

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51060; File No. SR-Phlx-2005-01)

January 19, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Imposing a New Licensing Fee in Connection with the Firm-Related Equity Option and Index Option Fee Cap

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 January 10, 2005, the Philadelphia Stock Exchange, Inc. (“Exchange” or “Phlx”) 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, proposes to amend its schedule of fees to adopt a license fee of \$.10 for options traded on the Standard & Poor’s Depository Receipts®, Trust Series 1 (“SPDRs”), traded under the symbol SPY (“SPY”),<sup>3</sup> to be assessed per contract side for equity option “firm” transactions (comprised of equity option firm/proprietary comparison transactions, equity option firm/proprietary transactions and firm/proprietary facilitation transactions). This license fee will be imposed only after the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> “Standard & Poor’s®,” “S&P®,” “S&P 500®,” “Standard & Poor’s 500®,” “Standard & Poor’s Depository Receipts®,” and “500” are trademarks of The McGraw-Hill Companies, Inc., and have been licensed for use by the Philadelphia Stock Exchange, Inc., in connection with the listing and trading of SPDRs, on the Phlx. These products are not sponsored, sold or endorsed by Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., and Standard & Poor’s makes no representation regarding the advisability of investing SPDRs.

Exchange's \$60,000 "firm-related" equity option and index option comparison and transaction charge cap, described more fully below, is reached.

Currently, the Exchange imposes a cap of \$60,000 per member organization<sup>4</sup> on all "firm-related" equity option and index option comparison and transaction charges combined.<sup>5</sup> 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, index option firm/proprietary transaction charges, and index option firm/proprietary facilitation transaction charges (collectively, "firm-related charges"). Thus, such firm-related charges for equity options and index options, in the aggregate for one billing month, may not exceed \$60,000 per month per member organization.

The Exchange also imposes a license fee of \$0.10 per contract side for equity option "firm" transactions on options on Nasdaq-100 Index Tracking Stock<sup>SM</sup>,<sup>6</sup> traded under the symbol

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<sup>4</sup> The firm/proprietary comparison or transaction charge 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 are required to verify this amount to the Exchange by certifying that they have reached this threshold and 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) (SR-Phlx-00-85).

<sup>5</sup> See Securities Exchange Act Release No. 51024 (January 11, 2005), 70 FR 3088 (January 19, 2005) (File No. SR-Phlx-2004-94).

<sup>6</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® ("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

QQQQ (“QQQ”), and certain other licensed products<sup>7</sup> (collectively, “licensed product”) after the \$60,000 cap, as described above, is reached. Therefore, when a member organization exceeds the \$60,000 cap (comprised of combined firm-related charges), the member organization is charged \$60,000, plus license fees of \$0.10 per contract side for any applicable licensed product trades (if any) over those that were included in reaching the \$60,000 cap. In other words, once the cap is reached, the \$0.10 license fee is imposed on all subsequent firm-related transactions; these license fees are charged in addition to the \$60,000 cap.

The Exchange proposes to adopt a \$.10 license fee per contract side for the SPY for equity option firm transactions, which will be imposed after the \$60,000 cap is reached in the same way the current licensed product fees are assessed. Thus, when a member organization exceeds the \$60,000 cap, the member organization will be charged \$60,000 plus any applicable license fees for trades of licensed products, including the SPY, over those trades that were counted in reaching the \$60,000 cap.<sup>8</sup>

The fees set forth in this proposal are scheduled to become effective for transactions settling on or after January 10, 2005.

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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.

<sup>7</sup> In addition to the QQQs, the following products are assessed a \$.10 license fee per contract side after the \$60,000 cap is reached: Russell 1000 Growth iShares (“IWF”); Russell 2000 iShares (“IWM”); Russell 2000 Value iShares (“IWN”); Russell 2000 Growth iShares (“IWO”); Russell Midcap Growth iShares (“IWP”); Russell Midcap Value iShares (“IWS”); NYSE Composite Index (“NYC”); and NYSE U.S. 100 Index (“NY”).

<sup>8</sup> Consistent with current practice, when calculating the \$60,000 cap, the Exchange first calculates all equity option and index option transaction and comparison charges for products without license fees, and then equity option transaction and comparison charges for products with license fees (*i.e.*, QQQ license fees) that are assessed by the Exchange after the \$60,000 cap is reached. See Securities Exchange Act Release No. 50836 (December 10, 2004), 69 FR 75584 (December 17, 2004) (SR-Phlx-2004-70).

The Exchange also proposes to make a minor change to its \$60,000 Firm Related Equity Option and Index Option Cap Schedule by changing the reference to “\$50,000” to read “\$60,000.” Although other references to \$50,000 were changed to \$60,000 in SR-Phlx-2004-94, this reference was inadvertently omitted.

A copy of the applicable portions of the Exchange’s Summary of Equity Options Charges and the Exchange’s \$60,000 “Firm Related” Equity Option and Index Option Cap Schedule is available on Phlx’s Web site ([http://www.phlx.com/exchange/phlx\\_rule\\_fil.html](http://www.phlx.com/exchange/phlx_rule_fil.html)), at Phlx’s Office of the Secretary, and at the Commission’s Public Reference Room.

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 Exchange 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 assessing the SPY license fee of \$.10 per contract side after reaching the \$60,000 cap as described in this proposal is to help defray licensing costs associated with the trading of this product, while still capping member organizations’ fees enough to attract volume from other exchanges. The cap operates this way in order to offer an incentive for additional volume without leaving the Exchange with out-of-pocket costs.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)(4) of the Act,<sup>9</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 19b-4(f)(2).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Phlx-2005-01 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2005-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-Phlx-2005-01 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12).