

million, will apply to Mini-Flex Index Options.¹⁰

Composition of the Index

The Index is a capitalization-weighted index comprised of approximately 3,400 stocks listed and traded on Nasdaq. The Index includes Nasdaq National Market and Nasdaq SmallCap Market securities. To be eligible for inclusion in the Index, a security must be listed on Nasdaq and must be one of the following types of securities: an American Depositary Receipt ("ADR"), common stock, ordinary share, real estate investment trust ("REIT"), share of beneficial interest, of tracking stock. The Index is comprised of all of the foreign and domestic ADRs, common stocks, ordinary shares, REITs, shares of beneficial interest, and tracking stocks listed on Nasdaq. Convertible debentures, preferred stocks, rights, warrants, units, closed-end funds, exchange-traded funds ("ETFs"), and derivative securities are not included in the Index.

The Index includes most of the stocks listed and traded on the Nasdaq SmallCap Market. Nasdaq SmallCap Market securities are "reported securities" for purposes of Rule 11Aa3-1 under the Act.¹¹ According to the PHLX, Nasdaq SmallCap Market stocks comprised 1.3% of the capitalization of the Index as of July 31, 2003.

The Index includes ten industry groups. As of July 31, 2003, the top five industry groups and their weights in the Index were: (1) computer software and hardware, 52%; (2) healthcare, 14%; (3) financials, 11%; (4) consumer discretionary, 8%; and (5) telecommunications and media, 6%.

As of July 31, 2003, the capitalization of the Index's components ranged from \$284 billion to \$55,000,¹² and the

market capitalization of the Index totaled \$2.6 trillion. The largest Index component accounted for 11.12% of the weight of the Index and the smallest component accounted for less than 1% of the weight of the Index. The median capitalization of the Index's components was \$110 million.

During the period from January 1, 2003, through July 31, 2003, the average daily trading volume of the component securities representing 95% of the weight of the Index was 850,000 shares, and the average daily trading volume for all of the Index's components was 485,000 shares. The top 100 components accounted for 64% of the weight of the Index and the bottom 100 stocks accounted for 0.01% of the weight of the Index. The prices of the Index's components ranged from \$0.11 per share to \$780.00 per share. The average share price was \$14.15. The share outstanding for each of the Index's components ranged from 10,000 shares to 11 billion shares, with an average of 43 million shares outstanding. According to the PHLX, options eligible securities represented 95% of the weight of the Index.

Calculation of the Index

The value of the Index equals the aggregate value of the Total Shares Outstanding ("TSO") of each Index component security multiplied by each security's respective price on Nasdaq, divided by the Adjusted Base Period Market ("ABPMV"), and multiplied by the Base Value. The Index began on February 5, 1971, at a Base Value of 100.00.

The Index is disseminated every 15 seconds through the Nasdaq Index Dissemination ServicesSM ("NIDS") during normal Nasdaq trading hours (9:30 a.m. to 4:00 p.m. ET).¹³ According to the PHLX, all major market data vendors carry the NIDS data feed.

The Index is calculated using Nasdaq prices (not consolidated) during the day and the Nasdaq Official Closing Price ("NOCP") for the close.¹⁴ Although the Index is calculated until 4:00 p.m. ET, the Index's closing value may change up until 5:15 p.m. ET due to changes or corrections to the last sale in the Index's component securities.

is the basis for listing on Nasdaq. Nasdaq's minimum listing and maintenance standard for global market capitalization is \$50 million.

¹³ NIDS is a Nasdaq data feed carrying intra-day index values and valuation data for ETFs listed on Nasdaq.

¹⁴ See Securities Exchange Act Release No. 47517 (March 18, 2003), 68 FR 14446 (March 25, 2003) (File No. SR-NASD-2002-158) (approving the establishment of the NOCP).

Maintenance

Nasdaq will maintain the Index, and the PHLX represented that it will not influence any Nasdaq decisions concerning maintenance of the Index.

An Index-eligible security (either an initial public offering or a seasoned security) is added to the Index on the business day immediately after a last sale is established (usually day two of listing on Nasdaq). A component security that is no longer traded on Nasdaq or no longer meets the security-type eligibility criteria is removed from the Index. The Index is updated on a daily basis and there is no periodic rebalancing of Index components.

Changes in the number of shares outstanding driven by corporate events, including stock dividends, splits, and certain spin-offs and rights issuances are adjusted on the ex-date. A change in the TSO arising from other corporate actions including secondary offerings, stock repurchases, conversions, and acquisitions is ordinarily made to the Index on the evening prior to the effective date of the corporate action or as soon as practicable thereafter. Changes are made after the market close and are reflected on <http://www.nasdaqtrader.com/asp/nasdaqcomp.asp> the following morning.

To ensure that there is no discontinuity in the value of the Index, Nasdaq ordinarily adjusts the ABPMV when there is a change in a component security's TSO, a component addition or deletion, or changes due to certain spin-offs and rights offerings.

Although the PHLX is not involved in the maintenance of the Index, it has represented that it will monitor the Index on a semi-annual basis and will notify Commission staff if and when: (1) 10% of the capitalization of the Index comprises securities with a market capitalization of less than \$100 million; (2) 10% of the capitalization of the Index is made up of components with an average daily trading volume of less than 10,000 shares over the previous six months; (3) less than 80% of the weight of the Index is options eligible; (4) 10% of the weight of the Index is represented by stocks trading less than 20,000 shares per day; or (5) the largest component of the Index comprises 15% of the weight of the Index, or the top five components comprise 50% of the weight of the Index.¹⁵ According to the PHLX, as of July 31, 2003, component securities representing 2.56% of the capitalization of the Index had market capitalizations

¹⁰ Telephone conversation between Kelly Riley, Senior Special Counsel, Division, Commission, and Mark Salvacion, Director and Counsel, PHLX, on November 25, 2003.

¹¹ See 17 CFR 240.11Aa3-1. A "reported security" is defined in Rule 11Aa3-1(a)(4) under the Act as "any listed equity security or Nasdaq security for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan." In 2001, the Commission approved the extension of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Nasdaq UTP Plan") to include Nasdaq SmallCap Market securities. Accordingly, Nasdaq SmallCap Market securities became securities reported pursuant to an effective transaction reporting plan approved by the Commission.

¹² For companies that list American Depositary Shares, these values represent only the value of the outstanding American Depositary Shares and not the global market capitalization of the issuer, which

¹⁵ See Amendment No. 3, note 4 *supra*.