

shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and Rule 19b-4(f)(6)<sup>13</sup> thereunder.<sup>14</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx seeks to have the proposed rule change become operative immediately upon filing so that the Exchange may remain competitive with other exchanges with similar rules in effect.

The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date and make the proposed rule change operative immediately upon filing, in order to allow the Phlx to compete for broker-dealer orders by removing any distinction between broker-dealer and customer orders with respect to the size for which the Exchange is firm at its disseminated price and the Exchange's guaranteed AUTO-X size.<sup>15</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.

#### IV. 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 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-2003-18 and should be submitted by May 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-9034 Filed 4-11-03; 8:45 am]

**BILLING CODE 8010-01-P**

therein by an Exchange market maker or over-the-counter ("OTC") market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

<sup>5</sup> Dow Jones®, "The Dow<sup>SM</sup>," "Dow 30<sup>SM</sup>," "Dow Jones Industrial Average<sup>SM</sup>," "Dow Jones Industrials<sup>SM</sup>," "DJIA<sup>SM</sup>," "DIAMONDS®" and "The Market's Measure®" are trademarks of Dow Jones & Company, Inc. ("Dow Jones") and have been licensed for use for certain purposes by the Philadelphia Stock Exchange, Inc., pursuant to a License Agreement with Dow Jones. The DIAMONDS Trust, based on the DJIA, is not sponsored, endorsed, sold or promoted by Dow

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47647; File No. SR-Phlx-2003-20]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Adopt a License Fee for Transactions in DIAMONDS® Exchange Traded Funds

April 8, 2003.

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 March 28, 2003, 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 and II below, which Items have been prepared by the Exchange. 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 its Summary of Equity Charges to adopt a license fee of \$0.00025 per share per trade side for sides greater than 500 shares, with no maximum fee per trade side charged to Non-PACE Customers<sup>3</sup> and Electronic Communications Networks ("ECNs"),<sup>4</sup> and a license fee of \$0.0005 per share per trade side, with no maximum fee per trade side charged to specialists for transactions on the Phlx in the DIAMONDS® Exchange Traded Funds ("DIAMONDS").<sup>5</sup> The Exchange also proposes to make minor, technical changes to its equity fee

Jones, and Dow Jones makes no representation regarding the advisability of investing in the DIAMONDS Trust.

<sup>6</sup> These charges may include equity transaction charges, an equity floor brokerage assessment, an equity floor brokerage transaction fee, an off-Exchange trade information fee, an SEC fee, a remote information access fee, an Electronic Communications Network fee, an outbound Inter-Market Trading System ("ITS") fee and a net inbound ITS credit. Additionally, the PACE Specialist charge does not apply because specialists are not eligible for further PACE volume discounts. See Securities Exchange Act No. 44259 (May 4, 2001), 66 FR 23962 (May 10, 2001) (SR-Phlx-2001-41).

<sup>7</sup> The license fees will not be eligible for the monthly credit of up to \$1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR-Phlx-2001-49).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>17</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> PACE is the acronym for the Exchange's Automated Communication and Execution System, which is the Exchange's order routing, delivery, execution and reporting system for its equity trading floor. See Exchange Rules 229 and 229A.

<sup>4</sup> ECNs shall mean any electronic system that widely disseminates to third parties orders entered

schedule to make corresponding references to the proposed fees. All other equity charges currently assessed

by the Phlx will be imposed where applicable.<sup>6</sup> The Exchange proposes to implement this fee as of April 1, 2003, the date that it began trading in the DIAMONDS.<sup>7</sup>

Text of the proposed rule change is set forth below. New text is in italics. Deleted text is in brackets.

**Summary of Equity Charges (p 1/3)\***

**EQUITY TRANSACTION CHARGE I**

[Based on total shares per transaction with the exception of specialist trades and PACE trades.<sup>1</sup>]

Monthly transaction value	Rate per share
First 500 shares .....	\$0.00
Next 2,000 shares .....	0.0075
Next 7,500 shares .....	0.005
Remaining shares .....	0.004
\$50 maximum fee per trade side.	

**License Fee**

SPDRs, Standard & Poor's Depository Receipts\*\*

Customer Non-PACE and Electronic Communications Network<sup>E</sup> ("ECN") License Fee:

\$0.00025 per share per trade side for sides greater than 500 shares

No maximum fee per trade side

Specialist License Fee:

\$0.00035 per share per trade side

No maximum fee per trade side

DIAMONDS® Exchange Traded Funds\*\*

Customer Non-PACE and Electronic Communications Network<sup>E</sup> ("ECN") License Fee:

*\$0.00025 per share per trade side for sides greater than 500 shares*

*No maximum fee per trade side*

Specialist License Fee:

*\$0.0005 per share per trade side*

*No maximum fee per trade side*

See Appendix A for additional fees.

I denotes fee eligible for monthly credit of up to \$1,000.

\* Not applicable to transactions in Nasdaq-100 Index Tracking Stock<sup>SM</sup> (see page 4 for fees).

**Summary of Equity Charges (p 2/3)\***

**PACE Specialist Charge<sup>2</sup> I**

\$.20 per PHLX Specialist Trade against PACE Executions (Not applicable to PACE trades on the opening)

**Equity Floor Brokerage Assessment I**

\$250 monthly charge<sup>3</sup>

**Equity Floor Brokerage Transaction Fee I**

\$.05 per 100 shares or fraction thereof, for floor broker executing transactions for their own member firms.

**SEC Fee**

The amount shall be determined by Section 31 of the Securities Exchange Act of 1934.

**Off-Exchange Trade Information Fee I**

\$.10 per DOT trade

**Remote Information Access Fee I**

\$300.00 per month

**Electronic Communications Network<sup>E</sup> ("ECN") Fee**

\$2,500.00 per month (in lieu of equity transaction charges)

**Outbound ITS Fee I (also applicable to transactions in Nasdaq-100 Index Tracking Stock<sup>SM</sup>)<sup>4</sup>**

For PACE orders sent over ITS with the customer information attached:

500 shares or less ..... \$0.60 per 100 shares.

501 to 4,999 shares ..... 0.30 per 100 shares.

**Summary of Equity Charges (p 3/3)**

<sup>3</sup> PACE is the acronym for the Exchange's Automated Communication and Execution System, which is the Exchange's order routing, delivery, execution and reporting system for its equity trading floor. See Exchange Rules 229 and 229A.

<sup>4</sup> ECNs shall mean any electronic system that widely disseminates to third parties orders entered

therein by an Exchange market maker or over-the-counter ("OTC") market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism

and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

Net Inbound ITS Credit (also applicable to transactions in Nasdaq-100 Index Tracking Stock<sup>SM</sup>)<sup>5</sup>

\$0.30 per 100 shares on the excess, if any, of the number of inbound ITS shares executed over the number of outbound ITS shares sent and executed on a monthly basis.

See Appendix A for additional fees.

I denotes fee eligible for monthly credit of up to \$1,000.

\* Not applicable to transactions in Nasdaq-100 Index Tracking Stock<sup>SM</sup> (see next page for fees).

<sup>E</sup>ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter ("OTC") market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: Any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

Any fees, credits, discounts and other charges in the Exchange's fee schedule which are based upon an equity specialist's specialist activity apply to competing specialists.

\*\* "Standard & Poor's," "S&P," "S&P 500," "Standard & Poor's 500," and "500" are trademarks of The McGraw-Hill Companies, Inc., and have been licensed for use by the Philadelphia Stock Exchange, Inc., in connection with the listing and trading of SPDRs, on the Phlx. These products are not sponsored, sold or endorsed by S&P, a division of The McGraw-Hill Companies, Inc., and S&P makes no representation regarding the advisability of investing SPDRs.

\*\* "Dow Jones," "The Dow," "Dow 30," "Dow Jones Industrial Average," "Dow Jones Industrials," "DJIA," "DIAMONDS" and "The Market's Measure" are trademarks of Dow Jones & Company, Inc. ("Dow Jones") and have been licensed for use for certain purposes by the Philadelphia Stock Exchange, Inc., pursuant to a License Agreement with Dow Jones. The DIAMONDS Trust, based on the DJIA, is not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in the DIAMONDS Trust.

<sup>1</sup> However, this charge applies where an order, after being delivered to the Exchange by the PACE system is executed by the specialist by way of an outbound commitment, when such outbound ITS commitment reflects the PACE order's clearing information, but does not apply where a PACE trade was executed against an inbound ITS commitment.

<sup>2</sup> This charge does not apply to transactions in Nasdaq-100 Index Tracking Stock<sup>SM</sup> [and] SPDRs and DIAMONDS.

<sup>3</sup> Applies to each member who derives at least 80% of gross income generated from Phlx floor based activities from his/her floor brokerage business conducted on the Exchange. Floor brokerage business conducted on the Exchange includes orders that are received on the Phlx, even if those orders are executed on an exchange other than the Phlx. The 5% floor brokerage assessment is waived until Dec. 31, 2003 and is scheduled to be reinstated Jan. 1, 2004.

<sup>4</sup> This fee will only apply when the specialist sends an order received over PACE to ITS and receives an execution, if the specialist used the PACE customer's clearing information on the outbound ITS commitment.

<sup>5</sup> This credit will include all inbound and outbound ITS executions, including both PACE and non-PACE and both proprietary and customer commitments.

\* \* \* \* \*

## 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 III 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 adopt a license fee that will apply to trading DIAMONDS on the Exchange. The Exchange recently determined to begin trading DIAMONDS. The license fees should help off-set licensing fees incurred by the Exchange associated with the trading of these products on the Exchange.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange believes that charging members that trade these products a licensing fee is an equitable means of recovering a portion of the licensing fees incurred by the Exchange.<sup>10</sup>

<sup>5</sup> Dow Jones®, "The Dow<sup>SM</sup>," "Dow 30<sup>SM</sup>," "Dow Jones Industrial Average<sup>SM</sup>," "Dow Jones Industrials<sup>SM</sup>," "DJIA<sup>SM</sup>," "DIAMONDS®" and "The Market's Measure®" are trademarks of Dow Jones & Company, Inc. ("Dow Jones") and have been licensed for use for certain purposes by the Philadelphia Stock Exchange, Inc., pursuant to a License Agreement with Dow Jones. The DIAMONDS Trust, based on the DJIA, is not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in the DIAMONDS Trust.

<sup>6</sup> These charges may include equity transaction charges, an equity floor brokerage assessment, an equity floor brokerage transaction fee, an off-Exchange trade information fee, a SEC fee, a remote information access fee, an Electronic Communications Network fee, an outbound Inter-Market Trading System ("ITS") fee and a net inbound ITS credit. Additionally, the PACE Specialist charge does not apply because specialists are not eligible for further PACE volume discounts. See Securities Exchange Act No. 44259 (May 4, 2001), 66 FR 23962 (May 10, 2001) (SR-Phlx-2001-41).

<sup>7</sup> The license fees will not be eligible for the

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

The Exchange 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 establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and Rule 19b-4(f)(2) thereunder.<sup>12</sup> At any

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> With regard to the distinction between Customer PACE and Non-PACE license fees, the Exchange states that it is consistent with its current practice to not impose customer charges for equity transactions delivered through PACE, but to impose customer charges for Non-PACE executions. See, e.g., Securities Exchange Act Release Nos. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR-Phlx-2003-06); 44381 (June 1, 2001), 66 FR 31264 (June 11, 2001) (SR-Phlx-2001-57); and 43776 (December 28, 2000), 66 FR 1166 (January 5, 2001) (SR-Phlx-2000-103). Also, consistent with its current practice, the Exchange charges customer transaction fees and specialist transaction fees at different rates. See, e.g., Securities Exchange Act

Continued

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 purpose 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-2003-20 and should be submitted by May 5, 2003.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-9035 Filed 4-11-03; 8:45 am]

**BILLING CODE 8010-01-P**

#### SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3483]

#### State of West Virginia; Amendment # 2

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective April 4, 2003, the above numbered declaration is hereby amended to include Braxton, Harrison, Lewis, Logan, Monroe and Putnam Counties in the State of West Virginia as disaster areas due to

damages caused by a severe winter storm, record snow, heavy rains, flooding and landslides occurring on February 16, 2003, and continuing through March 28, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Doddridge, Marion, Taylor and Wetzel in the State of West Virginia; and Craig County in the Commonwealth of Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is May 13, 2003, and for economic injury the deadline is December 15, 2003.

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

Dated: April 7, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03-9056 Filed 4-11-03; 8:45 am]

**BILLING CODE 8025-01-P**

#### DEPARTMENT OF STATE

##### Office of Visa Services

[Public Notice 4333]

#### 60-Day Notice of Proposed Information Collection: Form DS-3052, Nonimmigrant V Visa Application; OMB Control Number 1405-0128

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

*Type of Request:* Extension of currently approved collection.

*Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).

*Title of Information Collection:* Nonimmigrant V Visa Application.

*Frequency:* Once per respondent.

*Form Number:* DS-3052.

*Respondents:* Nonimmigrant visa applicants applying for a V visa.

*Estimated Number of Respondents:* 100,000 per year.

*Average Hours Per Response:* 1 hour.  
*Total Estimated Burden:* 100,000 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

*For Additional Information:* Public comments, or requests for additional information regarding the collection listed in this notice should be directed to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St., NW., RM L-703, Washington, DC 20520, who may be reached at 202-663-1163.

Dated: March 24, 2003.

**Janice L. Jacobs,**

*Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.*

[FR Doc. 03-9053 Filed 4-11-03; 8:45 am]

**BILLING CODE 4710-06-P**

#### DEPARTMENT OF STATE

##### Office of Recruitment, Examinations and Employment (HR/REE)

[Public Notice 4334]

#### 60-Day Notice of Proposed Information Collection: Form DS-1998, Department of State Registration Form; OMB Control Number 1405-0008

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. The process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

*Type of Request:* Continuation of a currently approved collection.