

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 Exchange. 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-NYSE-2004-05 and should be submitted on or before September 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50275; File No. SR-NYSE-2004-43]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Establishing Fees for Receiving NYSE OpenBook® on a Real-Time Basis

August 26, 2004.

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 August 11, 2004, the New York Stock Exchange, Inc. ("NYSE" 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 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 is proposing to establish fees for providing NYSE OpenBook on a real-time basis.

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 IV 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

The Exchange believes that NYSE OpenBook responds to the demands of some market participants for depth-of-market data, a demand that has resulted, in part, from decimalization's six-fold increase in the number of price points. The NYSE OpenBook service is a compilation of limit order data that the Exchange provides to market data vendors, broker-dealers, private network providers and other entities through a data feed. The Exchange represents that for every limit price, NYSE OpenBook includes the aggregate order volume.

Currently, the Exchange updates NYSE OpenBook every five seconds. The Exchange proposes to make available a second enhanced NYSE OpenBook service that would update NYSE OpenBook limit order information in real-time. The Exchange believes that the real-time service responds to the desire of some market participants for more frequently updated depth-of-market data. According to the Exchange, the proposed real-time service will allow subscribers to choose to either continue to receive their current NYSE OpenBook service unchanged, or upgrade to the new real-time service.

The fees for the present NYSE OpenBook service are two-fold: (1) \$5,000 per month for the receipt of, and the right to redistribute, the data feed and (2) \$50.00 per month for each terminal through which the end user is able to display the service. The Commission approved the current fees for NYSE OpenBook in December 2001.³

The Exchange proposes to establish a fee of \$60.00 per month for each terminal through which the end user is able to display the real-time NYSE OpenBook service. According to the Exchange, the current monthly \$5,000 data feed fee will entitle an entity to receive the five-second NYSE OpenBook data feed, the real-time NYSE OpenBook

data feed, or both. The Exchange states that the current data feed fee will also entitle an entity to receive the NYSE LiquidityQuote R® data feed.

The Exchange believes that the fee for the real-time NYSE OpenBook service reflects an equitable allocation of its overall costs associated with using its facilities. The Exchange states that it reviewed and discussed the fee with the Exchange's Board of Executives ("BoE") at its June 3, 2004 meeting following a presentation by NYSE senior management. (The BoE, which is a constituent panel that advises the Exchange's independent Board of Directors and senior management, is comprised of representatives of individual and institutional investors, listed companies, members and member organizations.) The Exchange also states that all members of the Exchange's Board of Directors attended the BoE meeting, listened to the presentation and discussion, and later that day approved the new service and proposed fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and Section 6(b)(4) of the Act,⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The Exchange 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

The Exchange has not received solicited or unsolicited written comments from members or other interested parties.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 44962 (December 7, 2001), 66 FR 54562 (December 14, 2001) (SR-NYSE-2001-42).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

(ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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-NYSE-2004-43 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-NYSE-2004-43. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2004-43 and should be submitted on or before September 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50276; File No. SR-PHLX-2004-55]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to NASDAQ-100 Index Tracking StockSM Equity Transaction Charges

August 26, 2004.

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 August 13, 2004, 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 and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and at the same time is granting accelerated approval of the proposed rule change.

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

The Phlx proposes to retroactively apply its amended schedule of fees and charges to replace the tiered equity transaction charges with a single per share charge for equity transactions from July 1, 2004 through July 30, 2004.³

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange filed a proposed rule change, Securities Exchange Act Release No. 50106 (July 28, 2004), 69 FR 47197 (August 4, 2004) (SR-PHLX-2004-40), which amended the Summary of Equity Charges portion of the fee schedule by replacing the total shares per transaction charge with a single per share charge. 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 for the period July 1 through July 30, 2004. The Exchange has filed a proposed rule change, SR-PHLX-2004-52, designated as effective upon filing, to cover QQQSM transactions on or after August 2, 2004. See Securities Exchange Act Release No. 50174 (August 10, 2004), 69 FR 51137 (August 17, 2004).

in NASDAQ-100 Index Tracking StockSM (known as QQQSM).⁴ 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	none ⁵
Non-PACE.	
Transaction	
[Charge] Fee.	\$.0035 per share
	[Rate per Share]
[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.

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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 its proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item III 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 remain competitive and

⁴ 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[®] ("Index") is determined, composed and calculated by Nasdaq without regard to the Licensee, 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.