

anyone, the Commission's concerns about a two-tiered market—where some market participants have information others do not—are absent.”¹⁴⁰

ArcaEx's discretionary orders will not provide any market participant with an unfair trading advantage.¹⁴¹ All Users will see the same orders ranked in the Arca Book, i.e., ArcaEx will display to all User those orders which are displayed in the Limit Order Process of the Arca Book, but not the working orders in the Working Order Process.¹⁴² No Users will have special access to trading interest that is not available to others on ArcaEx. All Users have the equivalent opportunity to receive fills based on both displayed and undisplayed orders. Furthermore, no Users will be able to control or influence the trades resulting from conditional trading interest; the trades will only be executed pursuant to an established algorithm.¹⁴³ Therefore, discretionary orders fail to hurt investors in any way; they only provide benefits to the marketplace, as discussed in detail above.

C. Conclusion

Discretionary orders comply with Rule 11Ac1-1. Moreover, not only do such orders not present any potential for investor harm, they affirmatively will benefit both investor and market liquidity.

[FR Doc. 01-11472 Filed 5-7-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44237; File No. SR-PHLX-2001-43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adding QQQ Options to the Exchange's List of the Top 120 Equity Options

April 30, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 30, 2001, the Philadelphia Stock Exchange, Inc. (“Phlx”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II,

and III below, which Items the Phlx has prepared. 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 revise its list of the Top 120 Options³ by adding options on Units of Beneficial Interest in the Nasdaq-100 Trust, Series 1, which are widely known as and traded under the symbol “QQQ”. Options on the QQQ index will be added to the Phlx's list of the Top 120 Options effective April 2, 2001, and will include trades that settle on that date.

All of the options on the Phlx's list of Top 120 Options are included in the Phlx's payment for order flow program, in which a marketing fee (currently \$1.00) is imposed on the transactions of specialists and ROTs, which the specialists may use to attract order flow to Phlx. QQQ options will be included in the marketing fee program once they are added to the list of Top 120 Options. The inclusion of QQQ options on the list means that there will be 121 Options on the Phlx's list of the Top 120 options through June 30, 2001, when the current measuring period ends.

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 Phlx has prepared summaries, set forth in Sections A, B, and C below, or 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 add QQQ options to the Phlx's list of the Top 120 Options. The list of the Top 120 Options identifies the 120 most actively traded equity options as measured by their trading volume on all U.S. options markets. The list of Top

120 Options is recalculated every six months, with the measuring periods running from January 1 through June 30 and from June 1 through November 30. The Phlx assembled its current list of Top 120 Options using data that the Options Clearing Corporation gathered during the period from June 1, 2000 through November 30, 2000.

The Phlx currently imposes a \$1.00 per contract fee on transactions of Phlx specialists and Registered Options Traders (“ROT”) in the Top 120 Options, with some exceptions.⁴ Under the program, Phlx specialists may use the proceeds raised from the marketing fee to attract order flow to the Phlx. Because options on the QQQ index are now traded on the Phlx,⁵ the Phlx is proposing to add QQQ options to its list of the Top 120 Options during the current measuring period. Accordingly, from April 2, 2001, the effective date of this proposal, through June 30, 2001, the end of the current measuring period, there will be a total of 121 options on the Phlx's list of the Top 120 Options.

2. Statutory Basis

The inclusion of QQQ options on the Phlx's list of the Top 120 Options would bring QQQ options into the Phlx's payment for order flow program. The Phlx believes that the QQQ specialist unit and the ROTs who pay the \$1.00 marketing fee should receive the benefits of increase order flow, and that the proposed rule change would equitably allocate reasonable fees among the Phlx's members. Accordingly, the Phlx—believes that the proposal is consistent with Section 6(b) of the Act,⁶ and in particular furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act.⁷ Moreover, the Phlx believes that the inclusion of QQQ options in its list of Top 120 Options, and the

⁴ The transactions in Top 120 Options that are currently excepted from the \$1.00 fee are transactions between: (1) A specialist and an ROT; (2) an ROT and an ROT; (3) a specialist and a firm; (4) an ROT and a firm; (5) a specialist and a broker-dealer; and (6) and ROT and a broker-dealer. See Securities Exchange Act Release Nos. 43177 (Aug. 18, 2000), 65 FR 51889 (Aug. 25, 2000) (SR-PHLX-00-77); 43480 (Oct. 25, 2000), 65 FR 66275 (Nov. 3, 2000) (SR-PHLX-00-86 and SR-PHLX-00-87); and 43481 (Oct. 25, 2000), 65 FR 66277 (Nov. 3, 2000) (SR-PHLX-00-88 and SR-PHLX-00-89).

⁵ See Securities Exchange Act Release Nos. 43921 (February 2, 2000), 66 FR 9739 (Feb. 9, 2001) (SR-PHLX-00-107) (amending Phlx rules to create listing criteria and trading rules to allow the Phlx to list QQQ options); 44054 (Mar. 8, 2001), 66 FR 15314 (Mar. 16, 2001) (SR-PHLX-01-31) (increasing the automatic execution guarantee for QQQ options to 100 contracts); and 44055 (March 8, 2001), 66 FR 15310 (Mar. 16, 2001) (SR-PHLX-01-32) (amending Phlx rules to create a one-point strike price interval for QQQ options and establishing the hours of trading for QQQ options).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

¹⁴⁰ See ATS Release at 70867.

¹⁴¹ See, e.g., PCX OptiMark Release at 50046 (“The failure to disseminate Profile does not provide any other market participant with an unfair market advantage as a result of seeing the trading interest that is not shown to others. Any User only knows its own Profile; it has no special access to other Users' Profiles. Moreover, Users have no control or influence in determining the outcome of a match, other than through the construction of their own Profiles.”)

¹⁴² See Proposed PCXE Rule 7.36.

¹⁴³ See Proposed PCXE Rule 7.37.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Phlx defines a Top 120 Option as one of the 120 most actively traded equity options nationwide during a six-month measuring period. The Phlx revises its list of the Top 120 Options every six months using data that the Options Clearing Corporation provides.

corresponding imposition of the \$1.00 fee on various transactions in QQQ options, should promote just and equitable principles to trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and public interest by attracting more order flow to the Phlx, which should result in increased liquidity, tighter markets, and more competition 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.

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

The Phlx neither solicited nor received any written comments on this proposal.

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

Because the Phlx has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)⁸ of the Act and Rule 19b-4(f)(2),⁹ the proposal has become effective upon filing with the Commission.¹⁰ 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 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. 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-2001-43 and should be submitted by May 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-11475 Filed 5-7-01; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Applicant No. 99000444]

First Capital Group of Texas III, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that First Capital Group of Texas III, L.P., 750 E. Mulberry, Suite 305, San Antonio, Texas 78212, an applicant for a Federal License under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financials which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). First Capital Group of Texas III, L.P. proposes to provide equity/debt security financing to BEI Group, Inc., 1051 East Nakoma, San Antonio, Texas 78216. The financing is contemplated for the purpose of providing working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because First Capital Group of Texas II, L.P., an Associate of First Capital Group of Texas III, L.P., currently owns greater than 10 percent of BEI Group, Inc. and therefore BEI Group, Inc. is considered an Associate of First Capital Group of Texas III, L.P. as defined in Sec. 107.50 of the SBA Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration,

409 Third Street, SW, Washington, DC 20416.

Dated: April 27, 2001.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 01-11540 Filed 5-7-01; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9L55]

State of Ohio

Hamilton County and the contiguous counties of Butler, Clermont and Warren in the State of Ohio; Dearborn and Franklin Counties in the State of Indiana; and Boone, Campbell and Kenton Counties in the Commonwealth of Kentucky constitute a disaster area due to a civil disturbance beginning on April 9, 2001. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on February 1, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rate for eligible small businesses and small agricultural cooperatives in 4 percent.

The number assigned for economic injury is 9L5500 for the State of Ohio; 9L5600 for the State of Indiana; 9L5700 for the Commonwealth of Kentucky.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: May 1, 2001.

John Whitmore,

Acting Administrator.

[FR Doc. 01-11541 Filed 5-7-01; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 3653]

Culturally Significant Objects Imported for Exhibition Determinations: "Spirit of an Age: Nineteenth Century Paintings From the Nationalgalerie, Berlin"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ The Phlx has stated that any change to the category of options to which the payment for order flow fee applies will be subject of a separate filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act. See Securities Exchange Act Release No. 43177 (Aug. 18, 2000), 65 FR 51889 (Aug. 25, 2000) (SR-Phlx-00-77).

¹¹ 17 CFR 200.30-3(a)(12).