

the principal office of the Phlx. All submissions should refer to File No. SR-PHLX-00-97 and should be submitted by January 12, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43717; File No. SR-Phlx-00-54]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Listing and Trading of Trust Shares**

December 13, 2000.

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 June 19, 2000, 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 the Phlx. On August 30, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On December 12, 2000, the Exchange submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing

this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change, as amended.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to amend its rules to permit the listing and trading, or the trading pursuant to unlisted trading privileges ("UTP"), of Trust Shares. New Section (i) of Phlx Rule 803 provides listing standards for Trust Shares, which represent interests in a unit investment trust operating on an open-end basis and holding a portfolio of securities. In conjunction with Rule 803(i), the Exchange is also: amending its "Hours of Business" Rule (Rule 101) to address Trust Shares; making conforming changes to its PACE Rule (Rule 229) regarding automatic price improvement; and adopting new Rule 136 regarding trading halts in Trust Shares. The Exchange is also proposing to trade shares of the Nasdaq-100 Trust ("Nasdaq-100 Index Tracking Stock") on a UTP basis. The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

**Rule 101 Dealings Upon the Exchange Hours of Business**

\* \* \* \* \*

Supplementary Material

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.02 [Post-Primary Session] *Equity Trading Hours.* Trading in any equity security on the Exchange's equity trading floor shall commence at 9:30 a.m. and end at 4 p.m. each business day, unless otherwise announced by the Exchange, except that:

- (i) the Post-Primary Session ("PPS") will operate from 4 to 4:15 p.m. for PPS-designated orders pursuant to Rule 232(b)[, and]
- (ii) the after hours trading facility for GTX orders will operate pursuant to Rule 232(c), and
- (iii) *Transactions in Nasdaq-100 Index Tracking Stock may be effected on the Exchange until 4:15 p.m. each business day as well as pursuant to Rule 232(c).*

**Rule 229. Philadelphia Stock exchange Automated Communication and Execution System (PACE)**

\* \* \* \* \*

Supplementary Material

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.07

(c) Price Improvement for PACE Orders

- (i) Automatic Price Improvement—Where the specialist voluntarily agrees to provide

Commission, from Carla Behnfeldt, Counsel, Phlx (December 12, 2000).

automatic price improvement to all customers and all eligible market orders in a security, automatically executable market and marketable limit orders in New York Stock Exchange and American Stock Exchange listed securities received through PACE for 599 shares or less shall be provided with automatic price improvement of 1/6 (or 1/64 in the case of Nasdaq-100 Index Tracking Stock) for equities trading in fractions, or .01 for equities trading in decimals from the PACE Quote where received beginning at 9:30 a.m., except where:

(A) a buy order would be improved to a price less than the last sale or a sell order would be improved to a price higher than the last sale (except as provided in (E) below); or

(B) a buy order would be improved to the last sale which is a downtick or a sell order would be improved to the last sale price which is an uptick (except as provided in (E) below). The PACE System will determine whether the last sale price is a downtick or an uptick. The PACE System does not recognize changes from the previous day's close.

In these situations, the order is not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote. A specialist may voluntarily agree to provide automatic price improvement to larger orders in a particular security to all customers under this provision. A specialist may choose to provide automatic price improvement for equities trading in fractions where the PACE Quote is (I) 3/16 or greater, [or] (II) 1/6 or greater, or (III) solely with respect to Nasdaq-100 Index Tracking Stock, 1/16 or greater. [for equities trading in fractions, or] A specialist may choose to provide automatic price improvement where the PACE Quote is .03 or greater or .05 or greater for equities trading in decimals.

\* \* \* \* \*

.17 *Except for transactions in Nasdaq-100 Index Tracking Stock: (a) Orders received by 4:00 p.m. Eastern Time as determined electronically by the PACE system are eligible for execution[.] (b) Orders received after such time will be rejected and returned to order entry firm[.], and (c) From 4 to 4:15 p.m., Eastern Standard Time, PACE may be used as a routing system for PPS eligible orders. Orders in Nasdaq-100 Index Tracking Stock received by 4:15 p.m. Eastern Time as determined electronically by the PACE system are eligible for execution.*

**Rule 136. Trading Halts in Certain Exchange Traded Funds**

*Rule 1047A(c) shall apply to the trading of Trust shares listed pursuant to the terms of Rule 803(i). The term "option" as used therein shall be deemed for the purposes of this rule only to include a Trust Share.*

**Rule 803. Criteria for Listing—Tier I**

\* \* \* \* \*

(i) Trust Shares

- (1) Definitions.
  - (i) Trust Shares. The term "Trust Share" means a security (a) that is based on a unit investment trust ("Trust") which holds the securities which comprise an index or portfolio underlying a series of Trust Shares;

<sup>9</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> In Amendment No. 1, the Phlx clarified references to Trust Shares series in the text of the Exchange's proposed rule. See Letter to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, from Nandita Yagnik, Attorney, Phlx (August 29, 2000).

<sup>4</sup> In Amendment No. 2, the Phlx proposed: trading Nasdaq-100 Index Tracking Stock until 4:15 p.m.; establishing conditions for a specialist to provide automatic price improvement in Nasdaq-100 Index Tracking Stock on the Philadelphia Stock Exchange Automated Communication and Execution ("PACE") System; renumbering and retitling a new rule governing trading halts; and clarifying that transactions in Nasdaq-100 Index Tracking Stock would be reported to the Exchange's consolidated tape. Amendment No. 2 also indicated that securities now known as "Nasdaq-100 Index Tracking Stock" were formerly called "Nasdaq-100 Shares;" substituted "Nasdaq Investment Product Services, Inc." for "Nasdaq-Amex Investment Product Services, Inc." as sponsor; and made a technical change to the text of the proposed rule change. See Letter to Nancy Sanow, Assistant Director, Division of Market Regulation,

(b) that is issued by the Trust in a specified aggregate minimum number in return for a "Portfolio Deposit" consisting of specified numbers of shares of stock plus a cash amount; (c) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and cash then comprising the "Portfolio Deposit"; and (d) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the stock index or portfolio of securities underlying the Trust Shares, less certain expenses and other charges as set forth in the Trust prospectus.

(ii) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Trust Shares means the Exchange, a wholly-owned subsidiary of the Exchange, an institution (including the Trustee for Trust Shares), or a reporting service designated by the Exchange or its subsidiary or by the exchange that lists a particular series of Trust Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust in connection with issuance of Trust Shares; the amount of any dividend equivalent payment or cash distribution to holders of Trust Shares, net asset value, or other information relating to the creation, redemption or trading of Trust Shares.

(2) Applicability. This Rule is applicable only to Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the By-Laws and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Trust Shares are included within the definition of "security" or "securities" as such terms are used in the By-Laws and Rules of the Exchange.

(3) Disclosure Requirements. Members and member organizations shall provide to all purchasers of a series of Trust Shares a written description of the terms and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Trust Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Trust Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Trust Shares) is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Trust Shares). In addition, upon request you may obtain from your broker a prospectus for (the series of Trust Shares)."

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Trust Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a member or member organization shall also provide a prospectus for the particular series of Trust Shares.

(4) Designation of an Index or Portfolio. The trading of Trust Shares based on one or more stock indexes or securities portfolios, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case by case basis. The Trust Shares based on each particular stock index or portfolio shall be identified as a separate series and shall be identified by unique symbol. The stocks that are included in an index or portfolio on which Trust Shares are based shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(5) Initial and Continued Listing and/or Trading. A Trust upon which a series of Trust Shares are based will be traded on the Exchange, whether by listing or pursuant to unlisted trading privileges, subject to application of the criteria:

(A) Commencement of Trading—For each Trust, the Exchange will establish a minimum number of Trust Shares required to be outstanding at time of commencement of trading on the Exchange.

(B) Continued Trading—Following the initial twelve month period following formation of trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of or termination of unlisted trading privileges for a Trust upon which a series of Trust Shares are based under any of the following circumstances:

(i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Shares for 30 or more consecutive trading days; or

(ii) if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available; or

(iii) if such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(C) Termination of Trust—Upon termination of a Trust, the Exchange requires that Trust Shares issued in connection with such Trust be removed from Exchange listing or have their unlisted trading privileges terminated. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(6) Term. The stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(7) Trustee. The trustee must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(8) Voting. Voting rights shall be as set forth in the Trust prospectus. The Trustee of a Trust may have the right to vote all of the voting securities of such Trust.

(9) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust; the amount of any dividend equivalent payment or cash distribution to holders of Trust Shares; net asset value; or other information relating to the creation, redemption or trading of Trust Shares, resulting from any negligent act or omission by the Exchange, or the Reporting Authority, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange or its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities. The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of Trust Shares or any underlying index or data included therein and the Exchange makes no express or implied warranties, and disclaims all warranties of merchantability or fitness for a particular purpose with respect to Trust Shares or any underlying index or data included therein. This limitation of liability shall be in addition to any other limitation contained in the Exchange's Articles of Incorporation or By-Laws or elsewhere in the Rules.

(10) Listing Fees and Other Rules. The Exchange may, in its discretion, waive listing fees for any issuer of any particular series of Trust Shares listed on the Exchange pursuant to Rule 803(i). The provisions of Rules 847, 849, 850 and 851 do not apply to unit investment trusts issuing Trust Shares listed on the Exchange pursuant to Rule 803(i), or to the trustees or the sponsors thereof. In addition, consideration of the suspension of trading in or removal from listing of any Trust Shares pursuant to Rule 810 will be made pursuant to the criteria set forth in section 5(B) of this Rule 803(i) rather than the specific criteria set forth in subsections (1) through (5) of Rule 810(a).

### Commentary

01 The Nasdaq Stock Market, Inc. ("Nasdaq") has licensed the use of the Nasdaq-100 Index for certain purposes in connection with trading in a particular series of Trust Shares on the Exchange. Nasdaq and its affiliates do not guarantee the accuracy and/or completeness of the Nasdaq-100 Index or any data included therein. Nasdaq, the Exchange and their affiliates make no warranty, express or implied, as to results to be obtained by any person or entity from the use of the Nasdaq-100 Index or any data included therein in connection with the rights licensed or for any other use. Nasdaq, the Exchange and their affiliates make no express or implied warranties, and disclaim all warranties of merchantability or fitness for a particular purpose with respect to the Nasdaq-100 Index or any data included therein. Without limiting any of the foregoing, in no event shall Nasdaq, the Exchange and their affiliates have any liability for any lost profits or special, punitive, incidental, indirect, or consequential damages, even if notified of the possibility of such damages. In addition, Nasdaq, the Exchange and their affiliates shall have no liability for any damages, claims, losses or expenses caused by any errors or delays in calculating or disseminating the Nasdaq-100 Index.

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## 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 V 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

**Trust Shares Listing Standards.** The Exchange proposes to adopt new rules and rule amendments to accommodate the trading of Trust Shares, *i.e.*, securities that are interests in a unit investment trust ("Trust") holding a portfolio of securities linked to an index. Each Trust would provide investors with an instrument that: (1) Closely tracks the underlying portfolio of securities; (2) trades like a share of common stock; and (3) pays holders of the instrument periodic dividends proportionate to those paid with respect to the underlying portfolio of securities,

less certain expenses (as described in the Trust prospectus).<sup>5</sup>

Listing standards for Trust Shares are established in Rule 803(i) ("Rule"). Under the Rule, the Exchange may list and trade, or trade pursuant to UTP, Trust Shares based on one or more stock indexes or securities portfolios.<sup>6</sup> Trust Shares based on each particular stock index or portfolio will be designated as a separate series and identified by a unique symbol. The stocks that are included in an index or portfolio on which Trust Shares are based will be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by another person having a proprietary interest in and authorized use of such index or portfolio, and may be revised as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.<sup>7</sup>

In connection with an initial listing, the Exchange proposes that, for each listing of Trust Shares, the Exchange will establish a minimum number of Trust Shares required to be outstanding at the time of commencement of Exchange trading. If the Exchange trades a particular Trust Share pursuant to UTP, the Exchange will follow the listing exchange's determination of the appropriate minimum number of securities included in the Trust.

Because the Trust operates on an open-end type basis, and because the number of Trust Share holders is subject to substantial fluctuations depending on market conditions, the Exchange

<sup>5</sup> The listing standards for Trust Shares set forth in proposed new Section (i) of Rule 803 are substantially similar to existing rules of the American Stock Exchange ("Amex") applicable to Portfolio Depository Receipts ("PDRs") and of the Chicago Board Options Exchange ("CBOE") applicable to Index Portfolio Receipts ("IPRs"). See Amex Rules 1000-1003; *see also* CBOE Rule 1.1, Interpretations and Policies Section .02, and Rules 30.54, 31.5.L and 31.94.F.

<sup>6</sup> As explained more fully below, Phlx intends to trade Trust Shares on the Nasdaq-100 Index pursuant to UTP under the listing standards approved herein. If Phlx intends to trade, pursuant to UTP, Trust Shares listed on another exchange by using listing standards that are different from current Phlx listing standards or the listing standards set forth in its proposed rule change, the Phlx represents that it will file a rule change proposal pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder to adopt the different listing standards before the Phlx trades those Trust Shares.

<sup>7</sup> The Exchange represents that its proposal would result in Trust Shares being listed as Tier I securities and therefore "covered securities" for purposes of Section 18 of the Securities Act of 1933, 15 U.S.C. 77r. (The Exchange has established Tier I listing criteria and Tier II listing criteria for companies listing on the Phlx. Tier I listing requires a company to meet certain higher numerical listing criteria than are required for Tier II listing. Tier II listing standards are intended to accommodate smaller companies.) The Exchange believes that, as "covered securities," Trust Shares would be exempt from state securities registration requirements.

believes that it would be inappropriate and burdensome on Trust Share holders to consider suspending trading in or delisting a series of Trust Shares, with the consequent termination of the Trust, unless the number of holders remains severely depressed during an extended time period. Therefore, following twelve months after the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, a Trust when, in the Exchange's determination, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the Trust on which the Trust Shares are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the Trust Shares for 30 or more consecutive trading days;

(b) if the index on which the Trust is based is no longer calculated; or

(c) if such other event occurs or condition exists, which, in the opinion of the Exchange, makes further dealings in such securities on the Exchange inadvisable.<sup>8</sup>

The stated term of the Trust will be set forth in the Trust prospectus. A Trust may also terminate under such conditions as may be set forth in the Trust prospectus. For example, the sponsor of the Trust, following notice to Trust Share holders, will have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a specified amount.

Rule 803(i)(3) requires that members and member organizations provide to all purchasers of each series of Trust Shares a written description of the terms and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such series of Trust Shares is delivered to such purchaser. In this regard, a member or member organization carrying an omnibus account for a non-member broker-dealer

<sup>8</sup> Proposed Phlx Rule 803(i)(10) would provide that a determination to delist or suspend Trust Shares shall be based upon the criteria set forth in proposed Rule 803(i)(5)(B), applicable specifically to Trust Shares. Therefore, those criteria would apply rather than the criteria set forth in subsections (1) through (5) of Rule 810(a), which are applicable generally to securities other than Trust Shares. However, Exchange Rule 810(c), which provides that the Exchange may at any time suspend dealings in any security from listed or unlisted trading privileges, would continue to apply. Telephone conversations between Carla Behnfeldt, Counsel, Phlx and Gordon Fuller, Special Counsel, Division of Market Regulation ("Division"), Commission, and Steven Johnston, Special Counsel, Division, Commission (October 11, 2000).

will be required to inform such non-member that execution of an order to purchase Trust Shares for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to member or member organizations. The written description must be included with any sales material on that series of Trust Shares that a member provides to the public. Moreover, other written materials provided by a member or member organization to the public making specific reference to a series of Trust Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the Trust Shares] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the Trust Shares]. In addition, upon request you may obtain from your broker a prospectus for [the Trust Shares]." Additionally, the Exchange would require that members and member organizations provide customers with a copy of the prospectus for a series of Trust Shares upon request.

Finally, Rule 803(i)(10) provides the Exchange with the discretion, in its business judgment, not to charge a listing fee for a particular series of Trust Shares. It also clarifies that certain of the listing rules designed for application to other kinds of securities will not apply to Trust Shares.<sup>9</sup>

*Trading of Trust Shares.* Dealings in Trust Shares on the Exchange would be conducted pursuant to the Exchange's general agency-auction trading rules. The general dealing and settlement rules of the Phlx would apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Transactions on the Exchange in Nasdaq-100 Index Tracking Stock will be reported to the consolidated tape.<sup>10</sup> Other generally applicable Exchange equity rules and procedures would also apply, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists.<sup>11</sup>

<sup>9</sup> Rules 847 (Annual Meetings), 849 (Audit Committee/Conflict of Interest), 850 (Shareholder Approval Policy) and 851 (Independent Directors) all contemplate a corporate governance structure that has no meaning in the context of Trust Shares.

<sup>10</sup> See Amendment No. 2.

<sup>11</sup> In SR-Phlx-99-41, which is pending before the Commission, the Phlx proposed new rules and rule amendments to accommodate the listing and trading of certain Trust Shares. As noted before, the Phlx intends to trade Trust Shares on the Nasdaq-

The Exchange is proposing procedures to govern the application of trading halts in Trust Shares. Phlx Rule 1047A currently governs trading rotations, halts and suspensions with respect to index option contracts. New Rule 136 provides that trading in Trust Shares will be halted on the same basis as trading in index options, as provided in Rule 1047A(c). Specifically, Rule 136 provides that trading on the Exchange in Trust Shares *may* be halted with the approval of two Floor Officials, with the concurrence of a Phlx Market Regulation officer, whenever trading on the primary market in underlying securities representing more than 10 percent of the current index value is halted or suspended. Trading would be *required* to be halted whenever two Floor Officials, with the concurrence of a Phlx Market Regulation officer, deem such action appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that could be considered are: (1) Whether trading has been halted or suspended in the market that is the primary market for a plurality of underlying stocks; (2) whether the current calculation of the index derived from the current market prices of the stocks is not available; or (3) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the trading of Trust Shares would be halted, along with the trading of all other listed or traded stocks, if "circuit breaker" thresholds are reached.<sup>12</sup> The Exchange would issue a circular to its members and member organizations informing them of Exchange policies regarding trading halts in such securities.

*UTP Trading of Nasdaq-100 Index Tracking Stock.* As noted above, pursuant to Rule 12f-5 under the Act,<sup>13</sup> the Exchange proposes to trade Nasdaq-100 Index Tracking Stock on a UTP basis under the proposed Trust Share rules discussed above. The Nasdaq-100 Trust is a unit investment trust sponsored by Nasdaq Investment Product Service, Inc. with a portfolio based on the component stocks of the Nasdaq-100 Index. The Exchange proposes to permit dealings in Nasdaq-

100 Index pursuant to UTP under the listing standards approved in this Order.

<sup>12</sup> See Phlx Rule 133 ("Trading Halts Due to Extraordinary Market Volatility") and Securities and Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (establishing uniform market-wide "circuit breaker" thresholds among all domestic securities exchanges, and approving SR-Phlx-98-15).

<sup>13</sup> 17 CFR 240.12f-5.

100 Tracking Stock in increments of  $\frac{1}{64}$  of \$1.00.

These shares are currently traded on the American Stock Exchange ("Amex") in increments of  $\frac{1}{64}$  of \$1.00 and, thus, the Exchange believes it is appropriate to trade these securities on the Exchange with the same minimum increment.<sup>14</sup>

Additionally, in connection with the Exchange's license agreement with the Nasdaq Stock Market ("Nasdaq") relating to, among other things, the use of the name "Nasdaq-100 Index Tracking Stock," and the disclaimers of liability relating to the Nasdaq-100 Index, the Exchange is proposing to adopt Commentary .01 to proposed Rule 803(i) to codify a rule governing disclaimers of liability relating to the Nasdaq-100 Index.<sup>15</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>16</sup> in general and furthers the objectives of Section 6(b)(5)<sup>17</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. Specifically, the proposed rule change would increase competition in unit investment trust share markets by permitting Exchange members to compete for unit investment trust share order flow. The Exchange represents that the adoption of the proposed rule change would

<sup>14</sup> See Securities Exchange Act Release No. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999), Nasdaq-100 Index Tracking Stock are also traded on a UTP basis by the Chicago Stock Exchange ("CHX"), the Boston Stock Exchange ("BSE") and the Pacific Exchange ("PCX") in increments of  $\frac{1}{64}$  of \$1.00. See Securities Exchange Act Release No. 41605 (July 7, 1999), 64 FR 38060 (July 14, 1999); Securities Exchange Act Release No. 41664 (July 27, 1999), 64 FR 42424 (August 4, 1999); and Securities Exchange Act Release No. 41712 (August 5, 1999), 64 FR 44072.

<sup>15</sup> The Phlx represents that the language of the disclaimer rule is substantially similar to BSE Chapter XXIV, Section 7, CHX Article XXVIII, Rule 25 and PCX Rule 8.300(g). The Phlx also represents that the language of the disclaimer rule is nearly identical to that adopted by Amex and approved in Securities Exchange Act Release No. 41119 (February 26, 1999), 64 FR 11510; and Securities Exchange Act Release No. 41562 (June 25, 1999), 64 FR 36057 (July 2, 1999).

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

result in increased efficiency and price competition in those markets.

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

The Phlx does not believe that the proposed rule change would 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 Phlx has requested that the proposed rule change, as amended, be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

### **IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).<sup>18</sup>

A Trust Share is an interest in a Trust holding a portfolio of securities linked to an index. Each Trust is intended to provide investors with an instrument that closely tracks the underlying securities index or portfolio, trades like a share of common stock, and pays holders a periodic cash payment proportionate to the dividends paid on the underlying portfolio of securities.<sup>19</sup> The definition of Trust Share is therefore substantively identical to the definition of PDRs or IPRs as those definitions appear in the previously approved rules of the Amex and CBOE, respectively.<sup>20</sup> The Phlx rule change proposal itself is also substantively identical to proposals filed by CBOE, BSE, CHX, and PCX, and approved by the Commission.<sup>21</sup> Therefore, this

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> In approving this rule, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>20</sup> See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (approving Amex Rules 1000 *et seq.* regarding listing standards for PDRs); Securities Exchange Act Release No. 39581 (January 26, 1998), 63 FR 5579 (February 3, 1998) (approving CBOE rules regarding listing standards for IPRs).

<sup>21</sup> See Securities Exchange Act Release No. 39581 (January 26, 1998), 63 FR 5579 (February 3, 1998) (approving CBOE rules regarding listing and trading standards for IPRs); Securities Exchange Act

proposal raises no new regulatory issues.

Moreover, the Commission believes that Amendment Nos. 1 and 2 are reasonable. Specifically, the new rule language regarding hours of trading, and the undertaking by Phlx to report transactions in Trust Shares to the Phlx consolidated tape, brings the proposal into conformity with the Amex's listing standards for PDRs, which the Commission previously approved.<sup>22</sup> In addition, the Commission believes that it is reasonable for the Phlx to amend its PACE rule to provide automatic price improvement for trades in Nasdaq-100 Index Tracking Stock in increments of  $\frac{1}{64}$  (instead of  $\frac{1}{16}$ ) where the Pace Quote<sup>23</sup> is  $\frac{1}{16}$  (instead of  $\frac{3}{16}$  to  $\frac{1}{8}$ ) or greater. These changes are appropriate because Nasdaq-100 Index Tracking Stock currently trades in increments of  $\frac{1}{64}$  instead of  $\frac{1}{16}$ .

The Commission emphasizes that this Order only approves the trading of Nasdaq-100 Index Tracking Stock under the listing standards approved herein. If the Phlx wishes to list and trade additional series of Trust Shares, it may be required to file a proposed rule change with the Commission under Section 19(b)(1) of the Act.<sup>24</sup>

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 thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act<sup>25</sup> in order to expand investor choice and encourage competition among exchanges for order flow related to essential identical securities products.

### **V. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities

Release No. 39660 (February 12, 1998), 63 FR 9026 (February 23, 1998) (approving BSE rules regarding listing and trading standards for PDRs); Securities Exchange Act Release No. 39076 (September 15, 1997), 62 FR 49270 (September 19, 1997) (approving CSE rules regarding listing and trading standards for PDRs); and Securities Exchange Act Release No. 39461 (December 17, 1997), 62 FR 67674 (December 29, 1997) (approving PCX rules relating to listing and trading standards for PDRs).

<sup>22</sup> See *supra* note 20.

<sup>23</sup> Phlx Rule 229 defines the PACE Quote as the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific or Philadelphia Stock Exchanges, or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote, as appropriate.

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> *Id.*

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-00-54 and should be submitted by January 12, 2001.

### **VI. Conclusion**

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act<sup>26</sup> that SR-Phlx-00-54 is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>27</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## **SMALL BUSINESS ADMINISTRATION**

### **Global Environment Strategic Technology Partners, L.P. (Applicant No. 99000410); Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest**

Notice is hereby given that Global Environment Strategic Technology Partners, L.P., 1225 Eye Street, NW., Suite 900 Washington DC 20005, 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, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). Global Environment Strategic Technology Partners, L.P., proposes to provide equity financing to Athena Technologies, Inc., 9950 Wakeman Drive Manassas Virginia 20110. The financing is contemplated for research and development.

<sup>26</sup> *Id.*

<sup>27</sup> 17 CFR 200.30-3(a)(12).