

rights, as well as any qualifications, limitations, and restrictions on it. Under Delaware Law, such Certificates of Designation are deemed to be an amendment to Nasdaq's Restated Certificate of Incorporation, and as such, Nasdaq is filing the Certificates of Designation with the Commission.

The issuance of the Series A and B Preferred is part of a transaction between the NASD and Nasdaq to reduce the NASD's ownership interest in Nasdaq while maintaining the NASD's control over Nasdaq until exchange registration. The Series A Preferred will pay a dividend and is non-voting unless Nasdaq fails to pay a timely dividend. In such case, Nasdaq must increase the size of its Board to add two directors elected by the holders of the Series A Preferred. Such directors would be required to resign upon the payment of the dividend or the redemption of the Series A Preferred. The NASD may not transfer the Series A Preferred without the prior written consent of Nasdaq for a period of one year from its issuance.

Nasdaq is currently discussing with the Commission staff how Nasdaq intends to meet its obligation for fair representation of members on its Board under Section 6(b)(3) of the Act⁴ if Nasdaq obtains approval of its exchange registration application. As a result of these discussions, Nasdaq may submit to the Commission amendments to its By-Laws with respect to its Board composition. The potential By-Law amendments under discussion could require the election of additional Board members if the Series A Preferred holder's right to elect Board members is triggered to ensure that the fair representation obligation is met at all times.

The Series B Preferred is a single share designed to ensure that the NASD maintains voting control over Nasdaq until exchange registration. The Series B Preferred is not transferable and must be redeemed when Nasdaq begins operating as a national securities exchange. The Series B will vote, together as one class with Nasdaq's common stock, on all matters submitted to a vote of holders of common stock. The Series B Preferred will have variable voting rights such that the number of votes entitled to be cast by the holder of the Series B Preferred shall equal that number of votes that, together with votes otherwise entitled to be cast by the holder of the Series B Preferred at such meeting, whether by virtue of share ownership, proxies, voting trust arrangements or otherwise, entitle the

holder to exercise one vote more than one-half of all votes entitled to be cast. These voting rights will terminate automatically upon Nasdaq commencing operation as a national securities exchange.

The Series A and B Preferred have no effect on the voting trust that governs the warrants to purchase Nasdaq common stock that were sold by the NASD in two private placements that closed in June 2000 and January 2001.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Sections 15A(b)(2) and (6) of the Act,⁵ which require, among other things, that the Association be so organized and have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance with the provisions of the Act, and that the Association's rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the issuance of this preferred stock will result in no substantive change in its current relationship to the NASD; as under the current ownership structure, the NASD will continue to control Nasdaq until exchange registration.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is concerned solely with the administration of the self-regulatory organization and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and subparagraph (f)(3) of Rule 19b-4⁷ thereunder. 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.

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 NASD. All submissions should refer to File No. SR-NASD-2002-36 and should be submitted by April 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-7610 Filed 3-28-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45622; File No. SR-Phlx-2002-14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Modified Capitalization Weighting Methodology for Index Options

March 21, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,²

⁵ 15 U.S.C. 78o-3(b)(2) and (6).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(3).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78f(b)(3).

notice is hereby given that on March 1, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III 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 Phlx Rule 1009A(b), Designation of the Index, to include modified capitalization weighting as an approved weighting methodology for index options.

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 increase and diversify the number and types of securities products the Exchange may offer to the investing public by including modified capitalization weighting as a methodology for index options under Phlx Rule 1009A(b). Increasingly, the Exchange receives requests to trade new indexes using the modified capitalization weighting methodology; accordingly, in order to accommodate those requests in a timely manner and respond to market demand, the Exchange seeks to permit this calculation methodology for narrow-based indexes. The Exchange wishes to accommodate these requests, and proposes to add this methodology to the existing narrow based criteria set forth in Phlx Rule 1009A(b) which permits the listing of options on stock index groups pursuant to Rule 19b-4(e) under the Act. Currently, Phlx Rule 1009A

requires an index to be calculated using the capitalization-weighted, price-weighted, or equal dollar-weighted methodologies. Use of the modified capitalization weighted methodology should allow the Exchange greater flexibility in developing indexes and facilitate the listing of options on stock industry index groups that more accurately reflect the industry represented by the index.

When determining the value using capitalization weighting methodology, the following calculation applies: multiply the primary exchange regular way last sale price of each component security by the number of shares outstanding, add the result for each product and divide the sum by the current index divisor. The index value for a modified capitalization-weighted index is calculated in a similar manner. However, instead of using the actual number of shares outstanding, an adjusted number of shares outstanding are used in the calculation. (Thus, the following calculation applies: multiply the primary exchange regular way last sale price of each component security by an adjusted number of shares outstanding, add the results for each product, and then divide the sum by the current index divisor). The adjusted number of shares is determined by a proprietary algorithm. When using the modified capitalization weighting the Exchange will use a calculation methodology that will be clearly defined, and will consist of objective standards in accordance with the generic criteria set forth in Phlx Rule 1009A. In addition, the terms of the index will be defined in the marketing materials describing a new index and in the circulars that the Exchange distributes to its members upon the launch of a new index option.

The modified capitalization weighting methodology uses an adjusted number of shares outstanding to prevent component companies with a relatively high market capitalization from representing an inordinately large portion of an index's value. For example, inclusion of a company that is highly capitalized, in relation to the other smaller capitalized companies in the index, may result in the higher capitalized company's representation in the index exceeding 25% of the index's value. Thus, options on these indexes could not be listed on the Phlx. However, because use of the modified capitalization methodology permits a reduction in the higher capitalized company's representation in the index to an amount less than 25% of the index's value, the listing criteria of Phlx Rule 1009A(b)(6) are satisfied.

Therefore, modifying the capitalization amounts of the securities underlying an index can prevent an individual stock from inappropriately skewing the performance of an entire index, thus market accuracy and transparency should be correspondingly enhanced by use of the modified capitalization methodology. Currently, indexes such as the Nasdaq 100³ and Fortune e-50⁴ utilize modified capitalization weighting. Thus, it is an established calculation methodology that the Exchange seeks to capture in its listing standards.

Additionally, the Exchange will review the component weightings of indexes employing the modified capitalization weighting methodology at least semi-annually (or pursuant to then-existing standards), and if necessary, adjust them to ensure that the index continues to meet the weighting guidelines. Also, adjustments will be made on an intra-semi-annual basis, as necessary, to reflect corporate actions such as, share issuances, repurchases and other events of significance.

2. Statutory Basis

For these reasons, the Exchange believes that this proposal is consistent with Section 6 of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5),⁶ in that this proposal is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect the investors and the public interest, by encouraging and adding flexibility to the development of new indexes, thereby, increasing the amount of new products available to the investing public, consistent with the purposes of option listing standards. Specifically, the Exchange seeks to list new index options based on this calculation methodology.

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.

³ The Nasdaq-100®, Nasdaq-100 Index®, and Nasdaq® are trade or service marks of The Nasdaq Stock Market, Inc.

⁴ The Fortune e-50® is a trade or service mark of the American Stock Exchange LLC.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (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 or such shorter time as the Commission may designate, and 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸ At any time within 60 days of the filing of the proposed rule change, as amended, 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 Commission notes that under Rule 19b-4(f)(6)(iii),⁹ the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate that the proposed rule change become operative immediately, which the Phlx believes is consistent with investor protection and the public interest. In particular, because the proposed rule change is significantly similar to the rules of another self-regulatory organization already approved by the Commission,¹⁰ the Exchange requests that Commission accelerate the operative date to promptly begin eligibility of modified capital weighted indexes for option trading.

The Commission believes that it is consistent with the protection of investors and the public interest to designate the proposal immediately operative.¹¹ Accelerating the operative date will permit the Exchange to implement Phlx Rule 1009(b) without undue delay. For this reason, the Commission finds good cause to designate that the proposal become operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 Section. 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-2002-14 and should be submitted by April 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-7567 Filed 3-28-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45629; File No. SR-Phlx-2001-89]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to an Increase in the Maximum Guaranteed Size for AUTO-X Eligible Orders in Options on the Nasdaq-100 Index Tracking Stock ("QQQ") from 100 Contracts to 250 Contracts

March 22, 2002.

I. Introduction

On September 27, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to increase its automatic execution guarantee for options overlying the QQQ from 100 contracts to 250 contracts. On October 9, 2001, the Phlx filed Amendment No. 1 to the proposed rule change.³ On November 15, 2001, the proposed rule change and Amendment No. 1 were published for public comment in the **Federal Register**.⁴ The Commission received no comments on the proposed rule change, as amended. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

The Exchange proposes to increase the maximum order size eligibility for its automatic execution system ("AUTO-X") in QQQ options from 100 contracts to 250 contracts. Under the rules of the Phlx, through AUTOM,⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 5, 2001 ("Amendment No. 1"). In Amendment No. 1, the Phlx changed the status of the proposal from a filing made pursuant to Section 19(b)(3)(A) of the Act to a filing made pursuant to Section 19(b)(2) of the Act.

⁴ See Securities Exchange Act Release No. 45046 (November 7, 2001), 66 FR 57500.

⁵ 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 routed to AUTOM's automatic execution feature, AUTO-X, if they are eligible for execution on AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features

Continued

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ See Securities Exchange Act Release No. 41557, June 24, 1999, 64 FR 36055 (July 2, 1999) (Order approving File No. SR-Amex-99-09 to allow modified equal-dollar and modified capitalization weighting calculation methodologies for narrow-based index options on the American Stock Exchange LLC).

¹¹ For purposes 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).

¹² 17 CFR 200.30-3(a)(12).