

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50174; File No. SR-PHLX-2004-52)

August 10, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Amend its NASDAQ-100 Index Tracking StockSM Equity Transaction Charge to Replace the Total Shares Per Transaction Charge With a Single Per Share Charge

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 July 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 Exchange. The Phlx has designated this proposal as one changing a fee imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice, as amended, 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 NASDAQ-100 Index Tracking Stock^{SM 5} (known

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ 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 Philadelphia Stock Exchange 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 TrustSM, or the beneficial owners of

as QQQSM) equity transaction charge⁶ to replace the total shares per transaction charge with a single per share charge, as described further below, for trades on or after August 2, 2004. Below is the text of the proposed rule change. Proposed new language is in *italics*; deletions are in brackets.

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NASDAQ-100 INDEX TRACKING STOCKSM FEE SCHEDULE

PHLX FEE SCHEDULE

Customer

PACE

none⁵

Non-PACE

Transaction [Charge] Fee	<u>\$.0035 per share</u>	<u>[Rate per Share]</u>
[First 500 shares		\$0.00
Next 2,000 shares		\$0.0075
Remaining shares		\$0.005]

\$50 maximum fee per trade side.

⁵ 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 ITS 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.

* * * * *

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.

⁶ The Exchange filed a proposed rule change, SR-Phlx-2004-40, which amends the Summary of Equity Charges portion of the fee schedule by replacing the total shares per transaction charge with a single per share charge. See Exchange Act Release No. 34-50106 (July 28, 2004), 69 FR 47197 (August 4, 2004). The NASDAQ-100 Index Tracking StockSM fee schedule, which contains a duplicate tiered fee schedule as contained in the Summary of Equity Charges, was inadvertently omitted from that filing. This filing seeks to amend the replicated tiered fee schedule, which is displayed in the NASDAQ-100 Index Tracking StockSM, in the same fashion as it was amended in the Summary of Equity Charges portion of the fee schedule.

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 Phlx states that the purpose of the proposed rule change is to remain competitive and foster growth of the equity floor brokerage business by seeking to increase volume. The proposal seeks to replace the current tiered fee schedule for non-PACE NASDAQ-100 Index Tracking StockSM equity transaction charges with a single per share charge of \$.0035, subject to a cap of \$50 per trade side.⁷ Presently, such transaction charges are based on total shares per transaction. For example, for the first 500 shares the transaction fee is \$0, for the next 2,000 shares the transaction fee is \$.0075 on a per share basis, and thereafter, for any remaining shares the transaction fee is \$.005

⁷ However, this fee applies where an order, after being delivered to the Exchange by the PACE system is executed by the specialist by way of an outbound ITS 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. See footnote 5 of the Exchange's NASDAQ-100 Index Tracking StockSM Fee Schedule. PACE is the Exchange's automated order entry, routing and execution system. See Phlx Rules 229 and 229A. Telephone conversation between Angela Saccomandi Dunn, Counsel, Phlx, and David Liu, Attorney, Division of Market Regulation, Commission, on August 5, 2004.

on a per share basis. This proposal would increase the fee for the first 500 shares transacted and decrease the fee for subsequent share volume.⁸

In addition, the term “charge” is being replaced with the term “fee” for the purpose of clarity.

2. Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members and will allow the equity floor to remain competitive and encourage growth.

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 has become effective pursuant to Section

⁸ The fee is charged only to members of the Phlx. Telephone conversation between Angela Saccomandi Dunn, Counsel, Phlx, and David Liu, Attorney, Division of Market Regulation, Commission, on August 5, 2004.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

19(b)(3)(A)(ii) of the Act¹¹ and Rule 19b-4(f)(2)¹² thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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. 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-2004-52 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.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-PHLX-2004-52. 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. 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-2004-52 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.¹³

Margaret H. McFarland
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).