

securities on ArcaEx are still subject to a broker's duty of best execution for its customer.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 2, the Exchange made various clarifying and technical amendments to the proposed rule text to: (1) Reference the "Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges" in proposed PCXE Rule 1.1(aa), (2) clarify that the term "OTC/UTP Listing Market" shall have a meaning consistent with the Nasdaq Unlisted Trading Privileges Plan, (3) clarify the definition of "Sweep Reserve Order" by replacing the word "price" with the word "size," (4) clarify the definition of "Random Reserve Order" by indicating that the random reserve value is expressed in share amounts and by correcting a grammatical error, (5) amend the definition of "Pegged Order" to reflect that the display price will track the relevant Consolidated Quote information for such orders on a real-time basis and that the displayed price of a Pegged Order designated as a Discretionary Order will track the NBBO, and that the discretionary price of such order would re-price in correlation to any change in the displayed price, and (6) clarify that IOC, NOW, PNP, Passive Discretionary, Discretion Limit, IOC Cross and PNP Cross orders in Nasdaq securities will received executions at a price no worse than the ArcaEx BBO. Because Amendment No. 2 is of a technical, clarifying, non-substantive nature, and does not raise any novel regulatory issues or issues that were not considered by the Commission prior to its submission, the Commission finds good cause for accelerating approval of the proposed rule change, as amended by Amendment No. 2.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change, (File No. SR-PCX-2002-75) as amended, be, and it hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47456; File No. SR-Phlx-2002-77]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. To Adopt a Specialist Revenue Sharing Plan for Trades in the Nasdaq-100 Index Tracking Stock

March 6, 2003.

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 December 16, 2002, 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 Phlx. The Exchange amended the proposal on February 28, 2003.<sup>3</sup> The 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 amend its schedule of dues, fees and charges to adopt a Specialist Revenue Sharing Plan for trades in the Nasdaq-100 Index Tracking Stock ("QQQ").<sup>SM</sup> 4 Under this

<sup>28</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> On February 28, 2003, the Exchange filed a Form 19b-4, which replaced the original filing in its entirety ("Amendment No. 1"). In Amendment No. 1, the Exchange made technical corrections to the proposed rule text.

<sup>4</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.

program, the Exchange is proposing to share with the QQQ specialist unit a portion of the revenues that the Exchange receives under the Consolidated Tape Association ("CTA") Plan<sup>5</sup> attributable to the QQQ (which is reportable on Tape B).<sup>6</sup> The Exchange proposes to begin its program on November 1, 2002.

The text of the proposed rule change is set forth below. Additions are in italics.

*Specialist Revenue Sharing Program for Nasdaq-100 Index Tracking Stock ("QQQ")*

*The Exchange will share a portion of net revenues that it receives for Tape B under the Consolidated Tape Association ("CTA") Plan attributable to the Nasdaq-100 Index Trading Stock ("QQQ") with the specialist unit for the QQQ. The Specialist Revenue Sharing Program operates as follows:*

- *Revenues under the CTA Plan are distributed to Plan Participants on a quarterly basis. Each quarter, the Phlx will start its calculation with the quarterly revenues actually received for Tape B.*
- *First, Phlx will determine the portion of such quarterly revenues attributable to the trading of QQQ for each calendar month in the quarter to which the revenue is attributed.*
- *Then, Phlx will subtract the amount it owes Nasdaq under its license agreement for each such calendar month, to arrive at the "Monthly Residual QQQ Tape Revenue" for that month.*

- *The Monthly Residual QQQ Tape Revenue will be shared between Phlx and the QQQ specialist unit in the following order of priority, in each case to the extent that Monthly Residual QQQ Tape Revenues are available:*

- (i) *Phlx will receive the first \$15,000 per month of the Monthly Residual QQQ Tape Revenue to cover, at a minimum, its estimated monthly costs for operating and regulating trading of the QQQ on the Exchange;*

- (ii) *the specialist unit will receive the next \$15,000 per month; and*

<sup>5</sup> The CTA Plan is a national market system plan approved by the Commission pursuant to section 11A of the Act, (15 U.S.C. 78k-1, and Rule 11Aa3-2 thereunder, 17 CFR 240.11Aa3-2); CTA Plan: Second Restatement of Plan Submitted to the Securities and Exchange Commission Pursuant to Rule 11Aa3-1 under the Act, May 1974 as restated March 1980 and December 1995. The CTA Plan governs, among other things, the collection, consolidation and dissemination of transaction reports in certain securities and the distribution of the revenues derived therefrom among parties to the CTA Plan, which are known as the Plan Participants.

<sup>6</sup> This proposal applies only to QQQ and to no other Tape B security nor any Tape A security.

<sup>27</sup> 15 U.S.C. 78s(b)(2).

(iii) *Phlx and the specialist unit will share equally, subject to reasonable rounding, any remaining Monthly Residual QQQ Tape Revenue for that month.*

*Phlx intends to perform this calculation monthly and then make distributions to the specialist unit quarterly, after it receives its Tape B distribution under the Plan for that quarter and following a reasonable processing period of ten business days.<sup>1</sup>*

*The program will apply to Tape B revenues in respect of QQQ trading on or after November 1, 2002.<sup>11</sup>*

## **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 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 attract additional business in the QQQ equity product through a Specialist Revenue Sharing Program. The Specialist Revenue Sharing Program is intended to provide the specialist unit with incentives to grow its specialist activity in the QQQ by reducing its costs of doing business and providing it with additional funds to commit to trading to promote liquidity.

The Specialist Revenue Sharing Program would operate as follows: Revenues under the CTA Plan are distributed to Plan Participants on a quarterly basis. Each quarter, the Phlx would start its calculation with the quarterly revenues actually received for Tape B in respect of a given, prior quarter; such quarterly revenues are

<sup>1</sup> Accordingly, this proposal is dependent upon the Exchange actually collecting its quarterly distribution of Tape B revenues. Any transaction or other fees that the QQQ specialist unit may owe to the Exchange are handled separately from this program, pursuant to the Exchange's fee schedules and billing practices.

<sup>11</sup> For the first quarter of implementation, because the program will begin on November 1, 2002, the calculations will be based on the quarterly revenues received for the period November 1–December 31, 2002 (excluding the month of October).

usually received 45 days after the end of a quarter. First, the Phlx would determine the portion of such quarterly revenues attributable to trading in the QQQ for each calendar month in that quarter.<sup>7</sup> Then, the Phlx would subtract the amount it owes Nasdaq under its license agreement. The remainder (if any) respecting that calendar month ("Monthly Residual QQQ Tape Revenue") would be shared between the Phlx and the QQQ specialist unit in the following order of priority, in each case to the extent that Monthly Residual QQQ Tape Revenues are available: (i) The Phlx would receive the first \$15,000 per month of the Monthly Residual QQQ Tape Revenue to cover, at a minimum, its estimated costs for operating and regulating trading of the QQQ;<sup>8</sup> (ii) the specialist unit would receive the next \$15,000 per month; and (iii) the Phlx and the specialist unit would share equally, subject to reasonable rounding, any remaining Monthly Residual QQQ Tape Revenue for that month. The proposal would be applied separately to each month; trades from one month may not be transferred to or aggregated with trades from another month.

The Phlx intends to perform this calculation in respect of each monthly period and then make distributions to the specialist unit quarterly, after it receives its Tape B distribution under the Plan and following a reasonable processing period of ten business days.<sup>9</sup> The program would apply to revenue in respect of QQQ trading on and after November 1, 2002.

#### 2. Statutory Basis

The Phlx believes that the proposed rule change is consistent with the Act, including section 6(b)<sup>10</sup> and section 11A of the Act,<sup>11</sup> and will further the objectives of section 6(b)(5) of the Act<sup>12</sup> by promoting just and equitable principles of trade, removing impediments to and perfecting the mechanism of a free and open market and a national market system and, in general, protecting investors and the

<sup>7</sup> The Phlx states that its total revenue Tape B distribution may be attributable to trades in securities other than QQQ.

<sup>8</sup> The Exchange will periodically reconsider whether this amount is appropriate, and may adjust this figure from time to time, pursuant to a proposed rule change.

<sup>9</sup> Accordingly, this proposal is dependent upon the Exchange actually collecting its quarterly distribution of Tape B revenues. Any transaction or other fees that the QQQ specialist unit may owe to the Exchange are handled separately from this program, pursuant to the Exchange's fee schedules and billing practices.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78k-1.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

public interest, by encouraging use of the Phlx for trading the QQQ. Similarly, the Phlx believes that the Specialist Revenue Sharing Program for QQQ is consistent with section 11A of the Act,<sup>13</sup> because it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (i) Economically efficient execution of securities transactions; and (ii) fair competition among exchange markets and between exchange markets and markets other than exchange markets. It also furthers the objectives of section 6(b)(4) of the Act<sup>14</sup> 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 Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition. The Phlx states that the proposal is designed to attract additional business to the Exchange in the QQQ by reducing the specialist unit's costs and providing it with additional funds to commit to trading, and, thus, should promote competition among market centers trading such securities.

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

The Phlx has neither solicited nor received written comments with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## **IV. Solicitation of Comments**

On July 2, 2002, the Commission issued an Order abrogating certain proposed rule changes relating to market data revenue sharing

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

programs.<sup>15</sup> In that Order, the Commission expressed concern that the subject proposed rule changes raised “serious questions as to whether they are consistent with the Act and with the protection of investors.” Specifically, the Commission questioned the effect of market data rebates on the accuracy of market data, and on the regulatory functions of self-regulatory organizations.

The Commission now solicits comment on the Phlx proposed rule change, and in general, on (1) Market data fees; (2) the collection of market data fees; (3) the distribution of market data rebates; (4) the effect of market data revenue sharing programs on the accuracy of market data; and (5) the impact of market data revenue sharing programs on the regulatory functions of self-regulatory organizations.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2002-77 and should be submitted by April 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland.**

*Deputy Secretary.*

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<sup>15</sup> See Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37) (Order of Summary Abrogation).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

## DEPARTMENT OF STATE

### [Public Notice 4299]

#### **Bureau of Educational and Cultural Affairs Request for Grant Proposals: Central and Eastern European Professional Exchanges and Training Program for Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Estonia, Kosovo, Latvia, Lithuania, Macedonia, Romania, and Serbia and Montenegro**

**SUMMARY:** The Europe/Eurasia division of the Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for Central and Eastern European Professional Exchanges and Training Programs for Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Estonia, Kosovo, Latvia, Lithuania, Macedonia, Romania, and Serbia and Montenegro. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals that support international projects in the United States and overseas involving current or potential leaders.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting proposals.

*Announcement Title and Number:* All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/EUR-03-39.

**FOR FURTHER INFORMATION CONTACT:** The Office of Citizen Exchanges, ECA/PE/C/EUR, Room 224, U.S. Department of State, SA-44, 301 4th Street, SW., Washington, DC 20547, Attention: Central and Eastern Europe Professional Exchanges and Training Program, telephone number: 202-205-3003, fax number 202-619-4350 or [kturner@pd.state.gov](mailto:kturner@pd.state.gov) to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation.

For specific inquiries, please contact Bureau program officers by phone or e-mail: Kendra Davis (202) 619-5328 ([kldavis@pd.state.gov](mailto:kldavis@pd.state.gov)); Michael George (202) 619-5330 ([mdgeorge@pd.state.gov](mailto:mdgeorge@pd.state.gov)); Brent Beemer (202) 401-6887 ([bbeemer@pd.state.gov](mailto:bbeemer@pd.state.gov)); or Henry Scott (202) 619-5327 ([hscott@pd.state.gov](mailto:hscott@pd.state.gov)).

Please read the complete **Federal Register** announcement before sending

inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

#### **To Download a Solicitation Package via Internet**

The entire Solicitation Package may be downloaded from the Bureau’s Web site at <http://exchanges.state.gov/education/RFGPs>. Please read all information before downloading.

#### **General Program Guidelines**

Applicants should identify the local organizations and individuals in the counterpart country with whom they are proposing to collaborate and describe in detail previous cooperative programming and/or contacts. Specific information about the counterpart organizations’ activities and accomplishments should be included in the section on Institutional Capacity. Proposals should contain letters of support tailored to the project being proposed from foreign-country partner organizations.

Exchanges and training programs supported by institutional grants from the Bureau should operate at two levels: they should enhance institutional partnerships, and they should offer practical information and experience to individuals and groups to assist them with their professional responsibilities. Strong proposals usually have the following characteristics:

- A proven track record of working in the proposed issue area and country;
- Experienced staff with language facility and a commitment by the staff to monitor projects locally to ensure implementation;
- A clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant; and
- A follow-on plan that includes activities beyond the conclusion and scope of the Bureau grant.

Proposal narratives should clearly demonstrate an organization’s commitment to consult closely with the Public Affairs Section, and when required, other officers at the U.S. Embassy. Proposal narratives must confirm that all materials developed for the project will acknowledge Bureau funding for the program as well as a commitment to invite representatives of the Embassy and/or Consulate to participate in various program sessions/site visits. Please note that this will be a formal requirement in all final grant awards.

Organizations with less than four years of experience managing