

(iii) *Phlx and the specialist unit will share equally, subject to reasonable rounding, any remaining Monthly Residual QQQ Tape Revenue for that month.*

Phlx intends to perform this calculation monthly and then make distributions to the specialist unit quarterly, after it receives its Tape B distribution under the Plan for that quarter and following a reasonable processing period of ten business days.¹

The program will apply to Tape B revenues in respect of QQQ trading on or after November 1, 2002.¹¹

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 Phlx 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 attract additional business in the QQQ equity product through a Specialist Revenue Sharing Program. The Specialist Revenue Sharing Program is intended to provide the specialist unit with incentives to grow its specialist activity in the QQQ by reducing its costs of doing business and providing it with additional funds to commit to trading to promote liquidity.

The Specialist Revenue Sharing Program would operate as follows: Revenues under the CTA Plan are distributed to Plan Participants on a quarterly basis. Each quarter, the Phlx would start its calculation with the quarterly revenues actually received for Tape B in respect of a given, prior quarter; such quarterly revenues are

usually received 45 days after the end of a quarter. First, the Phlx would determine the portion of such quarterly revenues attributable to trading in the QQQ for each calendar month in that quarter.⁷ Then, the Phlx would subtract the amount it owes Nasdaq under its license agreement. The remainder (if any) respecting that calendar month ("Monthly Residual QQQ Tape Revenue") would be shared between the 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) The Phlx would receive the first \$15,000 per month of the Monthly Residual QQQ Tape Revenue to cover, at a minimum, its estimated costs for operating and regulating trading of the QQQ;⁸ (ii) the specialist unit would receive the next \$15,000 per month; and (iii) the Phlx and the specialist unit would share equally, subject to reasonable rounding, any remaining Monthly Residual QQQ Tape Revenue for that month. The proposal would be applied separately to each month; trades from one month may not be transferred to or aggregated with trades from another month.

The Phlx intends to perform this calculation in respect of each monthly period and then make distributions to the specialist unit quarterly, after it receives its Tape B distribution under the Plan and following a reasonable processing period of ten business days.⁹ The program would apply to revenue in respect of QQQ trading on and after November 1, 2002.

2. Statutory Basis

The Phlx believes that the proposed rule change is consistent with the Act, including section 6(b)¹⁰ and section 11A of the Act,¹¹ and will further the objectives of section 6(b)(5) of the Act¹² by promoting just and equitable principles of trade, removing impediments to and perfecting the mechanism of a free and open market and a national market system and, in general, protecting investors and the

public interest, by encouraging use of the Phlx for trading the QQQ. Similarly, the Phlx believes that the Specialist Revenue Sharing Program for QQQ is consistent with section 11A of the Act,¹³ because it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (i) Economically efficient execution of securities transactions; and (ii) fair competition among exchange markets and between exchange markets and markets other than exchange markets. It also furthers the objectives of section 6(b)(4) of the Act¹⁴ in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

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

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition. The Phlx states that the proposal is designed to attract additional business to the Exchange in the QQQ by reducing the specialist unit's costs and providing it with additional funds to commit to trading, and, thus, should promote competition among market centers trading such securities.

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

The Phlx has neither solicited nor received written comments with respect to the proposed rule change.

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 Phlx 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

On July 2, 2002, the Commission issued an Order abrogating certain proposed rule changes relating to market data revenue sharing

¹ Accordingly, this proposal is dependent upon the Exchange actually collecting its quarterly distribution of Tape B revenues. Any transaction or other fees that the QQQ specialist unit may owe to the Exchange are handled separately from this program, pursuant to the Exchange's fee schedules and billing practices.

¹¹ For the first quarter of implementation, because the program will begin on November 1, 2002, the calculations will be based on the quarterly revenues received for the period November 1–December 31, 2002 (excluding the month of October).

⁷ The Phlx states that its total revenue Tape B distribution may be attributable to trades in securities other than QQQ.

⁸ The Exchange will periodically reconsider whether this amount is appropriate, and may adjust this figure from time to time, pursuant to a proposed rule change.

⁹ Accordingly, this proposal is dependent upon the Exchange actually collecting its quarterly distribution of Tape B revenues. Any transaction or other fees that the QQQ specialist unit may owe to the Exchange are handled separately from this program, pursuant to the Exchange's fee schedules and billing practices.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78k-1.

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78k-1.

¹⁴ 15 U.S.C. 78f(b)(4).