the business day it was granted need be obtained on an “order-by-order basis,” or whether general “standing instructions” from the customer are permitted.

The current text of NYSE Rule 408(d) clearly limits the exercise of time and price discretion to “the purchase or sale of a definite amount of a specified security. \* \* \*.” Any written authorization granting time and price discretion must comply with this established, trade-specific standard. Customers who wish to grant more extensive discretionary authority to their registered representative may do so pursuant to a fully executed trading authorization.

#### Maintenance of “Account Designation Change” Documentation

The proposed amendments to NYSE Rule 410 (“Records of Orders”) state, in

<sup>10</sup> Telephone conversation between Steve Kasprzak, Attorney, NYSE and Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, on August 7, 2003.

part, that the “essential facts relied upon by the person approving an account designation change must be documented in writing and maintained in a central location.”

A.G. Edwards seeks clarification that such documentation be maintained “in a location where the determination and approval occurs, not in the Home Office” so as to avoid “duplicate record.”

The determination of where such documentation should be retained would depend on the supervisory structure of the firm. Typically, the “central location” would be where the account designation change was approved. However, the proposed rule amendments should not be construed to be determinative of where such records should be maintained, nor discourage maintenance of records in more than one location if regulatory purposes are well served by doing so.

Accordingly, the requirement that relevant documentation be maintained in “a central location” has been deleted and replaced with the requirement that such documentation be maintained for three years, the first two in an “easily accessible place,” consistent with the meaning of that term under SEC Rule 17a-4.<sup>11</sup>

#### Independent Branch Office Inspections

Two related issues have been raised regarding proposed amendments to the Interpretation of NYSE Rule 342 (“Offices—Approval, Supervision, and Control”). The amendments originally required that branch office visits be conducted by a person “independent of the ongoing supervision, control, or performance evaluation of the branch office (*i.e.*, not the Branch Office Manager, Sales Manager, District/Regional Manager assigned to the office, or any other person performing a similar supervisory function).”

Commenters have raised concerns that the amendments may result in economically burdensome and counter-productive supervisory structures. Also, clarification is sought as to who would be sufficiently “independent” to conduct such visits. A more flexible standard is sought that would prohibit supervisors from inspecting their own offices but would allow other supervisory personnel in a hierarchical supervisory system, sufficiently outside of the day-to-day chain of command, to meet the “independence” standard.

The Exchange believes that in order for a branch inspection program to be effective, reasonable guidelines must be in place to minimize conflicts of

interest. While these guidelines need not exclude all participants at every level of a branch office’s hierarchical supervisory structure, the Exchange believes it is reasonable that they exclude the branch manager, any person to whom the branch manager directly reports, and any person who reports to the branch manager. The proposed amendments have been revised accordingly.

#### Number of Annual Branch Office Inspections

A.G. Edwards raised the concern that the proposed amendments, in conjunction with pending NYSE rule proposals that amend the definition of “branch office,” will create a “huge burden” with respect to annual inspections for firms with far-reaching branch networks.

The Exchange currently requires, absent a specific waiver, annual inspections of each branch office location.<sup>12</sup> Pending NYSE Rule amendments relating to the definition of a “branch office”<sup>13</sup> would significantly *reduce* the types of locations required to be registered as branch offices; therefore, the number of branch office inspections required of each member organization would either be reduced or remain the same.

#### Effective Date

Commenters expressed concern has been raised that the effective date of any new requirements allow adequate time to enable firms to make necessary systems changes in an efficient and cost-effective manner. Accordingly, the Exchange intends to establish an effective date six months from Commission approval of the proposed rule amendments to allow members and member organizations sufficient time to address any necessary procedural or systems changes.

#### 2. Statutory Basis

The Exchange believes that the statutory basis for the proposed rule change is Section 6(b)(5) of the Exchange Act,<sup>14</sup> which requires, among other things, that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market and, in general, to protect investors and the public interest. The proposed rule

amendments are intended to foster the strengthening of NYSE members’ and member organizations’ internal controls and supervisory systems

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

SR-NYSE-2002-36 and Amendment No. 1 were published in the **Federal Register** on November 20, 2002.<sup>15</sup> Commenters included Cadaret, Grant & Co., A.G. Edwards & Sons, Inc., Charles Schwab & Co., and the SIA. Their comments and the Exchange’s response appear above.

#### 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 Exchange 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 Amendment Nos. 2 and 3, are 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

<sup>11</sup> See 17 CFR 240.17a-4.

<sup>12</sup> See NYSE Rule 342(a)(b)/03 in the *NYSE Interpretation Handbook*.

<sup>13</sup> See Securities and Exchange Act Release No. 46888 (November 22, 2002), 67 FR 72257 (December 4, 2002) SR-NYSE-2002-34.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> See note 4, *supra*.

the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-2002-36 and be submitted by September 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary,*

[FR Doc. 03-20600 Filed 8-18-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48286; File No. SR-SCCP-2003-03]

### Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for Remote Competing Specialists for Odd-Lot Trades

August 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 28, 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 parties.

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

The proposed rule change amends SCCP's fee schedule to reduce the "SCCP transaction charge (remote competing specialists only)" as it applies to odd-lot trades.

#### 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 amends SCCP's schedule of dues, fees, and charges to reduce the amount of the "SCCP transaction charge (remote competing specialists only)" as it applies to odd-lot trades from \$0.30 to \$0.10 per trade side. The SCCP transaction charge applicable to round lot trades will remain at \$0.30 per trade side.<sup>3</sup> The combination of these fees remains capped at \$100,000 per month.<sup>4</sup>

SCCP states that the purpose of the proposed rule change is to encourage odd-lot business by reducing the SCCP transaction charge as it applies to odd-lot trades. Currently, the "SCCP transaction charge (remote competing specialists only)" is \$0.30 per trade side capped at \$100,000 per month without regard to size or type. This fee reduction is intended to provide an incentive for remote competing specialists to continue to trade odd-lots in addition to their regular businesses. SCCP believes that the proposed fee reduction will encourage these smaller trades as well as regular trades thereby enhancing SCCP's business and liquidity in the marketplace.

SCCP believes that the proposed rule change is consistent with 17A(b)(3)(D) of the Act<sup>5</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 equally to all SCCP participants with remote competing specialist operations or which clear for remote competing 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

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>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-2003-03. 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.

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

<sup>3</sup> 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 more and includes partial round lots (for example, 125 shares).

<sup>4</sup> This proposal is scheduled to become effective for transactions clearing on or after April 2, 2003.

<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>16</sup> 17 CFR 200.30-3(a)(12).

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