

Dated: June 20, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03-15982 Filed 6-20-03; 9:49 am]

BILLING CODE 3210-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Azco Mining Inc., Common Stock, \$.002 Par Value) File No. 1-12974

June 18, 2003.

Azco Mining Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its Common Stock, \$.002 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer states that it is taking such action because the Issuer has been notified that it is not in compliance with the Amex's listing standards. In addition, the Issuer believes that its needs would be better served by listing its Security on the OTC Bulletin Board ("OTCBB").

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act<sup>3</sup> shall not affect its obligation to be registered under section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before July 9, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on

the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

Jonathan G. Katz,

Secretary.

[FR Doc. 03-15883 Filed 6-23-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48045; File No. SR-PCX-2003-28]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendments No. 1 and 2 by the Pacific Exchange, Inc. To Initiate a Pilot Program That Allows the Listing of Strike Prices at One-Point Intervals for Certain Stocks Trading Under \$20

June 17, 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 June 13, 2003, the Pacific Exchange, Inc. ("PCX" 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 PCX filed Amendments No. 1 and 2 to the proposal on June 16, 2003.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated

<sup>5</sup> 17 CFR 200.30-3(a)(1).

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

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

<sup>3</sup> See letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 13, 2003 ("Amendment No. 1"). Amendment No. 1 revises the text of the proposed rule to state that the pilot program will expire on June 5, 2004. In addition, Amendment No. 1 revises the proposal's description of the Exchange's current strike price intervals for equity options. See also letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 16, 2003 ("Amendment No. 2"). Amendment No. 2 corrects a typographical error in the text of the proposed rule by replacing a reference to the interval of "stock" prices in the first sentence of proposed PCX Rule 6.4, Commentary .04 with a reference to the interval of "strike" prices.

approval to the proposed rule change, as amended, through June 5, 2004.

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

The Exchange proposes to initiate a pilot program ("Pilot Program") that will allow the Exchange to list options on selected stocks trading below \$20 at one-point intervals. The text of the proposed rule change appears below. Additions are in *italics*; deletions are in brackets.

#### 4745 Series of Options Open for Trading

Rule 6.4(a)-(e)—No change.

Commentary .01-.03—No change.

.04 *The Exchange may select a limited number of its listed options on individual stocks for which the interval of strike prices will be \$1.00 ("\$1 strike prices") provided the strike price is \$20.00 or less, but not less than \$3. The listing of \$1 strike prices will be limited to options issues overlying no more than five (5) individual stocks (the "\$1 Strike Pilot Program") as specifically designated by the Exchange. The Exchange may list \$1 strike prices on any other option issues if those issues are specifically designated by other securities exchanges that employ a \$1 Strike Pilot Program under their respective rules. To be eligible for inclusion into the \$1 Strike Pilot Program, an underlying stock must close below \$20 in its primary market on the previous trading day. After a stock is added to the \$1 Strike Pilot Program, the Exchange may list \$1 strike prices from \$3 to \$20 that are no more than \$5 from the closing price of the underlying on the preceding day. For example, if the underlying stock closes at \$13, the Exchange may list strike prices from \$8 to \$18. The Exchange may not list series with \$1.00 intervals within \$0.50 of an existing \$2.50 strike price (e.g., \$12.50, \$17.50) in the same series, and may not list \$2.50 intervals (e.g. \$12.50, \$17.50) below \$20 under Commentary .03 of this Rule for any issue included within the \$1 Strike Pilot Program if the addition of \$2.50 intervals would cause the issue to have strike price intervals that are \$.50 apart. Additionally, the Exchange may not list long-term option series ("LEAPS") at \$1 strike price intervals for any option class selected for the \$1 Strike Pilot Program. A stock shall remain in the \$1 Strike Pilot Program until otherwise designated by the Exchange. The \$1 Strike Pilot Program shall expire on June 5, 2004.*

[.04] .05—No change.

<sup>1</sup> 15 U.S.C. 78l(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

<sup>3</sup> 15 U.S.C. 78l(b).

<sup>4</sup> 15 U.S.C. 78l(g).

## 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

PCX policy establishes the guidelines regarding the addition of series for trading on the Exchange.<sup>4</sup> The Exchange may list \$2.50 intervals for strike prices at \$25 or less, \$5.00 intervals for strikes over \$25 but less than \$200, and \$10 intervals for strikes at or above \$200.<sup>5</sup> The PCX currently lists options on more than 400 stocks trading under \$20, including Cisco, Sun Microsystems, Lucent, JDS Uniphase, Nextel, AT&T, Motorola, Intel, Apple, Tyco, AOL Time Warner, and Calpine. These stocks are among the most widely held and actively traded equities listed on the New York Stock Exchange, Inc. ("NYSE") or Nasdaq and the options overlying these stocks also trade actively.

When a stock underlying an option trades at a lower price, it takes a larger percentage gain in the stock for an option to become in-the money. For example, when a stock trades at \$8 an investor who wants to buy a slightly out-of-the-money call option would have to buy the call with a \$10 strike price. At these levels, the stock price would need to register a 25% change before it reached \$10 (*i.e.*, in-the-money status). A 25% gain in the underlying is especially large given the lessened degree of volatility that has accompanied many stocks and options over the past several months. Due to the recent preponderance of low priced stocks, Member Firms have expressed an interest in listing additional strike

prices on these classes so that they can provide their customers with greater flexibility in their investment choices. For this reason, the Exchange proposes to implement a Pilot Program, as described below.

#### Pilot Program Eligibility

The Exchange proposes to amend PCX Rule 6.4 in order to list series with \$1 strike price intervals on equity option issues that overlie up to five individual stocks, provided that the strike prices are \$20 or less, but not less than \$3. The PCX's Options Listing Committee would make the determination of which underlying stocks are to be included in the Pilot Program. An issue becomes eligible for inclusion in the Pilot Program when the underlying stock closes below \$20 in its primary market on the previous business day. Underlying stocks trading under \$20 that are not a part of the Pilot Program would continue to be eligible for trading in \$2.50 and \$5.00 intervals. Although the PCX may select only up to five individual stocks to be included in the Pilot Program, the Exchange would not be precluded from also listing options on other individual stocks at \$1 strike price intervals if other options exchanges listed those series pursuant to their respective \$1 strikes pilot programs.

#### Procedures for Adding \$1 Strike Price Intervals

The Exchange proposes to amend Rule 6.4 to specify the standards that will apply when adding additional \$1 strike price intervals under the Pilot Program. Under the proposal, the closing price of the underlying stock serves as the reference point for determining which \$1 strike prices the Exchange may open for trading. Specifically, the Exchange will only list \$1 strike prices that fall within a \$5 range of the underlying stock price, and no strike prices will be added outside of the \$5 range. For example, if the underlying stock trades at \$6, the Exchange could list \$1 strikes from \$3 to \$11.<sup>6</sup> The Exchange believes that this proposed range-format will significantly restrict the number of series that may be added at any one time.

The Exchange may currently list strike prices with \$2.50 intervals when an underlying stock trades below \$25.<sup>7</sup> Accordingly, several option issues have \$7.50, \$12.50, and \$17.50 strike prices (the "\$2.50 series" or "\$2.50 intervals").

To further avoid the proliferation of series, the Exchange does not intend to list \$1 strike prices at levels that "bracket" existing \$2.50 intervals (*e.g.*, \$7 and \$8 strikes around a \$7.50 strike). Accordingly, the Exchange does not intend to list \$7, \$8, \$12, \$13, \$17, and \$18 levels in an expiration month where there is a corresponding \$2.50 level. As the \$2.50 intervals are "phased-out," as described below, the Exchange would introduce the \$1 levels that bracket the phased-out price. For example, when the \$7.50 series expires, the Exchange would replace it by issuing a new month with \$7 and \$8 intervals.

#### Procedures for Phasing-out \$2.50 Strike Price Intervals

When a stock becomes part of the Pilot Program, the Exchange will begin the corresponding process of phasing-out the existing \$2.50 intervals on the same stock in favor of \$1 intervals. To phase out the \$2.50 intervals, the Exchange would first delist those \$2.50 series for which there is no open interest. Second, the Exchange would no longer add new expiration months at \$2.50 intervals below \$20 when the existing months expire. This would cause the \$2.50 strike price intervals below \$20 to be phased-out when the farthest-out month with a \$2.50 interval eventually expires.

#### \$1 Strikes for LEAPS

The Exchange will not list long-term options (also known as "LEAPS") in equity option classes at \$1 strike price intervals.

#### Procedures for Adding Expiration Months

PCX Rule 6.4 will govern the addition of expiration months for the Pilot Program. Pursuant to this rule, the Exchange generally opens up to four expiration months for each class upon initial listing of an options class for trading, and upon expiration of the near-term month, the Exchange lists an additional expiration month. With respect to options in the Pilot Program, the Exchange may list an additional expiration month for a \$1 strike series provided that the underlying strike price closes below \$20 on its primary market on expiration Friday. If the underlying closes at or above \$20 on expiration Friday, the Exchange would not list an additional month for \$1strike series until the stock again closes below \$20.

#### Procedures for Deleting \$1 Strike Price Intervals

At any time, the Exchange may cease trading options series, including series

<sup>4</sup> See Securities Exchange Act Release No. 21985 (April 25, 1985), 50 FR 18595 (May 1, 1985) (order approving File Nos. SR-PSE-85-9 and PHLX-85-9) ("1985 Order").

<sup>5</sup> See 1985 Order, *supra* note 4. Additionally, PCX Rule 6.4, Commentary .03 establishes guidelines for listing \$2.50 strikes for a set number of issues with series trading between \$25 and \$50.

<sup>6</sup> As indicated above, strike prices for options included in the Pilot Program may not be greater than \$20 or less than \$3.

<sup>7</sup> See 1985 Order, *supra* note 4.

with \$1 strike prices, by submitting a cessation notice to the Options Clearing Corporation ("OCC").<sup>8</sup> As discussed above, if the underlying closes at or above \$20 on expiration Friday, the Exchange would not list any additional months with \$1 strike prices until the stock subsequently closed below \$20. If the underlying does not subsequently close below \$20, thereby precluding the listing of additional strike prices and months, the existing \$1 series will eventually expire. When the near-term month is the only series available for trading, the Exchange may submit a cessation notice to OCC. Upon submission of that notice, the underlying stock would no longer count towards the five stock Pilot Program, thereby allowing the Exchange to list issues on an additional stock. Once the Exchange submits the cessation notice, it would not list any additional months for trading with \$1 strikes below \$20 (unless the underlying once again closed below \$20).<sup>9</sup>

#### *Options Price Reporting Authority ("OPRA") Capacity*

The PCX believes that OPRA has the capacity to accommodate the increase in the number of series added pursuant to the Pilot Program. The Pilot Program is limited to only five underlying securities, and the Pilot Program will result in an increase of between seven and 14 additional strikes for each underlying (depending on the number of existing \$2.50 strikes listed). Thus, the Pilot Program will result in a maximum of 70 additional series, which is a small increase in the 59,000 series currently traded on the PCX. Currently, OPRA's one-minute peak has been less than one-third its total capacity.

#### **2. Basis**

The Exchange believes that the addition of \$1 strike prices would stimulate customer interest in options overlying lower-priced stocks by creating greater trading opportunities and flexibility. The Exchange further believes that \$1 strike prices would provide customers with the ability to more closely tailor investment strategies

to the precise movement of the underlying security. For these reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act.<sup>10</sup> Specifically, the Exchange believes the proposed rule change is consistent with section 6(b)(5)<sup>11</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The PCX does not believe that the proposed rule change will impose 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*

Written comments on the proposed rule change were neither solicited nor received.

#### **III. 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-2003-28 and should be submitted by July 15, 2003.

#### **IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

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.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>13</sup> which requires, among other things, that the rules of a national securities exchange be designed 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. Specifically, the Commission believes that the proposed listing of one point strike price intervals in selected equity options on a pilot basis should provide investors with more flexibility in the trading of equity options overlying stocks trading at more than \$3 but less than \$20, thereby furthering the public interest by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. The Commission also believes that the Exchange's limited Pilot Program strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wide array of investment opportunities and the need to avoid unnecessary proliferation of options series. The Commission expects the Exchange to monitor the applicable equity options activity closely to detect any proliferation of illiquid options series resulting from the narrower strike price intervals and to act promptly to remedy this situation should it occur. In addition, the Commission requests that the PCX monitor the trading volume associated with the additional options series listed as a result of the Pilot Program and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

As noted above, the Commission is approving the PCX's proposal on a pilot basis. In the event that PCX proposes to extend the Pilot Program beyond June 5, 2004, expand the number of options eligible for inclusion in the Pilot Program, or seek permanent approval of the Pilot Program, it should submit a Pilot Program report to the Commission

<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed 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>8</sup> Among the reasons for submitting a cessation notice are the expiration of available \$1 strikes (*i.e.*, underlying stock price remains at or above \$20), series proliferation concerns, and delisting because of low price, merger, takeover, or other events. In any event, with prior notice to the membership and customers, the PCX would continue to have the ability to cease trading series that become inactive and have no open interest.

<sup>9</sup> If the underlying stock trades below \$20 after submission of the cessation notice by the Exchange, the PCX could list \$1 strike prices again provided it included the class as one of the five classes permitted under the Pilot Program.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

along with the filing of such proposal.<sup>14</sup> The report must cover the entire time the Pilot Program was in effect, and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of \$1 strike price intervals for the options the PCX selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the PCX's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the PCX addressed them; (6) any complaints that the PCX received during the operation of the Pilot Program and how the PCX addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program.

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The PCX's Pilot Program is identical to a CBOE pilot program ("CBOE Pilot") that the Commission approved.<sup>15</sup> Notice of the CBOE Pilot was published for comment<sup>16</sup> and the Commission received one comment letter, which supported the CBOE's proposal. Accordingly, the Commission believes that the PCX's Pilot Program proposal raises no issues of regulatory concern. Amendment No. 1 to the proposal clarifies the proposal by specifying the date on which the Pilot Program will expire and describing the PCX's current strike price intervals for equity options. Amendment No. 2 corrects a typographical error in the text of the proposed rule. For these reasons, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b) of the Act,<sup>17</sup> to approve the PCX's proposal, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>18</sup> that the

proposed rule change (SR-PCX-2003-28) and Amendments No. 1 and 2, are hereby approved, on an accelerated basis and as a pilot program, through June 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-15835 Filed 6-23-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48052; File No. SR-Phlx-2003-33]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. To Eliminate and Refund a Specialist Transaction Fee

June 17, 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 April 23, 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, II, and III below, which Items have been prepared by the Exchange. The Exchange amended the proposal on June 5, 2003.<sup>3</sup> 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 (1) eliminate the Nasdaq-100 Index Tracking Stock ("QQQ")<sup>SM</sup> 4 specialist

<sup>19</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> On June 5, 2003, the Exchange filed a Form 19b-4, which completely replaced and superceded the original filing in its entirety ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the proposal to designate the proposed rule change as filed under Section 19(b)(3)(A)(ii), rather than Section 19(b)(2), of the Act. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on June 5, 2003, the date the Exchange filed Amendment No. 1. 15 U.S.C. 78s(b)(3)(C).

<sup>4</sup> The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, 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

transaction fee of \$0.002 per share, retroactive to its implementation date;<sup>5</sup> and (2) refund the amounts that were billed to and collected from the Phlx QQQ specialist unit<sup>6</sup> during the time period in which the QQQ specialist \$0.002 per share transaction fee was in effect.<sup>7</sup>

On December 8, 2000, the Phlx filed a proposed rule change with the Commission to amend its fee schedule to accommodate the trading of the QQQ.<sup>8</sup> Pursuant to that filing, the Exchange was to assess no charge to members for customer trades entered through the Phlx Automated Communication and Execution System ("PACE"),<sup>9</sup> but was to impose a fee of \$1.00 per transaction to customers for non-PACE trades.<sup>10</sup> Specialists were to be charged a fee of \$0.002 per share, with a maximum charge of \$50.00 per trade, whether or not the QQQ trade took place on PACE.

Due to a programming error, the QQQ specialist \$0.002 per share transaction fee was programmed for non-PACE trades only, thereby erroneously excluding PACE trades from it.<sup>11</sup>

purposes by the Phlx 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 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.

<sup>5</sup> See Securities Exchange Act Release No. 43776 (December 28, 2000), 66 FR 1166 (January 5, 2001) (SR-Phlx-00-103) (imposing, among other things, a QQQ specialist \$0.002 per share transaction fee, with a maximum charge of \$50.00 per trade). On January 31, 2003, the Phlx filed a proposed rule change which eliminated the QQQ specialist \$0.002 per share transaction fee for transactions settling on or after February 3, 2003. See Securities Exchange Act Release No. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR-Phlx-2003-06). The instant proposal seeks to eliminate this fee from on or after December 15, 2000, the date of implementation, through February 2, 2003.

<sup>6</sup> The Exchange uses the terms "specialist" and "specialist unit" interchangeably herein.

<sup>7</sup> During the time period during which this fee was in effect, there was only one Phlx specialist unit that traded the QQQ.

<sup>8</sup> See Securities Exchange Act Release No. 43776 (December 28, 2000), 66 FR 1166 (January 5, 2001) (SR-Phlx-00-103).

<sup>9</sup> PACE is the Phlx's order routing, delivery, execution and reporting system for its equity trading floor. See Phlx Rules 229 and 229A.

<sup>10</sup> The customer, non-PACE per trade fee was amended on January 31, 2003. See Securities Exchange Act Release No. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR-Phlx-2003-06).

<sup>11</sup> It is not uncommon for the Exchange to distinguish between PACE and non-PACE trades in its fee structure. For instance, the Exchange charges QQQ customer non-PACE transaction charges, but does not charge for customer PACE transactions.

Continued

<sup>14</sup> The Commission expects the PCX to submit a proposed rule change at least 60 days before the expiration of the Pilot Program in the event the PCX wishes to extend, expand, or seek permanent approval of the Pilot Program.

<sup>15</sup> See Securities Exchange Act Release No. 47991 (June 5, 2003), 68 FR 35243 (June 12, 2003) (order approving File No. SR-CBOE-2001-60).

<sup>16</sup> See Securities Exchange Act Release No. 47753 (April 29, 2003), 68 FR 23784 (May 5, 2003).

<sup>17</sup> 15 U.S.C. 78f(b)(5) and 78s(b).

<sup>18</sup> 15 U.S.C. 78s(b)(2).