

options to be imposed after the \$50,000 firm-related equity and index option comparison and transaction cap is reached; (3) a specialist unit fixed monthly fee ("fixed monthly fee") in lieu of paying the rate currently in effect for equity and index option transaction charges and equity option specialist deficit (shortfall) fee ("Shortfall Fee"); and (4) a charge of \$0.10 per contract side for specialist unit transactions in the QQQ equity options, if the specialist unit elects to pay a fixed monthly fee.

A. \$50,000 "Firm-Related" Equity Option and Index Option Cap

The Exchange is proposing to adopt a cap of \$50,000 per member organization⁴ on all "firm-related" equity option and index option comparison and transaction charges combined. Specifically, "firm-related" charges include equity option firm/proprietary comparison charges, equity option firm/proprietary transaction charges, equity option firm/proprietary facilitation transaction charges, index option firm (proprietary and customer executions) comparison charges, and index option firm transaction charges. Therefore, under this proposal, such firm-related charges for equity option and index options, in the aggregate for one billing month, would not exceed \$50,000 per month per member organization.

B. QQQ Equity Option License Fee of \$0.10 Per Contract Side for Equity Option Firm/Proprietary and Firm/Proprietary Facilitation Transactions

The Exchange is proposing to adopt a license fee of \$0.10 per contract side for equity option Firm/Proprietary and Firm/Proprietary Facilitation transactions in QQQ equity options to be imposed after the \$50,000 firm-

related equity option and index option comparison and transaction cap, as described above, is reached. Therefore, when a member organization exceeds the \$50,000 cap (comprised of firm-related equity option and index option comparison and transaction charges combined), the firm will be charged \$50,000 plus the QQQ license fee of \$0.10 per contract side for any QQQ trades (if any) over those trades that were included in reaching the \$50,000 level. The \$0.10 license fee for firm/proprietary and firm/proprietary facilitation transactions is in addition to the proposed \$50,000 cap, if the cap is reached, on "firm-related" equity option and index option comparison and transaction charges.⁵

C. Specialist Unit Fixed Monthly Fee

Currently, Phlx equity option specialists are charged equity option transaction charges and specialist deficit fees, while index option specialists are charged index option transaction charges.⁶ Phlx specialist units that have been active⁷ on the Phlx for at least one year from September 1, 2002, may now elect to continue paying the above-referenced charges or, in lieu of these charges, to pay a fixed monthly fee as more fully described below. The fixed monthly fee for each specialist unit will be calculated by:

1. Computing the equity options and index options volume that each unit transacted in May 2003 and June 2003 ("Volume"), provided it has been a Phlx specialist unit for a one-year period (from September 1, 2002);
2. Multiplying the Volume by the specialist transaction charges that are currently in effect, (*i.e.*, \$0.21 per contract for equity options and \$0.24 per contract for index options). The total of the equity and index

⁵ See Exhibit 3 to the Phlx's Form 19b-4, which provides examples of how the QQQ license fee will be calculated. Exhibit 3 to the Form 19b-4 is available for review at the Phlx and the Commission.

⁶ This proposal does not affect or alter the charges listed on Appendix A of the Exchange's Schedule of Dues, Fees, and Charges. Specialist units will continue to be charged applicable non transactional-related fees and membership-related fees that appear on Appendix A of the Exchange's schedule of dues, fees and charges. Non transactional-related fees include floor-related fees, such as trading post/booth, controller space, floor facility, and shelf space fees, as well as communication charges such as direct wire to the floor, telephone system and execution services/communication charges. Specialist units will also continue to be charged applicable membership-related fees, such as membership dues, application fees, and initiation, transfer, examinations, and technology fees.

⁷ In order to be eligible for the fixed monthly fee, the specialist unit must have been trading an equity or index option book on the Phlx trading floor in their capacity as a specialist unit with Phlx equity option or index option transactions in at least one equity option or index option book, for at least one year from September 1, 2002.

option transaction charges are added together to arrive at the total for the period ("Total Transaction Charges");⁸

3. For equity options, calculating for that month the Shortfall Fee at the current rate (currently 12%, with a monthly limit of \$10,000, if applicable) for the months of May 2003 and June 2003;⁹ and

4. Adding the Total Transaction Charges with the Shortfall Fee calculation, if applicable, dividing the total by two, and multiplying the quotient by 1.062, which will produce the fixed monthly fee.

For a specialist unit that has selected the fixed monthly fee and acquires, after September 1, 2003, an equity or index option book already traded on the Exchange, a similar methodology described to calculate the fixed monthly fee is applied to that specialist unit's book. In this case, the same 2 months volume (May 2003 and June 2003) will be multiplied by the applicable specialist transaction fee of \$0.21 or \$0.24 applicable to the acquired options book. If applicable, any shortfall fee will be recalculated as described in step 3 above, with the totals for May 2003 and June 2003 added together. These aggregate totals will then be divided by two and the result then multiplied by 1.062 to arrive at the fixed monthly fee for that options book. That fee is then added to the acquiring specialist unit's fixed monthly fee for all other equity and index options.

For a specialist unit who has selected the fixed monthly fee and who obtains a book after September 1, 2003 as a result of a new Exchange listing, the methodology used to calculate the fixed fee for the newly listed Exchange equity or index option books will be the average of the two-previous months' national volume multiplied by 12% with that product multiplied by 21%,

⁸ In the case of the specialist unit trading QQQ options, the calculation is slightly different. The May 2003 and June 2003 QQQ equity options volume will be subtracted from the May 2003 and June 2003 total equity and index option volumes; that figure will then be multiplied by the current equity option charge (\$0.21 per equity option contract) and then added to the product of \$0.11 multiplied by the May 2003 and June 2003 QQQ equity options volume (the \$0.10 license fee owed to Nasdaq subtracted from the \$0.21 charge). Steps 3 and 4 above are then followed. Then, all QQQ equity option transactions to which the specialist unit is a party will incur an additional \$0.10 per contract, which will be added to the specialist unit's fixed fees. See Exhibit 3 to Phlx's Form 19b-4, which is available for review at the Phlx and the Commission.

⁹ See Securities Exchange Act Release Nos. 48207 (July 22, 2003), 68 FR 44558 (July 29, 2003) (notice of filing and immediate effectiveness of File No. SR-Phlx-2003-47) and 48206 (July 22, 2003), 68 FR 44555 (July 29, 2003) (notice of filing and immediate effectiveness of File No. SR-Phlx-2003-45).

without regard to the Licensee, the Nasdaq-100 TrustSM, or the beneficial owners of Nasdaq-100 SharesSM. According to Phlx, 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.

⁴ This proposal applies to member organizations for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customers. Member organizations will be required to verify this amount to the Exchange by certifying that they have reached this threshold by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). In the event that a member organization has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted. See Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000). As part of this proposal, this footnote will be included on the Phlx Summary of Equity Option and Index Option fee schedules.