

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49693; File No. SR-Phlx-2004-30)

May 12, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Specialist Unit Fixed Monthly Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 30, 2004, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) 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 Phlx. The proposed rule change has been filed by the Phlx as establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission. 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 proposes to amend its schedule of dues, fees and charges to cap the current specialist unit fixed monthly fee (“fixed monthly fee”)<sup>5</sup> at \$310,000 per specialist unit per month for transactions settling on May 1, 2004 through August 31, 2004. The proposed \$310,000

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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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> See Securities Exchange Act Release No. 49467 (March 24, 2004), 69 FR 17017 (March 31, 2004) (SR-Phlx-2004-17).

monthly fee cap would not include the Nasdaq-100 Index Tracking Stock (“QQQ”)<sup>sm 6</sup> license fee of \$0.10 per contract side for specialist unit transactions in the QQQ equity options.

Currently, the Exchange offers specialist units<sup>7</sup> the opportunity to elect to pay a fixed monthly fee in lieu of paying fees currently in effect for equity option and index option transaction charges and the equity option specialist deficit (shortfall) fee (“shortfall fee”).<sup>8</sup> In addition to the fixed monthly fee, a \$0.10 charge per contract side for specialist unit transactions in the QQQ equity options (“QQQ license fee”) is imposed, if applicable, if the specialist unit elects to pay the fixed monthly fee.<sup>9</sup> The current fixed monthly fee and QQQ license fee are scheduled to be in effect through August 31, 2004.<sup>10</sup> Pursuant to this proposal, specialist units that have elected to pay the fixed monthly fee as described above and reach the proposed \$310,000 monthly fee cap would pay \$310,000 per month plus a QQQ license fee, if applicable.

## II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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<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® (the 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 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> The Exchange uses the terms “specialist” and “specialist unit” interchangeably herein.

<sup>8</sup> The fixed monthly fee program does not affect additional charges, such as non-transaction and membership-related charges listed on Appendix A of the Exchange’s schedule of dues, fees and charges. See Securities Exchange Act Release Nos. 48459 (September 8, 2003), 68 FR 54034 (September 15, 2003) (SR-Phlx-2003-61); and 49467 (March 24, 2004), 69 FR 17017 (March 31, 2004) (SR-Phlx-2004-17).

<sup>9</sup> The \$0.10 fee does not apply if the specialist unit elects to pay the current equity option and index option transaction charges and the applicable shortfall fees.

<sup>10</sup> See Securities Exchange Act Release No. 49467 (March 24, 2004), 69 FR 17017 (March 31, 2004) (SR-Phlx-2004-17).

In its filing with the Commission, the Phlx 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 limit the amount of fixed monthly fees incurred per specialist unit per month. The current fixed monthly fee and the proposed \$310,000 monthly fee cap should create an incentive for specialist units to bring in more business, above the fixed monthly fee amount, which would be free of additional transaction charges assessed on specialist units, while protecting the Exchange's revenue base. Additional order flow may generate transaction fees on the contra side that, in turn, may generate additional revenue for the Exchange. In addition, the proposed \$310,000 monthly fee cap has the potential to attract additional specialist units to the Exchange's trading floor.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>12</sup> in particular, 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 Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of 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>13</sup> and subparagraph (f)(2) of Rule 19b-4<sup>14</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.

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

#### 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:

##### 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 Number SR-Phlx-2004-30 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-2004-30. 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-2004-30 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

J. Lynn Taylor  
Assistant Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).