

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50751; File No. SR-Phlx-2004-59)

November 29, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc. Relating to Minor Adjustments in the Calculation of the Nasdaq Composite Index®

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 October 8, 2004, the Philadelphia Stock Exchange ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On November 16, 2004, the Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On November 16, 2004, the Phlx filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Phlx filed the proposal under Section 19(b)(3)(A) of the Act,<sup>5</sup> and Rule 19b-4(f)(6) thereunder,<sup>6</sup> which renders the proposal effective upon filing.<sup>7</sup> 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> Amendment No. 1 changed language in the Purpose section of the proposal to more accurately reflect the changes Nasdaq is making with respect to calculating the settlement values of the component securities of the Index, which the Phlx is proposing to copy. Amendment No. 1 also included an Exhibit that set forth the comments the Phlx received regarding this proposal. Amendment No. 1 replaced the original filing in its entirety.

<sup>4</sup> Amendment No. 2 made a technical correction to the proposed rule change. Amendment No. 2 replaced the proposed rule change, including Amendment No. 1, in its entirety.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 19 CFR 240.19b-4.

<sup>7</sup> The Commission considers the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act to have commenced on November 16, 2004, the date the Phlx filed Amendment No. 2 to the proposal.

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 Phlx proposes to make minor adjustments to the manner by which the Nasdaq Composite Index® ("Index") is calculated.<sup>8</sup> The Exchange currently lists and trades full-sized option contracts on the Index ("QCX") and mini-sized option contracts on the Index ("QXE"), which are one-tenth the size of QCX contracts.<sup>9</sup> The Index is a cash-settled, capitalization-weighted, broad-based, A.M.-settled index composed of approximately 3,400 stocks listed and traded on The Nasdaq Stock Market, Inc. ("Nasdaq").

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<sup>9</sup> See Securities Exchange Act Release No. 48884 (December 5, 2003), 68 FR 69753 (December 15, 2003) (SR-Phlx-2003-66).

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 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 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 the proposed rule change is to make minor adjustments to the manner by which the Index is calculated because Nasdaq has made certain minor adjustments to the manner of calculating the settlement values of the component securities of the Index.

Nasdaq maintains, compiles, and calculates the Index. The Exchange, for its part, provides and maintains the market for QCX and QCE Index options. The QCX and QCE options on the Index expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 4:15 p.m. (Eastern Time) on the Thursday immediately prior to expiration. Previously, the exercise settlement value of the Index at option expiration was calculated by Nasdaq based on the volume-weighted opening price ("Nasdaq VWOP") of the component securities in the first four minutes of trading on the business day prior to expiration, which would normally be a Friday ("A.M. Settlement").<sup>10</sup>

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<sup>10</sup> Telephone conversation between Mark Salvacion, Director and Counsel, Phlx, and Angela Muehr, Attorney, Division of Market Regulation ("Division"), Commission, on November 24, 2004 (clarifying the calculation of the exercise settlement value).

Under the new calculation, the exercise settlement value of the Index at option expiration will be calculated by Nasdaq based on the Nasdaq VWOP of the component securities in the first five minutes of trading (or period of time that Nasdaq determines)<sup>11</sup> on the business day prior to expiration. Under the new calculation, Nasdaq will independently maintain the trade history of each index component beginning with the receipt of the day's first eligible trade in that issue and continuing for five minutes.<sup>12</sup>

Trade adjustments will be recorded and reflected for each component, under the new calculation, until the five-minute window for the last component stock closes, or 4:00 p.m. (previously 10:30 a.m.), whichever is sooner. For individual securities, the VWOP value is calculated based on the first five minutes of trading in the Nasdaq market. For Nasdaq indices, such as the Index, the VWOP value is determined by the VWOP and weighting information for each of the component securities. The VWOP messages will be disseminated as the values are calculated between 9:45 a.m. and 4:00 p.m. (Eastern Time).<sup>13</sup>

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<sup>11</sup> If Nasdaq determines to change the period of time for calculating the VWOP from the first five minutes of trading to another period of time, the Exchange will announce the effective date of any future change by way of an Exchange memorandum to the membership within a reasonable time prior to the implementation of such change, but in no event sooner than five business days prior to its implementation. Telephone conversation between Mark Salvacion, Director and Counsel, Phlx, and Terri Evans, Special Counsel, Division, Commission, and Angela Muehr, Attorney, Division, Commission on November 18, 2004.

<sup>12</sup> Previously, the time period was four minutes.

<sup>13</sup> There are certain instances in which the VWOP value will be calculated at a time later than the first five minutes of trading in the Nasdaq market. See <http://www.nasdaqtrader.com/trader/mds/nasdaqfeeds/nidsspec.pdf>. Telephone conversation between Mark Salvacion, Director and Counsel, Phlx, and Terri Evans, Special Counsel, Division, Commission, and Angela Muehr, Attorney, Division, Commission, on November 18, 2004.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to promote just and equitable principles of trade, as well as to protect investors and the public interest, by establishing a more accurate calculation of the Index. The Exchange believes that adjusting the calculation of the Index should not raise manipulation concerns and should not cause adverse market impact, because the Exchange will continue to employ its current surveillance procedures.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

The Exchange received several comments in the form of electronic mail from Nasdaq on the proposed rule change. Nasdaq's comments were limited to, on the one hand, specific line edits on Section 3.a of the proposed rule change, and, on the other hand, comments with respect to the timing of the implementation of the adjustment to the VWOP calculation and the filing of the proposed rule change by the Exchange. These comments are available at the Phlx and at the Commission.

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<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange has designated the proposed rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>17</sup> Consequently, because the foregoing rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

The Exchange has requested that the Commission waive the 30-day operative delay specified in Rule 19b-4(f)(6). The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>19</sup> The Exchange will be able, without delay, to conform the manner in which the Index is calculated to the adjustments made by Nasdaq for calculating the settlement values of the component securities of the Index. For these reasons, the Commission designates the proposal operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> Rule 19b-4(f)(6) under the Act also requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Phlx complied with this requirement.

<sup>19</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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, as amended, 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-2004-59 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-2004-59. 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 Section, 450 Fifth

Street, NW, Washington, DC 20549. Copies of this 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-2004-59 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>20</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).