

along with the filing of such proposal.¹⁴ The report must cover the entire time the Pilot Program was in effect, and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of \$1 strike price intervals for the options the PCX selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the PCX's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the PCX addressed them; (6) any complaints that the PCX received during the operation of the Pilot Program and how the PCX addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program.

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The PCX's Pilot Program is identical to a CBOE pilot program ("CBOE Pilot") that the Commission approved.¹⁵ Notice of the CBOE Pilot was published for comment¹⁶ and the Commission received one comment letter, which supported the CBOE's proposal. Accordingly, the Commission believes that the PCX's Pilot Program proposal raises no issues of regulatory concern. Amendment No. 1 to the proposal clarifies the proposal by specifying the date on which the Pilot Program will expire and describing the PCX's current strike price intervals for equity options. Amendment No. 2 corrects a typographical error in the text of the proposed rule. For these reasons, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b) of the Act,¹⁷ to approve the PCX's proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁸ that the

¹⁴ The Commission expects the PCX to submit a proposed rule change at least 60 days before the expiration of the Pilot Program in the event the PCX wishes to extend, expand, or seek permanent approval of the Pilot Program.

¹⁵ See Securities Exchange Act Release No. 47991 (June 5, 2003), 68 FR 35243 (June 12, 2003) (order approving File No. SR-CBOE-2001-60).

¹⁶ See Securities Exchange Act Release No. 47753 (April 29, 2003), 68 FR 23784 (May 5, 2003).

¹⁷ 15 U.S.C. 78f(b)(5) and 78s(b).

¹⁸ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-PCX-2003-28) and Amendments No. 1 and 2, are hereby approved, on an accelerated basis and as a pilot program, through June 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-15835 Filed 6-23-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48052; File No. SR-Phlx-2003-33]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. To Eliminate and Refund a Specialist Transaction Fee

June 17, 2003.

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 April 23, 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, II, and III below, which Items have been prepared by the Exchange. The Exchange amended the proposal on June 5, 2003.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to (1) eliminate the Nasdaq-100 Index Tracking Stock ("QQQ")SM 4 specialist

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On June 5, 2003, the Exchange filed a Form 19b-4, which completely replaced and superceded the original filing in its entirety ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the proposal to designate the proposed rule change as filed under Section 19(b)(3)(A)(ii), rather than Section 19(b)(2), of the Act. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on June 5, 2003, the date the Exchange filed Amendment No. 1. 15 U.S.C. 78s(b)(3)(C).

⁴ The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 SharesSM, Nasdaq-100 TrustSM, Nasdaq-100 Index Tracking StockSM, and QQQSM are trademarks or service marks of The Nasdaq Stock Market, Inc. (Nasdaq) and have been licensed for use for certain

transaction fee of \$0.002 per share, retroactive to its implementation date;⁵ and (2) refund the amounts that were billed to and collected from the Phlx QQQ specialist unit⁶ during the time period in which the QQQ specialist \$0.002 per share transaction fee was in effect.⁷

On December 8, 2000, the Phlx filed a proposed rule change with the Commission to amend its fee schedule to accommodate the trading of the QQQ.⁸ Pursuant to that filing, the Exchange was to assess no charge to members for customer trades entered through the Phlx Automated Communication and Execution System ("PACE"),⁹ but was to impose a fee of \$1.00 per transaction to customers for non-PACE trades.¹⁰ Specialists were to be charged a fee of \$0.002 per share, with a maximum charge of \$50.00 per trade, whether or not the QQQ trade took place on PACE.

Due to a programming error, the QQQ specialist \$0.002 per share transaction fee was programmed for non-PACE trades only, thereby erroneously excluding PACE trades from it.¹¹

purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 TrustSM, or the beneficial owners of Nasdaq-100 SharesSM. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

⁵ See Securities Exchange Act Release No. 43776 (December 28, 2000), 66 FR 1166 (January 5, 2001) (SR-Phlx-00-103) (imposing, among other things, a QQQ specialist \$0.002 per share transaction fee, with a maximum charge of \$50.00 per trade). On January 31, 2003, the Phlx filed a proposed rule change which eliminated the QQQ specialist \$0.002 per share transaction fee for transactions settling on or after February 3, 2003. See Securities Exchange Act Release No. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR-Phlx-2003-06). The instant proposal seeks to eliminate this fee from on or after December 15, 2000, the date of implementation, through February 2, 2003.

⁶ The Exchange uses the terms "specialist" and "specialist unit" interchangeably herein.

⁷ During the time period during which this fee was in effect, there was only one Phlx specialist unit that traded the QQQ.

⁸ See Securities Exchange Act Release No. 43776 (December 28, 2000), 66 FR 1166 (January 5, 2001) (SR-Phlx-00-103).

⁹ PACE is the Phlx's order routing, delivery, execution and reporting system for its equity trading floor. See Phlx Rules 229 and 229A.

¹⁰ The customer, non-PACE per trade fee was amended on January 31, 2003. See Securities Exchange Act Release No. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR-Phlx-2003-06).

¹¹ It is not uncommon for the Exchange to distinguish between PACE and non-PACE trades in its fee structure. For instance, the Exchange charges QQQ customer non-PACE transaction charges, but does not charge for customer PACE transactions.

Continued

Thereafter, the Phlx eliminated the QQQ specialist \$0.002 per share transaction fee for transactions settling on or after February 3, 2003.¹² The Phlx now seeks to eliminate the QQQ specialist transaction fee of \$0.002 per share retroactive to its implementation date through February 2, 2003, and to refund the amounts billed to and collected from the Phlx QQQ specialist unit during the time period in which the QQQ specialist \$0.002 per share transaction fee was in effect.

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 purpose of the proposed rule change is to rectify the effects of a programming error that occurred in connection with the billing of the QQQ specialist \$0.002 per share transaction fee. The QQQ specialist \$0.002 per share transaction fee had been programmed for non-PACE trades only, thereby erroneously excluding PACE trades from it. The Exchange believes that, had the fee been billed as originally filed, the Exchange would have amended or terminated the fee in order to remain competitive in its charges to specialists trading the QQQ product.¹³

This proposal corrects the billing error by eliminating the QQQ specialist fee retroactive to its implementation date and refunding to the Phlx specialist

¹² See Securities Exchange Act Release Nos. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR-Phlx-2003-06), and 43776 (December 28, 2000), 66 FR 1166 (January 5, 2001) (SR-Phlx-00-103). However, the Exchange notes that the QQQ specialist \$0.002 per share transaction fee, as filed, treated PACE and non-PACE trades the same.

¹³ See Securities Exchange Act Release No. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR-Phlx-2003-06).

¹⁴ Moreover, had the fee been billed correctly, it would have been potentially unduly burdensome to the specialist trading the QQQ, especially in light of decimal trading.

the QQQ specialist \$0.002 per share transaction fees that were billed and collected, specifically as applied to non-PACE QQQ trades, during the time period that the fee was in effect.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,¹⁴ in general, and furthers the objectives of section 6(b)(4) of the Act,¹⁵ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The effect of correcting the QQQ specialist transaction fee billing error in the manner described above will be that the \$0.002 per share charges to the specialist for both QQQ PACE and non-PACE transaction fees would not have been charged at all. The Exchange believes that waiving the QQQ specialist transaction fee and refunding any amounts collected should provide for an equitable way in which to resolve this billing error and minimize confusion by resulting in a situation whereby the fee, in effect, was never implemented.

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

The Exchange 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

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act¹⁶ and Rule 19b-4(f)(2) thereunder.¹⁷ At any time within 60 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 purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78(s)(b)(3)(A)(ii).

¹⁷ 17 CFR 240.19b-4(f)(2).

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-2003-33 and should be submitted by July 15, 2003.

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

Margaret H. McFarland,

Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.
ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 24, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency

¹⁸ 17 CFR 200.30-3(a)(12).