

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46307; File No. SR-Phlx-2002-43]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Increase in the Maximum Guaranteed Size for AUTO-X Eligible Orders in Options on the Nasdaq-100 Index Tracking Stock ("QQQ")<sup>SM</sup> From 250 Contracts to 1,000 Contracts

August 2, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 29, 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. The proposed rule change has been filed by the Exchange as a "non-controversial" rule change under Rule 19-4(f)(6).<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 Exchange proposes to amend Phlx Rule 1080, which governs the Exchange's Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X),<sup>4</sup> to provide that, with respect to options overlying the Nasdaq-100 Index Tracking Stock ("QQQ")<sup>SM</sup>,<sup>5</sup> orders of up to 1,000

contracts would be eligible for automatic execution via AUTO-X.

#### 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.

##### 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 increase the maximum order size eligibility for AUTO-X in QQQ<sup>SM</sup> options from 250 to 1,000 contracts<sup>6</sup> to match the size of orders in the same options eligible for AUTO-X on another options exchange.<sup>7</sup>

Currently, orders are routed through AUTOM from member firms directly to the appropriate specialist on the trading floor. Public customer market orders and marketable limit orders routed through AUTOM that are eligible for

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>6</sup> Currently, the maximum option order size eligible for automatic execution via AUTO-X is 250 contracts for all options, including QQQ<sup>SM</sup> options. See Phlx Rule 1080(c).

<sup>7</sup> Phlx Rule 1080(c) provides that The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO-X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Commission pursuant to Section 19(b)(3)(A) of the Act. 15 U.S.C. 78s(b)(3)(A). The Exchange notes that the American Stock Exchange LLC ("Amex") allows automatic executions in QQQ<sup>SM</sup> options for a size of up to 2,000 contracts in series in the two near-term expiration months, and up to 1,000 contracts in all other expiration months. See Amex Rule 933. Commentary .02. See also Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002) (SR-Amex-2002-30). Because the Amex rule allows automatic executions in QQQ<sup>SM</sup> options for up to at least 1,000 contracts in, all series, the Exchange proposes to match the 1,000 contract AUTO-X guarantee for QQQ<sup>SM</sup> options in all series.

AUTO-X are automatically executed at the disseminated quotation price on the Exchange and reported back to the originating firm.<sup>8</sup>

Because AUTO-X affords prompt and efficient automatic executions at the displayed price, the Exchange believes that the proposed increase in automatic execution levels for eligible orders in QQQ<sup>SM</sup> options from 250 to 1,000 contracts should provide the benefits of automatic execution to a larger number of customer orders. The Exchange further believes that the proposed increase in automatic execution levels in QQQ<sup>SM</sup> options should enable the Exchange to remain competitive for order flow with other exchanges that trade QQQ<sup>SM</sup> options.

The Exchange notes that there are many safeguards incorporated into its rules to ensure the proper handling of AUTO-X orders. First, Phlx Rule 1080(f)(iii) states that a specialist is responsible for the remainder of an AUTOM order where a partial execution occurred. Phlx Rule 1015 governs execution guarantees and requires the trading crowd to ensure that public orders are filled at the best market to a minimum of the disseminated size. Violations of any of these provisions could be referred to the Business Conduct Committee for disciplinary action.

Registered Options Traders ("ROTS") have discretion to participate on the Wheel that allocates AUTO-X trades among specialists and ROTs.<sup>9</sup> Consequently, an increase in the maximum AUTO-X order size in QQQ<sup>SM</sup> options would not prevent a ROT from declining to participate on the Wheel. Because the Wheel currently rotates in two-lot to ten-lot increments depending upon the size of the order,<sup>10</sup> no single ROT would be allocated the entire 1,000 contracts. The Exchange also has procedures that allow specialists to disengage AUTO-X in extraordinary circumstances and provide that AUTOM users will be notified of such circumstances.<sup>11</sup>

With respect to issues involving financial responsibility, the Exchange notes that its rules provide a minimum net capital requirement for ROTs.<sup>12</sup> In addition, a ROT's clearing firm performs risk management functions to ensure that the ROT has sufficient financial resources to cover positions throughout the day. In this regard, the function

<sup>8</sup> See Phlx Rule 1080(c).

<sup>9</sup> Unlike ROTs, specialists are required to participate on the Wheel. See Phlx Rule 1080(g).

<sup>10</sup> See Phlx Options Floor Procedure Advice ("OFPA") F-24(e)(i).

<sup>11</sup> See Phlx OFPA A-13 and Phlx Rule 1080(e).

<sup>12</sup> See Phlx Rule 703.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

<sup>5</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 Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the "Index") is determined, composed, and

includes real-time monitoring of positions. Further, the Exchange believes that clearing firm procedures address the issue of whether a ROT has the financial capability to support the AUTO-X trading of orders in QQQ<sup>SM</sup> options as large as 1,000 contracts.

The Exchange believes that automatic execution of orders in QQQ<sup>SM</sup> options for up to 1,000 contracts should provide AUTOM customers with quicker, more efficient executions for a larger number of orders, by providing automatic rather than manual executions, thereby reducing the amount of orders subject to manual processing. Further, increasing the AUTO-X maximum order size in QQQ<sup>SM</sup> options should not impose a significant burden on operation or capacity of the AUTOM System and will give the Exchange better means of competing with other options exchanges for order flow.

2. Basis

For the reasons stated above, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>13</sup> in general, and in particular, with Section 6(b)(5),<sup>14</sup> in that it is designed 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<sup>SM</sup> of a free and open market and a national market system, as well as to protect investors and the public interest by enhancing efficiency by providing automatic executions to a larger number of options orders.

*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 has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder<sup>16</sup> because the proposed rule

change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of the filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.<sup>17</sup>

At any time within 60 days of the filing of such 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.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative date is consistent with the protection of investors and the public interest. The Commission also notes that a similar proposal was implemented by the Amex.<sup>18</sup> Acceleration of the operative date for this filing will enable the Phlx to compete on an equal basis with other exchanges and thus is consistent with Section 6(b)(8) of the Act.<sup>19</sup> For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.

**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

impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>17</sup> The Commission has determined to waive the requirement the Phlx provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

<sup>18</sup> 18 See note 7, supra.

<sup>19</sup> 19 15 U.S.C. 78f(b)(8).

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-2002-43 and should be submitted by September 3, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

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

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**BILLING CODE 8010-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster #3437]**

**State of California; Disaster Loan Areas**

Kern County and the contiguous counties of Inyo, Kings, Los Angeles, San Bernardino, San Luis Obispo, Santa Barbara, Tulare and Ventura in the State of California constitute a disaster area as a result of a wildfire that occurred on July 21, 2002 in the Deer Point area of Bodfish and Lake Isabella, California. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 4, 2002, and for economic injury until the close of business on May 5, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853-4795.

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

<sup>20</sup> 20 17 CFR 200.30-3(a)(12).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6). For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's