

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR-PCX-2003-17 and should be submitted by August 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-48166; File No. SR-Phlx-2002-87)

#### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. and Amendment No. 1 Thereto Relating to the Imposition of a 500 Contract Cap on Payment for Order Flow Fees

July 11, 2003.

On December 26, 2002, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission a proposal to impose a 500-contract cap on fees in connection with its payment for order flow program. On May 29, 2003, the Phlx filed Amendment No. 1 to the proposed rule

change. Under the proposal, the applicable payment for order flow fee would be imposed only on the first 500 contracts per individual cleared side of a transaction.

The proposed rule change was published for comment in the **Federal Register** on June 6, 2003.<sup>3</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, particularly section 6(b) of the Act<sup>4</sup> and the rules and regulations thereunder.<sup>5</sup> The Commission finds that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among Phlx members and other persons using the Phlx's facilities, consistent with Section 6(b)(4) of the Act.<sup>6</sup>

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-Phlx-2002-87) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-48163; File No. SR-Phlx-2003-46)

#### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Extension of Interpretation of PACE Guarantees in Securities Subject to ITS Plan Exemption

July 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on June 26,

<sup>3</sup> See Securities Exchange Act Release No. 47958 (May 30, 2003), 68 FR 34026 (June 6, 2003).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

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

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

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

2003, 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 and II, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

The proposal is intended to coincide with the Commission's extension of a *de minimis* exemption from the trade-through provisions of the Intermarket Trading System ("ITS") Plan with respect to certain transactions in the Nasdaq-100 Index ("QQQs"), the Dow Jones Industrial Average ("DIAMONDS"), and the Standard & Poor's 500 Index ("SPDRs").<sup>3</sup> The Commission's original exemption expired on June 4, 2003. The Exchange Rule that mirrors the Commission's exemption similarly expired on June 4, 2003.<sup>4</sup> The Commission recently extended the effectiveness of the exemption to March 4, 2004.<sup>5</sup> In order to avoid a lapse in the effectiveness of the corresponding Exchange Rule, this order is approving the Exchange's proposal to extend the rule from June 5, 2003 until March 4, 2004.

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

The Phlx proposes to extend a limited exemption in transactions in certain exchange-traded fund ("ETFs") shares from Supplementary Material Section .10(a)(iii) of Exchange Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System ("PACE") beyond June 4, 2003.<sup>6</sup> The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

#### 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 Phlx included statements concerning

<sup>3</sup> See Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) at 56607 ("ITS Exemption Order").

<sup>4</sup> See Securities Exchange Act Release No. 46761 (November 1, 2002), 67 FR 68222 (November 8, 2002)(order approving SR-Phlx-2002-49).

<sup>5</sup> See Securities Exchange Act Release No. 47950 (May 30, 2003), 68 FR 33748 (June 5, 2003)(order extending ITS Exemption Order).

<sup>6</sup> PACE is the Exchange's Automated Communication and Execution System. PACE provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions.

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

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

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