

provisions of the Act, in general, and with Section 6(b)(5)⁸ in particular.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In the notice, the Commission indicated that it would consider granting accelerated approval of the proposal after a 15-day comment period. The Commission received no comments on the proposal during the 15-day comment period. Additionally, the Commission believes that the proposed rule change should satisfy the concerns of order-sending firms that require immediate executions, while preserving the fundamental protections of an auction market environment. The Commission also believes that the proposed rule change as it relates to the refinement of automatic execution sequences and price improvement algorithms should provide benefits to investors, and therefore, the Commission believes accelerated approval is appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-CHX-2001-32), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46485; File No. SR-PCX-2002-59]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes in Marketing Fees

September 10, 2002.

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 August 28, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the PCX 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 PCX is proposing to change its marketing fee for certain options and to adopt new marketing fees for recently listed options. The text of the proposed rule change is available at the PCX and at the Commission.

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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX 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

The PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from \$0 to \$1.00 per contract on a per-issue basis.³ The PCX segregates the funds from this fee by trading post and makes the funds available to lead market makers for their use in attracting orders in the options traded at the posts. The PCX charges the marketing fees as set forth in the Schedule of Rates.

The PCX is proposing to change the marketing fee for certain options as set forth in the Schedule of Rates beginning at the commencement of the September trade month and continuing until further notice. The PCX proposes to change only the amounts of the fees that it charges for transactions in the options that are included in the proposed Schedule of Rates. Any fees currently being charged for transactions in options that are not listed in this amendment to the Schedule of Rates would not be affected by the proposed rule change. The PCX believes that its proposed rule change is reasonable and equitable because it is designed to enable the PCX to compete with other markets in attracting options business.

Only the amount of the fee is being changed.

The PCX believes that the proposal is consistent with Section 6(b) of the Act,⁴ particularly Section 6(b)(4),⁵ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The PCX neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)⁷ because it changes a PCX fee. 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 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

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 44830 (September 21, 2001), 66 FR 49728 (September 28, 2001) (SR-PCX-2001-37).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 19b-4(f)(2).

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.⁸

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"),¹ and Rule 19b-4 thereunder,² 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.³

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").⁴ 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 Quote⁵ 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.⁶

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.

⁴ 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.

⁵ 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.

⁶ 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").⁷ This exemption would correlate with a recent exemption from the ITS Plan issued by the Commission (the "ITS Exemption").⁸

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.

⁷ 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[®], Nasdaq-100 Index[®], Nasdaq[®], The Nasdaq Stock Market[®], Nasdaq-100 SharesSM, Nasdaq-100 TrustSM, Nasdaq-100 Index Tracking StockSM, and QQQSM 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 TrustSM, or the beneficial owners of Nasdaq-100 SharesSM. 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.

⁸ 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.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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.