

securities on ArcaEx are still subject to a broker's duty of best execution for its customer.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 2, the Exchange made various clarifying and technical amendments to the proposed rule text to: (1) Reference the "Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges" in proposed PCXE Rule 1.1(aa), (2) clarify that the term "OTC/UTP Listing Market" shall have a meaning consistent with the Nasdaq Unlisted Trading Privileges Plan, (3) clarify the definition of "Sweep Reserve Order" by replacing the word "price" with the word "size," (4) clarify the definition of "Random Reserve Order" by indicating that the random reserve value is expressed in share amounts and by correcting a grammatical error, (5) amend the definition of "Pegged Order" to reflect that the display price will track the relevant Consolidated Quote information for such orders on a real-time basis and that the displayed price of a Pegged Order designated as a Discretionary Order will track the NBBO, and that the discretionary price of such order would re-price in correlation to any change in the displayed price, and (6) clarify that IOC, NOW, PNP, Passive Discretionary, Discretion Limit, IOC Cross and PNP Cross orders in Nasdaq securities will received executions at a price no worse than the ArcaEx BBO. Because Amendment No. 2 is of a technical, clarifying, non-substantive nature, and does not raise any novel regulatory issues or issues that were not considered by the Commission prior to its submission, the Commission finds good cause for accelerating approval of the proposed rule change, as amended by Amendment No. 2.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change, (File No. SR-PCX-2002-75) as amended, be, and it hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47456; File No. SR-Phlx-2002-77]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. To Adopt a Specialist Revenue Sharing Plan for Trades in the Nasdaq-100 Index Tracking Stock

March 6, 2003.

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> notice is hereby given that on December 16, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), 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 by Phlx. The Exchange amended the proposal on February 28, 2003.<sup>3</sup> 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 Phlx proposes to amend its schedule of dues, fees and charges to adopt a Specialist Revenue Sharing Plan for trades in the Nasdaq-100 Index Tracking Stock ("QQQ").<sup>SM 4</sup> Under this

<sup>28</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.

<sup>3</sup> On February 28, 2003, the Exchange filed a Form 19b-4, which replaced the original filing in its entirety ("Amendment No. 1"). In Amendment No. 1, the Exchange made technical corrections to the proposed rule text.

<sup>4</sup> The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares<sup>SM</sup>, Nasdaq-100 Trust<sup>SM</sup>, Nasdaq-100 Index Tracking Stock<sup>SM</sup>, and QQQ<sup>SM</sup> are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain 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 Trust<sup>SM</sup>, or the beneficial owners of Nasdaq-100 Shares<sup>SM</sup>. 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.

program, the Exchange is proposing to share with the QQQ specialist unit a portion of the revenues that the Exchange receives under the Consolidated Tape Association ("CTA") Plan<sup>5</sup> attributable to the QQQ (which is reportable on Tape B).<sup>6</sup> The Exchange proposes to begin its program on November 1, 2002.

The text of the proposed rule change is set forth below. Additions are in italics.

*Specialist Revenue Sharing Program for Nasdaq-100 Index Tracking Stock ("QQQ")*

*The Exchange will share a portion of net revenues that it receives for Tape B under the Consolidated Tape Association ("CTA") Plan attributable to the Nasdaq-100 Index Trading Stock ("QQQ") with the specialist unit for the QQQ. The Specialist Revenue Sharing Program operates as follows:*

- *Revenues under the CTA Plan are distributed to Plan Participants on a quarterly basis. Each quarter, the Phlx will start its calculation with the quarterly revenues actually received for Tape B.*
- *First, Phlx will determine the portion of such quarterly revenues attributable to the trading of QQQ for each calendar month in the quarter to which the revenue is attributed.*
- *Then, Phlx will subtract the amount it owes Nasdaq under its license agreement for each such calendar month, to arrive at the "Monthly Residual QQQ Tape Revenue" for that month.*

• *The Monthly Residual QQQ Tape Revenue will be shared between Phlx and the QQQ specialist unit in the following order of priority, in each case to the extent that Monthly Residual QQQ Tape Revenues are available:*

- (i) *Phlx will receive the first \$15,000 per month of the Monthly Residual QQQ Tape Revenue to cover, at a minimum, its estimated monthly costs for operating and regulating trading of the QQQ on the Exchange;*
- (ii) *the specialist unit will receive the next \$15,000 per month; and*

<sup>5</sup> The CTA Plan is a national market system plan approved by the Commission pursuant to section 11A of the Act, (15 U.S.C. 78k-1, and Rule 11Aa3-2 thereunder, 17 CFR 240.11Aa3-2); CTA Plan: Second Restatement of Plan Submitted to the Securities and Exchange Commission Pursuant to Rule 11Aa3-1 under the Act, May 1974 as restated March 1980 and December 1995. The CTA Plan governs, among other things, the collection, consolidation and dissemination of transaction reports in certain securities and the distribution of the revenues derived therefrom among parties to the CTA Plan, which are known as the Plan Participants.

<sup>6</sup> This proposal applies only to QQQ and to no other Tape B security nor any Tape A security.

<sup>27</sup> 15 U.S.C. 78s(b)(2).