

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

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.

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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

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).