

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51179; File No. SR-Phlx-2004-95)

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Relating to Limitation of the Net Inbound ITS Credit to Certain Phlx and SCCP Fees and Transaction-Related Charges

February 9, 2005

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 December 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 and II below, which Items have been prepared by the Phlx. On January 24, 2005, the Exchange filed Amendment No. 1.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to revise its schedule of fees to limit the Net Inbound Intermarket Trading System ("ITS")⁴ Credit ("ITS Credit")⁵ to certain Phlx and Stock Clearing Corporation

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 clarified certain terminology used in the proposed rule change and slightly changed the text of the rule.

⁴ ITS is an order routing network designed to facilitate intermarket trading in exchange-listed equity securities among participating self-regulatory organizations based on current quotation information emanating from their markets.

⁵ Currently, the ITS Credit (which is calculated on a monthly basis) is: \$0.30 per 100 shares on the excess, if any, of the number of inbound ITS shares executed compared to the number of outbound ITS shares sent and executed on a monthly basis. The outbound ITS fee ("Outbound ITS Fee") for PACE orders (PACE is the Exchange's electronic order routing, delivery, execution, and reporting system for equities) sent over ITS and

of Philadelphia (“SCCP”)⁶ fees and transaction-related charges. Specifically, the proposal limits the ITS Credit to the amount of Phlx Permit Fees, Phlx Outbound ITS Fees, SCCP Trade Recording Fees, SCCP Value Fees, SCCP Transaction Charges (Remote Specialist Only), SCCP ETF Fees (related to NASDAQ-100 Trust, Series 1 (“QQQ”),⁷ Standard & Poor’s Depository Receipts® (“SPDRs”),⁸ and DIAMONDS® Exchange Traded Funds (“DIAMONDS®”))⁹ incurred in the same month that the credit is earned.¹⁰ On a monthly basis, ITS Credit in excess of the amount charged for the fees may not be used for any other purpose and may not be carried

containing customer clearing information is: \$0.60 per 100 shares for up to 501 shares and \$0.30 per 100 shares for 501 to 4,999 shares. See Securities Exchange Act Release No. 45388 (February 4, 2002), 67 FR 6310 (February 11, 2002) (SR-Phlx-2001-121).

⁶ SCCP, a subsidiary of Phlx, is a registered clearing agency.

⁷ 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 Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-200 Index® (“Index”) is determined, composed, and calculated by Nasdaq without regard to the licensee of the product, 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.

⁸ “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 Phlx, in connection with the listing and trading of SPDRs, on the Phlx. These products are not sponsored, sold or endorsed by Standard & Poor’s (“S&P”), a division of The McGraw-Hill Companies, Inc., and S&P makes no representation regarding the advisability of investing SPDRs.

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¹⁰ SCCP is simultaneously submitting a proposed rule change that adds reference to the ITS Credit in the SCCP Fee Schedule and also renames fees related to certain products as “ETF Fees.” See SR-SCCP-2004-05.

forward.¹¹ The proposed amendment is scheduled to become effective for transactions occurring in February, 2005.

The text of the proposed rule change is available on the Phlx's Web site <http://www.phlx.com>, at the Phlx's Office of the Secretary, and at the Commission's Public Reference Room.

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 continue encouraging ITS trades by allowing equity specialists to get an ITS Credit, but to limit the credit in a reasonable fashion so as not to financially burden the Exchange, particularly in light of the change in equity business on the Exchange. Specifically, while the current ITS Fee and ITS Credit methodology was practical when instituted in 2002,¹² the equity business mix on the Exchange has changed, such

¹¹ Thus, for example, if an equity specialist had a monthly ITS Credit of \$30,000 and monthly Phlx and SCCP charges that were eligible to be reduced by the ITS Credit of \$5,000 and \$20,000, respectively, the equity specialist would receive a credit of \$25,000, and the unused credit amount of \$5,000 could not be used for any purpose.

¹² See Securities Exchange Act Release No. 45388 (February 4, 2002), 67 FR 6310 (February 11, 2002)(SR-Phlx-2001-121).

that the ITS Credit is now substantially greater than the ITS Fee, with the Exchange generally having to credit substantial amounts to equity specialists. The Exchange is therefore constricting the amount of the ITS Credit, which will continue to be calculated on a monthly basis, such that the credit is limited as described above. The fees to which the ITS Credit is now limited reflect the most fundamental fees applicable to equity specialists.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁴ in particular, in that it is an equitable allocation of reasonable fees among Exchange members.

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and paragraph (f) of Rule 19b-4 thereunder,¹⁶ because it establishes or changes a due, fee, or other charge imposed by the Phlx. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

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.¹⁷

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. 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. Please include File Number SR-Phlx-2004-95 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-2004-95. 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

¹⁷ For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on January 24, 2005 when Amendment No. 1 was filed.

available for inspection and copying in the Commission's Public Reference Room. Copies of the 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-2004-95 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).