

affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days from the date of filing. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. Accordingly, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ At any time within 60 days after 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.

PCX has also requested that the Commission waive the 30-day waiting period so that the proposed rule change may become operative immediately. The proposed Primary Only Order, as amended, promotes a more efficient and effective market operation, and enhances the investment choices available to Users in the handling of their orders. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day waiting period.¹⁰ For these reasons, the Commission designates the proposal as operative immediately.

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 PCX. All submissions should refer to File No. PCX-2002-58 and should be submitted by November 5, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-26155 Filed 10-11-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46615; File No. SR-Phlx-2002-58]

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

October 8, 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 October 1, 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 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 continue to exempt transactions 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") beginning October 4, 2002, for a period of 30 days ending on November 3, 2002.³ The text of the proposed rule change is available

at the Office of the Secretary, Phlx 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend a current limited exemption from Phlx Rule 229.10(a)(iii), with such extension beginning October 4, 2002 and ending on November 3, 2002. The exemption applies to the ETFs tracking the Nasdaq-100 Index ("QQQs"), the Dow Jones Industrial Average ("DIAMONDS"), and the Standard & Poor's 500 Index ("SPDRs").⁴ The exemption would correlate with a recent exemption from the ITS Plan issued by the Commission (the "ITS Exemption").⁵

As discussed in the Exchange's earlier proposed rule change to temporarily adopt the exemption until October 4,

⁴ 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 Philadelphia Stock Exchange 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.

⁵ See Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 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.).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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.

2002,⁶ Section .10(a)(iii) provides generally that if 100 or more shares print through the limit price on any exchange(s) eligible to compose the PACE Quote⁷ 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.⁸ The Exchange's earlier proposed rule change provided a limited exemption from this requirement. The limited exemption by its terms expires on October 4, 2002. The Exchange is now proposing to extend the effectiveness of the exemption until November 3, 2002.

Phlx Rule 229.10(a)(iii) requires a Phlx specialist to execute certain orders that are traded-through by another market center. Prior to the Commission's issuance of the ITS Exemption, 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.

⁶ See Securities Exchange Act Release No. 46481 (September 10, 2002), 67 FR 58669 (September 17, 2002) (File No. SR-Phlx-2002-48).

⁷ 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.

⁸ 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.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act⁹ in general and furthers the objectives of Section 6(b)(5)¹⁰ 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 Act¹¹ and subparagraph (f)(1) of Rule 19b-4 thereunder.¹²

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.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A)(i).

¹² 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-2002-58 and should be submitted by November 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3452]

State of Louisiana

As a result of the President's major disaster declaration on October 3, 2002, I find that Acadia, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu, Cameron, Evangeline, Iberia, Iberville, Jefferson Davis, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne and Vermillion Parishes in the State of Louisiana constitute a disaster area due to damages caused by Hurricane Lili occurring on October 1, 2002, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 2, 2002 and for economic injury until the close of business on July 3, 2003 at the address

¹³ 17 CFR 200.30-3(a)(12).