

the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the PCX. All submissions should refer to File No. SR-PCX-2002-59 and should be submitted by October 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46481; File No. SR-Phlx-2002-48]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to PACE Guarantees in Securities Subject to ITS Plan Exemption

September 10, 2002.

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 September 4, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On September 9, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup>

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 exempt transactions, beginning September 4, 2002 for a period of 30 days ending on October 4, 2002, in certain exchange-traded fund ("ETF") shares from Supplementary Material Section .10(a)(iii) of Exchange Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System ("PACE").<sup>4</sup> Section .10(a)(iii) of Exchange Rule 229 currently provides that if 100 or more shares print through the limit price on any exchange(s) eligible to compose the PACE Quote<sup>5</sup> after the time of entry of any such order into PACE, the specialist shall execute all such orders at the limit price without waiting for an accumulation of 1000 shares to print at the limit price on the New York market.<sup>6</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 Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

<sup>4</sup> PACE is the Exchange's Automated Communication and Execution System. PACE provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions.

<sup>5</sup> PACE Quote is defined in Rule 229 as the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific or Philadelphia Stock Exchange, or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote, as appropriate.

<sup>6</sup> To be understood, Section .10(a)(iii) must be read in conjunction with the preceding Section of the PACE Rule. Supplementary Material Section .10(a)(ii) provides as follows:

Non-Marketable Limit Orders—Unless the member organization entering orders otherwise elects, round-lot limit orders up to 500 shares and the round-lot portion of PRL limit orders up to 599 shares which are entered at a price different than the PACE Quote will be executed in sequence at the limit price when an accumulative volume of 1000 shares of the security named in the order prints at the limit price or better on the New York market after the time of entry of any such order into PACE. For each accumulation of 1000 shares which have been executed at the limit price on the New York market, the specialist shall execute a single limit order of a participant up to a maximum of 500 shares for each round-lot limit order up to 500 shares or the round-lot portion of a PRL limit order up to 599 shares.

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

#### 1. Purpose

The purpose of the proposed rule change is to adopt an exemption from Phlx Rule 229.10(a)(iii) beginning September 4, 2002 for a period of 30 days ending on October 4, 2002. This exemption would apply to the ETFs tracking the Nasdaq-100 Index ("QQQs"), the Dow Jones Industrial Average ("DIAMONDS"), and the Standard & Poor's 500 Index ("SPDRs").<sup>7</sup> This exemption would correlate with a recent exemption from the ITS Plan issued by the Commission (the "ITS Exemption").<sup>8</sup>

Phlx Rule 229.10(a)(iii) requires a Phlx specialist to execute certain orders that are traded-through by another market center. Previously, although the specialist had this obligation the specialist was, in turn, entitled to "satisfaction" of those orders pursuant to Section 8(d) of the ITS Plan. Now, where trading through is no longer prohibited by the ITS Plan, as enumerated in the ITS Exemption, the specialist does not have recourse to seek "satisfaction" for these orders and is alone responsible for those executions. Thus, the Phlx believes that its provision guaranteeing an execution no longer makes sense. Moreover, the provision now unduly burdens the specialist by requiring the specialist to execute orders in situations where the specialist does not have access to trading at that price.

<sup>7</sup> The Exchange does not currently trade DIAMONDS or SPDRs but may determine to do so in the future. The Exchange does trade QQQs. The Nasdaq-100<sup>®</sup>, Nasdaq-100 Index<sup>®</sup>, Nasdaq<sup>®</sup>, The Nasdaq Stock Market<sup>®</sup>, 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<sup>®</sup> (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>8</sup> See Securities Exchange Act Release No. 46428 (August 28, 2002) (Order Pursuant to section 11A of the Securities Exchange Act of 1934 and Rule 11Aa3-2(f) thereunder Granting a De Minimis Exemption for Transactions in Certain Exchange-Traded Funds from the Trade-Through Provisions of the Intermarket Trading System.). The ITS Plan is a national market system plan approved by the Commission pursuant to section 11A of the Act and Rule 11Aa3-2 thereunder.

<sup>8</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> See letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated September 6, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange consented to the Commission's treatment of the proposed rule change as being filed as a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule pursuant to section 19(b)(3)(A) of the Exchange Act. 15 U.S.C. 78s(b)(3)(A). In addition, in Amendment No. 1, the Exchange provided rule text to accompany the proposed rule change.

## 2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with section 6(b) of the Act<sup>9</sup> in general and furthers the objectives of Section 6(b)(5)<sup>10</sup> in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. By adopting the proposed exemption, the Exchange avoids burdening specialists with the obligation to fill an order in circumstances where an external event triggered the execution obligation and the specialist could not access trading at that price.

### *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*

No written comments were either solicited or received.

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

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to section 19(b)(3)(A)(i) of the Act<sup>11</sup> and subparagraph (f)(1) of Rule 19b-4 thereunder.<sup>12</sup>

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.

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>12</sup> 17 CFR 240.19b-4(f)(1).

## 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-2002-48 and should be submitted by October 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-23533 Filed 9-16-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3440]

#### State of Wisconsin

As a result of the President's major disaster declaration on September 10, 2002, I find that Barron, Burnett, Chippewa, Clark, Dunn, Langlade, Lincoln, Marathon, Polk, Portage, Price, Rusk, Sawyer, Shawano, St. Croix, Taylor, Washburn, Waupaca and Wood Counties in the State of Wisconsin constitute a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on September 2, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 12, 2002 and for economic injury until the close of business on June 10, 2003 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Adams, Ashland, Bayfield, Brown, Douglas, Eau Claire, Forest, Iron, Jackson, Juneau, Menominee, Oconto, Oneida, Outagamie, Pepin, Pierce, Vilas, Waushara and Winnebago in the State of Wisconsin; Chisago, Pine and Washington counties in the State of Minnesota.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere .....	6.625
Homeowners Without Credit Available Elsewhere .....	3.312
Businesses With Credit Available Elsewhere .....	7.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere .....	3.500
Others (Including Non-Profit Organizations) With Credit Available Elsewhere .....	6.375
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere .....	3.500

The number assigned to this disaster for physical damage is 344011. For economic injury the number is 9R5100 for Wisconsin; and 9R5200 for Minnesota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 11, 2002.

**Allan I. Hoberman,**

*Acting Associate Administrator for Disaster Assistance.*

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## DEPARTMENT OF STATE

### [Public Notice 4122]

#### **Determination Related to Colombian Armed Forces Under Section 567(a)(1) of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations, 2002 (Pub. L. 107-115)**

Pursuant to the authority vested in me as Secretary of State, including under section 567 of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law. 107-115) (the "FOAA"), I hereby determine and certify that: (A) "[t]he Commander General of the Colombian Armed Forces