

names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. We may also disclose to the FPLS names, social security numbers, and quarterly earnings of each RRB employee within one month of the end of the quarterly reporting period.

Information submitted by the RRB to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by the RRB to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

II. Compatibility of Proposed Routine Use

We are proposing this routine use in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use where the information will be used for a purpose which is compatible with the purpose for which the information was originally collected. The Office of Management and Budget has indicated that a "compatible" use is a use which is necessary and proper. Since the proposed uses of the data are required by Public Law 104-193, they are clearly necessary and proper uses, and therefore "compatible" uses which meet the requirement of the Privacy Act.

III. Altered System Report

On December 11, 1997, the Railroad Retirement Board filed an altered system report for this system with the chairman of the designated Senate and House committees and with the Office of Management and Budget. This was done to comply with Section 3 of the Privacy Act of 1974 and OMB Circular No. A-130, Appendix I.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

RRB-19

SYSTEM NAME: PAYROLL RECORD SYSTEM—RRB

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Paragraph "j" is added to read as follows:

j. The names, social security numbers, home addresses, dates of birth, dates of

hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Act, Pub. L. 104-193).

[FR Doc. 97-33202 Filed 12-18-97; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39444; File Nos. SR-DTC-97-16, SR-NSCC-97-08, SR-Philadep-97-04, SR-SCCP-97-04]

Self-Regulatory Organizations; The Depository Trust Company; National Securities Clearing Corporation; Philadelphia Depository Trust Company; Stock Clearing Corporation of Philadelphia; Order Granting Partial Permanent Approval and Partial Temporary Approval of Proposed Rule Changes Relating to a Decision by the Philadelphia Stock Exchange, Incorporated to Withdraw From The Securities Depository Business and to Restructure and Limit its Clearance and Settlement Business

December 11, 1997.

In August and September, 1997, The Depository Trust Company ("DTC"), National Securities Clearing Corporation ("NSCC"), Philadelphia Depository Trust Company ("Philadep"), and Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ concerning the decision by the Philadelphia Stock Exchange, Incorporated ("PHLX") to withdraw from the securities depository business and to restructure its clearance and settlement business.² Notices of the

proposals were published in the **Federal Register** on October 15 and 16, 1997.³ The Commission received one comment letter, which pertained to DTC and which expressed concern that PHLX's decision to withdraw from the clearance and settlement and securities depository businesses reduced competition in the market.⁴ The Commission also received DTC's letter responding to the comment letter.⁵ For the reasons discussed below, the Commission is approving the proposed rule changes.

I. Description

PHLX is withdrawing from the securities depository business currently offered through its wholly owned subsidiary, Philadep, and is restructuring and limiting its clearance and settlement business currently offered through its wholly owned subsidiary, SCCP. DTC, NSCC, PHLX, Philadep, and SCCP have entered into an agreement dated as of June 18, 1997, governing arrangements relating to PHLX's decision ("Agreement"). Pursuant to the Agreement, as discussed below, most of the current day-to-day depository and clearance services of Philadep and SCCP will now be provided by DTC and NSCC.

A. Agreement

Under the Agreement, the parties are working to assure an orderly transition with respect to the cessation of Philadep's operations and the restructuring of SCCP's operations. Philadep and DTC have agreed to assist sole Philadep participants in becoming DTC participants to the extent that they meet DTC qualifications and desire to become DTC participants. Philadep and DTC also have agreed to cooperate in the transfer of securities from the custody of Philadep to the custody of DTC.

After the closing date of the Agreement, SCCP no longer will maintain its continuous net settlement ("CNS") system for conducting

filed its proposed rule change with the Commission (File No. SR-Philadep-97-04).

PHLX submitted a rule filing on November 14, 1997 (File No. SR-PHLX-97-59) in connection with its withdrawal from the clearance and settlement and securities depository businesses. PHLX's rule filing is being addressed in a separate notice and order.

³ Securities Exchange Act Release Nos. 39222 (October 8, 1997), 62 FR 53847 (DTC); 39220 (October 8, 1997), 62 FR 53848 (NSCC); 39223 (October 8, 1997), 62 FR 53681 (SCCP); 39221 (October 8, 1997), 62 FR 53681 (Philadep).

⁴ Letter from P. Howard Edelstein, President, Electronic Settlements Group, Thomson Financial Services, Inc., (November 4, 1997).

⁵ Letter from Richard B. Nesson, Executive Vice President and General Counsel, DTC (November 14, 1997).

¹ 15 U.S.C. 78s(b)(1).

² On August 5, 1997, DTC filed its proposed rule change with the Commission (File No. SR-DTC-97-16). On August 6, 1997, NSCC filed with the Commission and on August 28, 1997, amended its proposed rule change (File No. SR-NSCC-97-08). On September 25, 1997, Philadep filed its proposed rule change with the Commission (File No. SR-Philadep-97-04). On September 30, 1997, SCCP

settlements between SCCP and its participants. As a result, SCCP will cease providing the cash settlement services attendant to Philadep's same-day funds settlement system and the Philadep settlement process. However, pursuant to the Agreement, SCCP may continue to offer limited clearing and settlement services to PHLX members. SCCP intends to provide trade confirmation and recording services for PHLX members that carry out transactions through regional interface operations ("RIO") accounts and ex-clearing accounts. Under the amended versions of SCCP Rules 10 and 11, SCCP will not provide clearing guarantees on such transactions.

SCCP will continue to offer margin services for certain participants in a special account established by SCCP at NSCC. Pursuant to the Agreement, SCCP will establish an omnibus account at NSCC and will abide by NSCC's rules and procedures as a participant of NSCC. Under the Agreement, SCCP may offer margin services only to: (i) PHLX equity specialists for their specialists and alternate specialists transactions, as well as for their proprietary transactions in securities for which they are not appointed as specialists or alternate specialists and (ii) PHLX members listed on a schedule that are not PHLX equity specialists for their proprietary transactions.⁶

Under the Agreement, PHLX, Philadep, and SCCP will not directly or indirectly engage in or compete in the business of providing securities depository services or clearance and settlement services for a period of five years. This prohibition does not apply to PHLX's equity ownership interest in The Options Clearing Corporation and does not apply to SCCP's providing of margin services.

B. SCCP Rule Changes⁷

A new definition of "margin member" is established in SCCP Rule 1 to reflect those PHLX floor firms entitled to clear through a SCCP margin account.⁸ Pursuant to the amended version of SCCP Rule 9, SCCP may provide margin accounts for margin members that clear

and settle their transactions through SCCP's omnibus clearance and settlement account. SCCP will margin such accounts based on its procedures and on Regulation T of the Board of Governors of the Federal Reserve System.⁹

At any time, SCCP may demand a margin member to provide additional margin based upon its review of the margin member's security positions held by SCCP. SCCP will retain its margin thresholds as currently specified in its procedures and may require adequate assurances or additional margin in addition to the minimum margin thresholds in order to protect SCCP in issues deemed by SCCP to warrant additional protection. SCCP may demand any such margin payments in federal funds in accordance with its procedures.

SCCP may issue margin calls to any margin member whose margin requirement exceeds the account equity of the margin member's margin account.¹⁰ SCCP may waive any amount that would trigger a margin call not exceeding \$500. A margin member that fails to meet a margin call will be subject to SCCP Rule 22 (formerly SCCP Rule 23) which governs disciplinary proceedings and penalties. SCCP may cease to act for delinquent margin members and will retain a lien on all delinquent margin members' accounts and securities therein.

SCCP will segregate and maintain records on each individual margin account and will maintain the omnibus account so as to reflect all positions in SCCP's margin accounts. SCCP also will guarantee the settlement obligations of the omnibus account to NSCC. Pursuant to the Agreement, PHLX will guarantee SCCP's obligations to NSCC.

SCCP's books and records for the omnibus clearance and settlement account will reflect all activity that occurs in the account at NSCC and DTC. At any time prior to midnight (Eastern Time) on the next business day after SCCP receives a margin member's trade, SCCP will be entitled to reverse such a trade from such margin member's account. SCCP will settle the omnibus clearance and settlement account with NSCC each business day in accordance with NSCC's rules and procedures. Accordingly, SCCP will be subject to NSCC's rules including, but not limited to, the following: (i) Daily mark-to-market requirements, (ii) allocations of

long and short securities positions, (iii) dividend and reorganization settlement activities, and (iv) pledging of collateral and stock loans. Dividends, reorganizations, adjustments, and buy-ins will be passed through to margin members in accordance with SCCP's procedures. SCCP will continue to provide margin members with purchase and sales reports, bookkeeping reports, dividend and reorganization reports, and preliminary equity reports in accordance with SCCP's procedures.

SCCP will have one composite settlement per day with NSCC through the omnibus clearance and settlement account. SCCP will maintain line of credit ("LOC") arrangements with one or more commercial banks sufficient to support anticipated funding needs of the underlying margin accounts. In order to cover all such margin debits, SCCP anticipates obtaining an aggregate of \$5 million in committed and \$5 million in uncommitted LOCs from each of two separate lending institutions, totaling \$20 million.

SCCP is amending its Rule 14 (formerly SCCP Rule 15) to provide that mark-to-market funds may not be used to finance margin members' account activity. SCCP also is amending Rule 14 to provide that any mark-to-market funds collected by SCCP will be segregated and invested in accordance with analogous procedures set forth in SCCP Rule 4. Under the amended version of SCCP Rule 13, SCCP will pass through any buy-ins submitted by NSCC to SCCP or by a SCCP participant to NSCC in accordance with NSCC's buy-in rules and procedures.

To ensure that margin members have an efficient way to obtain securities depository services after the closure of Philadep's depository service, NSCC will sponsor SCCP in opening a depository account at DTC to benefit margin members. If margin members carry out trades in securities that are not eligible for custodial services in DTC's book-entry system, SCCP will use NSCC's direct clearing service to settle the transactions. SCCP will continue to perform bookkeeping and reconciliation services for the omnibus clearance and settlement account and its related DTC custody account pursuant to SCCP procedures.

In accordance with NSCC's participants fund formulae, SCCP, as a NSCC participant and as a sponsored participant of DTC, will be required to provide NSCC and DTC with participants fund contributions. SCCP is deleting its participants fund formulae applicable to inactive accounts, full service CNS accounts, and layoff accounts. SCCP will establish a fixed

⁶ Under the Agreement, SCCP may add other PHLX members to this schedule subject to NSCC's approval. The Commission understands that at this time SCCP will be offering margin services only to PHLX members that are PHLX equity specialists.

⁷ SCCP included the text of its revised rules as an exhibit which is available for inspection and copying at the Commission's public reference room and through SCCP.

⁸ Under the rule change, the term "margin member" is defined to include participants that are PHLX specialists, alternate specialists, and other PHLX floor members specifically approved by NSCC to effect trading in a margin account.

⁹ 12 CFR 220.

¹⁰ Under the rule change, SCCP Rule 1 defines the term "account equity" as the total net current market value of security positions held in the margin account plus or minus cash balances in such account.

\$35,000 contribution for each of the following account categories: specialist margin and non-specialist margin. No changes will be made to the RIO account formula. Accordingly, RIO account participants will continue to be subject to a contribution of \$10,000 to \$75,000 depending upon monthly trading activity. SCCP will continue to use its current procedure under which a participant engaging in more than one account type activity will be subject only to the formula that would generate the highest participants fund contribution.

SCCP may allocate any portion of its participants fund to satisfy NSCC's and DTC's participants fund requirements with respect to the omnibus account. Any excess SCCP participants fund cash not used to fund SCCP's NSCC and DTC participants fund requirements will be segregated and invested by SCCP in accordance with SCCP Rule 4. If SCCP's participants fund formulae do not provide for contributions that equal those which would be required pursuant to the NSCC and DTC participants fund formulae, SCCP reserves the right to collect from each participant an additional pro rata charge to meet any such deficit.

SCCP is amending SCCP Rule 4 to specify that no participants fund contributions may be used in financing margin members' margin account activity.¹¹ In addition SCCP is amending Rule 4 to provide for the establishment by SCCP and Philadep of a reserve fund that will be used to provide a liquid fund to draw on as necessary to meet certain specified expenses. The reserve fund will be funded with deposits of \$1,000,000 by August 11, 1998; \$1,000,000 by August 11, 1999; and \$1,000,000 by August 11, 2000. The reserve fund will be held and invested in accordance with the procedures set forth in SCCP Rule 4 for the holding and investment of the participants fund. Amounts drawn from the reserve fund must be replenished within sixty days following the date of each such withdrawal. SCCP Rule 4 also is being amended to provide that no portion of the reserve fund may be used in financing margin members' margin account activity.

SCCP is amending its schedule of fees to delete those fees associated with services no longer to be offered. SCCP will now charge RIO Accounts fees of \$0.05 per \$1,000 of contract value.

¹¹ As previously stated, SCCP is establishing separate sources of funding, including bank LOCs, to serve the operation of its margin members' margin accounts.

II. Comment Letters

The Commission received two comment letters in response to the notice of DTC's proposed rule change: one was a comment letter from Thomson Financial Services ("Thomson") pertaining to DTC and one was a response from DTC to Thomson's letter.¹² Thomson stated that it did not object to DTC's proposal to offer depository services to former sole Philadep participants; however, Thomson also stated its belief that the cessation of Philadep's services might adversely affect competition.

DTC stated in response that it is strongly committed to competition. DTC noted that the regional stock exchanges have decided independently that maintaining their own securities depositories was no longer in their members' best interests. In addition, DTC stated that when the regional stock exchanges have decided to close their securities depositories, DTC always has responded promptly by expending resources to ensure the safe transfer of funds and securities.

III. Discussion

Section 17A(b)(3)(F) of the Act¹³ requires that the rules of a clearing agency be designed to promote prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule changes by DTC, NSCC, Philadep, and SCCP are consistent with the requirements of Section 17A(b)(3)(F) because they should facilitate prompt and accurate clearance and settlement of securities transactions by providing more efficient and less expensive clearing and depository services. Moreover, because the proposals provide for the orderly transfer of open positions and securities from SCCP to NSCC and from Philadep to DTC, the Commission believes the proposals are consistent with the obligations of DTC, NSCC, Philadep, and SCCP to safeguard securities and funds in their custody and control and to provide for the prompt and accurate clearance and settlement of securities transactions.

Section 19(b) of the Act¹⁴ provides that the Commission shall approve proposed exchange and clearing agency rule changes if it finds that the proposals are consistent with the requirements of the Act and the rules

and regulations thereunder that govern those organizations. Competition among clearing agencies is a factor that the Commission must consider in its examination of any proposal.¹⁵ However, the Commission is not required to achieve its regulatory objectives in the least anticompetitive manner and is at most required to decide that any anticompetitive effects of its actions are necessary or appropriate to the achievement of its objectives.¹⁶ Therefore, in assessing the anticompetitive effect, the Commission is required to balance the maintenance of fair competition along with a number of other equally important express purposes of the Act such as the protection of investors and the safeguarding of securities and funds.¹⁷

Despite the dominant market position of DTC and NSCC, the Commission believes the current regulatory scheme and the particular structure and nature of the clearing and depository industries provide ample means of avoiding the potential negative effects of a monopoly. Sections 17A and 19 of the Act and the rules thereunder provide the Commission appropriate and effective regulatory authority over DTC and NSCC. The Commission believes that after the consummation of the proposed arrangements, securities industry members will continue to have access to high quality, low cost depository and clearing services provided under the mandate of the Act. Accordingly, the Commission believes that the proposed transaction advances the objectives of the national clearance and settlement and system without an inappropriate or unnecessary burden upon competition.

Thus, the light of the above, the Commission finds that approval of the proposals is warranted. However, because a part of SCCP's proposed rule change concerns the restructuring of SCCP's operations to enable SCCP to offer limited clearing and settlement services to certain PHLX members, the Commission finds that it is appropriate to grant only temporary approval to the portion of SCCP's proposed rule change that amends SCCP's By-laws, Rules, or Procedures. This will allow the Commission and SCCP to see how well SCCP's restructured operations are functioning under actual working conditions and to determine whether any adjustments are necessary. Thus, the Commission is approving the portion of SCCP's proposal that amends

¹⁵ See Exchange Act Section 17A(b)(3)(I), 15 U.S.C. 78q-1(b)(I).

¹⁶ 15 U.S.C. 78c(f). *Bradford National Clearing Corp. v. SEC*, 590 F.2d 1085, 1105 (D.C. Cir. 1978).

¹⁷ *Id.* at 1106.

its By-laws, Rules, or Procedures through December 31, 1998.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposals are consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes of Philadep (File No. SR-Philadep-97-04), of DTC (File No. SR-DTC-97-16), and of NSCC (File No. SR-NSCC-97-08) and the portion of SCCP's proposed rule change dealing with its entering into the Agreement (File No. SR-SCCP-97-04) be and hereby are approved.

It is further Ordered, pursuant to Section 19(b)(2) of the Act, that the portion of SCCP's proposed rule change that amends its By-laws, Rule, or Procedures (File No. SR-SCCP-97-04) be and hereby is approved through December 31, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-33194 Filed 12-18-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39442; File No. SR-NASD-97-78]

Self-Regulatory Organizations; Order Granting Partial Approval on an Accelerated Basis of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Amended Interpretation of IM-8310-2, Release of Disciplinary Information

December 11, 1997.

I. Introduction

On October 17, 1997, National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change which amends the Interpretation on the Release of Disciplinary Information, IM-8310-2 of Rule 8310 of the Procedural Rules of the

NASD ("Interpretation" or "IM-8310-2"). A notice of the proposed rule change was published in the **Federal Register** on November 21, 1997.³ The Commission, to date, has received no comment letters on the proposed rule change. For the reasons discussed below, the Commission is granting partial accelerated approval of the proposed rule change.

In its notice, filed on October 17, 1997, the NASD Regulation, Inc. ("NASDR") proposed to amend IM-8310-2 to include the phrase "electronic inquiry" in the rule language so that it could respond to electronic inquiries, as well as written or telephonic inquiries. In the notice, the NASDR also proposed to amend the rule language to include the additional information required to be reported on the amended Forms U-4, U-5, and BD. The NASDR has requested that the Commission approve, on an accelerated basis, only that portion of the amended rule language that allows it to respond to electronic inquiries.⁴ Hence, the Commission is partially approving, on an accelerated basis, that portion of the NASDR's request which will give the NASD the option of responding to the electronic inquiries of persons or entities requesting employment and disciplinary history of its members and their associated persons.

II. Description of Proposal

Under the NASD's Public Disclosure Program ("PDP"),⁵ the NASD, in response to a written inquiry or telephonic inquiry via a toll-free telephone listing, releases certain information contained in the Central Registration Depository ("CRD") regarding the employment and disciplinary history of its members and their associated persons. When an inquiry is made, if the broker-dealer or associated person has a disciplinary history, the NASD responds by sending the inquirer a copy of the disclosable information (e.g., information regarding past and present employment history with Association members).⁶ If there is no history, the NASD responds by

informing the caller of this and following up with a written record of same, if so requested.⁷

In past months, the NASD has undertaken a reassessment of the CRD to take advantage of developing technology and to improve its performance meeting the NASD's changing business needs. As a result of this reassessment, the NASD determined that the Internet should be a component of its PDP. In an effort to expand its PDP and make it more accessible and convenient for investors, the NASD's proposal amends the Interpretation to enable the NASD to receive electronic inquiries as well as written and telephonic inquiries.⁸

III. Discussion

NASDR has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act,⁹ for approving, prior to the 30 day after publication in the **Federal Register**, that part of the proposed rule change that permits the NASD to respond to electronic inquiries.¹⁰ The Commission has reviewed the NASDR's proposed rule change and believes, for reasons set forth below, that the proposal is consistent with the requirements of the Act¹¹ and the rules and regulations thereunder applicable to the NASD. Specifically, the Commission believes the proposal is consistent with Sections 15A(b)(6) and 15A(i) of the Act. Section 15A(b)(6) provides in relevant part that the rules of the association be designed to foster cooperation and coordination with persons engaged in regulating and processing information with respect to securities and not to permit unfair discrimination among customers, issuers, brokers or dealers. Section 15A(i) of the Act requires the Association to promptly respond in writing to inquiries regarding disciplinary actions involving its members or associated persons.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. By amending IM-

⁷ If the request is written and there is no disclosable history, a record indicating same is sent to the inquirer.

⁸ See *supra* note 3.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ See *supra* note 4.

¹¹ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The ability to use electric media will most likely enhance efficiency by decreasing the time between when the request is made and when the response is received. Additionally, the ready accessibility of CRD information should positively affect competition in the marketplace; disciplinary histories will be more accessible to the public. 15 U.S.C. 78c(f).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Rel. No. 39322 (Nov. 13, 1997), 62 FR 62391.

⁴ Telephone conversation with Alden S. Adkins, General Counsel and Mary M. Dunbar, Assistant General Counsel, NASDR, and Belinda Blaine, Associate Director, Katherine A. England, Assistant Director, and Mignon McLemore, Staff Attorney, Division of Market Regulation, November 26, 1997.

⁵ See Securities Exchange Act Rel. No. 30629 (April 23, 1992), 57 FR 18535 (April 30, 1992); and Securities Exchange Act Rel. No. 32568 (July 1, 1993), 58 FR 36723 (July 8, 1993).

⁶ See *supra* note 3. The notice contains a complete list of disclosable disciplinary information.