

Rule 19b-4(f)(1)<sup>12</sup> thereunder. 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 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2004-24 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2004-24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

should refer to File Number SR-Phlx-2004-24 and should be submitted on or before June 9, 2004.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49697; File No. SR-Phlx-2004-18]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Make Permanent a Pilot Program Relating to the Book Sweep Function of the Exchange's Automated Options Market System

May 13, 2004.

#### I. Introduction

On March 1, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change 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> to make permanent a pilot program relating to a current enhancement to the Exchange's Automated Options Market ("AUTOM") System,<sup>3</sup> which is designed to automatically execute limit orders on the book when the bid or offer generated by the Exchange's Auto-Quote<sup>4</sup> system (or by a proprietary quoting system called "Specialized Quote Feed" or "SQF")<sup>5</sup> locks or crosses a limit order on the book, thus rendering such limit order marketable. The proposed rule change was published for comment in

the **Federal Register** on March 11, 2004.<sup>6</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description

On September 29, 2003, the Commission approved a six-month pilot enhancement to the Exchange's AUTOM system, called Book Sweep.<sup>7</sup> The Book Sweep pilot was subsequently extended until the earlier of July 1, 2004 or such time as the Commission approves the Book Sweep feature on a permanent basis.<sup>8</sup> The Exchange now seeks permanent approval of the Book Sweep pilot.

Book Sweep allows certain orders resting on the limit order book<sup>9</sup> to be automatically executed when the bid or offer generated by the Exchange's Auto-Quote system (or by the SQF) locks (*i.e.*, \$1.00 bid, \$1.00 offer) or crosses (*i.e.*, \$1.05 bid, \$1.00 offer) the Exchange's best bid or offer in a particular series as established by an order on the limit order book. Orders executed by the Book Sweep feature are allocated among crowd participants participating on the Wheel.<sup>10</sup> If Book Sweep is not engaged at the time the Auto-Quote or SQF bid or offer matches or crosses the Exchange's best bid or offer as represented by a limit order on the book,<sup>11</sup> the specialist may manually engage Book Sweep so that certain orders in the limit order book can be automatically executed. Prior to the deployment of Book Sweep, when the Auto-Quote or SQF bid or offer locked or crossed a booked order, the specialist handled the execution manually after being alerted by the system that one or more limit orders on the book have

<sup>6</sup> See Securities Exchange Act Release No. 49365 (March 4, 2004), 69 FR 11690.

<sup>7</sup> See Securities Exchange Act Release No. 48563 (September 29, 2003), 68 FR 57724 (October 6, 2003) (SR-Phlx-2003-30).

<sup>8</sup> See Securities Exchange Act Release No. 49459 (March 23, 2004), 69 FR 16629 (March 30, 2004) (SR-Phlx-2004-21).

<sup>9</sup> The electronic "limit order book" is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. See Exchange Rule 1080, Commentary .02.

<sup>10</sup> The "Wheel" is a feature of AUTOM that allocates contra-party participation respecting automatically executed trades among the specialist and registered options traders signed onto the Wheel for that listed option. See Exchange Rule 1080(g). See also Option Floor Procedure Advice F-24.

<sup>11</sup> Book Sweep would be engaged when AUTO-X is engaged, and would be disengaged when AUTO-X is disengaged. See Exchange Rule 1080(c)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(1).

<sup>13</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> AUTOM is the Exchange's electronic order delivery, routing, execution 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 features. 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>4</sup> Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations. See Exchange Rule 1080, Commentary .01(a).

<sup>5</sup> See Exchange Rule 1080, Commentary .01(b)(i).

become marketable and are due an execution.

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 of the Act.<sup>12</sup> Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.<sup>13</sup>

The Commission notes that permanent approval of Book Sweep, which has been operating on a pilot basis for over six months, should help facilitate the more efficient execution of orders when Auto-Quote or SQF locks or crosses the Exchange's best bid or offer in a series, as established by an order on the limit order book. The Commission notes that the Exchange's Book Sweep system is similar to systems that the Commission has previously approved for use on other exchanges.<sup>14</sup> In addition, the Commission notes that the proposed rule change does not alter Phlx members' duty to comply with the Commission's rule relating to the firmness of quotations.<sup>15</sup> The trading crowd, as the responsible broker or dealer, would continue to be required to honor its disseminated quote.

### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-Phlx-2004-18) be, and it hereby is, approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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<sup>12</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See, e.g., Securities Exchange Act Release No. 44462 (June 21, 2001), 66 FR 34495 (June 28, 2001) (SR-CBOE-00-22) (Order approving CBOE Autoquote Triggered EBook Execution system).

<sup>15</sup> 17 CFR 240.11Ac1-1.

<sup>16</sup> 15 U.S.C. 78s(b)(2).

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49693; File No. SR-Phlx-2004-30]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Specialist Unit Fixed Monthly Fees

May 12, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 30, 2004, 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. The proposed rule change has been filed by the Phlx as establishing or changing a due, fee, or other charge, pursuant to section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission. 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 amend its schedule of dues, fees and charges to cap the current specialist unit fixed monthly fee ("fixed monthly fee")<sup>5</sup> at \$310,000 per specialist unit per month for transactions settling on May 1, 2004 through August 31, 2004. The proposed \$310,000 monthly fee cap would not include the Nasdaq-100 Index Tracking Stock ("QQQ")<sup>SM</sup> license fee of

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

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

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

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

<sup>5</sup> See Securities Exchange Act Release No. 49467 (March 24, 2004), 69 FR 17017 (March 31, 2004) (SR-Phlx-2004-17).

<sup>6</sup> The Nasdaq-100<sup>®</sup>, Nasdaq-100 Index<sup>®</sup>, Nasdaq<sup>®</sup>, The Nasdaq Stock Market<sup>®</sup>, 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 Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index<sup>®</sup> (the Index) is determined, composed, and 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.

\$0.10 per contract side for specialist unit transactions in the QQQ equity options.

Currently, the Exchange offers specialist units<sup>7</sup> the opportunity to elect to pay a fixed monthly fee in lieu of paying fees currently in effect for equity option and index option transaction charges and the equity option specialist deficit (shortfall) fee ("shortfall fee").<sup>8</sup> In addition to the fixed monthly fee, a \$0.10 charge per contract side for specialist unit transactions in the QQQ equity options ("QQQ license fee") is imposed, if applicable, if the specialist unit elects to pay the fixed monthly fee.<sup>9</sup> The current fixed monthly fee and QQQ license fee are scheduled to be in effect through August 31, 2004.<sup>10</sup> Pursuant to this proposal, specialist units that have elected to pay the fixed monthly fee as described above and reach the proposed \$310,000 monthly fee cap would pay \$310,000 per month plus a QQQ license fee, if applicable.

#### 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 IV below. The Phlx 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 limit the amount of fixed monthly fees incurred per specialist unit per month. The current fixed monthly fee and the proposed \$310,000 monthly fee cap should create an

<sup>7</sup> The Exchange uses the terms "specialist" and "specialist unit" interchangeably herein.

<sup>8</sup> The fixed monthly fee program does not affect additional charges, such as non-transaction and membership-related charges listed on Appendix A of the Exchange's schedule of dues, fees and charges. See Securities Exchange Act Release Nos. 48459 (September 8, 2003), 68 FR 54034 (September 15, 2003) (SR-Phlx-2003-61); and 49467 (March 24, 2004), 69 FR 17017 (March 31, 2004) (SR-Phlx-2004-17).

<sup>9</sup> The \$0.10 fee does not apply if the specialist unit elects to pay the current equity option and index option transaction charges and the applicable shortfall fees.

<sup>10</sup> See Securities Exchange Act Release No. 49467 (March 24, 2004), 69 FR 17017 (March 31, 2004) (SR-Phlx-2004-17).