

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43776; File No. SR-PHLX-00-103]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Proposed Fees for Processing of Units of Beneficial Interest in the Nasdaq-100 Trust, Series 1

December 28, 2000.

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 8, 2000, 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. On December 14, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.³ 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 its fee schedule to accommodate the trading of Units of Beneficial Interest in

the Nasdaq 100 Trust, Series 1 ("Nasdaq-100 Index Tracking Stock"), traded under the symbol and widely known as QQQ. On June 14, 2000, the Phlx filed a proposed rule change with the Commission to permit, among other things, the trading pursuant to unlisted trading privileges ("UTP"), of Nasdaq-100 Index Tracking Stock.⁴ The proposal has been approved.⁵ In addition, the Exchange has obtained a license to use the Nasdaq-100 Index in connection with the trading of the Nasdaq-100 Index Tracking Stock.⁶

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 provide for fees that will apply to trading on the Exchange of Units of Beneficial Interest in the Nasdaq 100 Trust, Series 1, referred to as "Nasdaq 100 Shares." Specifically, under the Exchange's proposal the Exchange will assess no charge to members for trades entered through the Phlx Automated Communication and Execution System ("PACE"), but will impose a \$1.00 fee for non-PACE trades.⁷ Specialists will be charged a fee

of \$0.002 per share, with a maximum charge of \$50.00 per trade, whether or not a trade takes place on PACE.⁸ No other Phlx transaction fees will apply to trades in Nasdaq-100 Index Tracking Stock. The Exchange represents that, upon initiation of trading, members will be notified, by means of a circular, of the new fees applicable to trading in Nasdaq-100 Index Tracking Stock.

The Exchange represents that the fees proposed above for transactions in Nasdaq-100 Index Tracking Stock are lower than the fees charged for other equities already traded on the Exchange. The Phlx believes that the proposed lower fees should encourage trading of Nasdaq-100 Index Tracking Stock, while ensuring that the amounts collected will still cover the Exchange's costs of administering the trading of this new product. The Exchange further states that lower fees should also provide market participants with a more affordable market for the trading of this product. The Phlx states that a more affordable, competitive market for trading should attract more order flow in Nasdaq-100 Index Tracking Stock to the Exchange, which in turn should further increase liquidity of Nasdaq-100 Index Tracking Stock, and create a tighter, more liquid market. The Phlx represents that increased market competition should both benefit investors and protect the public interest in general.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section (6)(b)(4)¹⁰ in particular because it applies equally to all members that would be trading the Nasdaq-100 Index Tracking Stock and, therefore, is an equitable allocation of reasonable fees among Exchange members.

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

The Phlx represents that it does not believe 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.

for the member's own account or for the account of the member's customer. See Amendment No. 1, *supra* note 3.

⁸ *Id.*

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78s(b)(4).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange replaced the term "Nasdaq-100 Shares" with "Nasdaq-100 Index Tracking Stock" noted that "Nasdaq-100 Index Tracking Stock" and "QQQ" are service marks of the Nasdaq Stock Market, Inc. ("Nasdaq") and that the Phlx has entered into a licensing agreement with Nasdaq to use those marks for certain purposes; observed that the Commission has approved a related rule filing, File No. SR-PHLX-00-54, relating to the listing and trading of Trust Shares; clarified that a fee for trades not processed through the Phlx Automated Communication and Execution System ("PACE") will be paid by members of the Exchange; and clarified that the Phlx will charge specialists a per-share fee whether or not an order is executed via PACE. See letter from Carla Behnfeldt, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 14, 2000 ("Amendment No. 1").

⁴ File No. SR-PHLX-00-54.

⁵ Securities Exchange Act Release No. 43717 (December 13, 2000). The proposal is pending publication in the **Federal Register**.

⁶ 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-100 Index[®] ("Index") is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 TrustTM, 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.

⁷ The \$1.00 fee for non-PACE trades will be paid by a member who is trading with a specialist, either

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)(ii) of the Act¹¹ and Rule 19b-4(f)(2) thereunder¹² because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the 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.¹³

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. 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 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-00-103 and should be submitted by January 26, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43781; File No. SR-SCCP-00-05]

Self-Regulatory Organization; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Extending Approval of Restructured and Limited Clearing Services

December 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 6, 2000, the Stock Clearing Corporation of Philadelphia ("SCCP") 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 primarily by SCCP. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

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

SCCP proposes to extend, for a one year period ending December 31, 2001, the ability to provide limited clearance and settlement services. Specifically, SCCP seeks to continue to provide trade confirmation and recording services for members of the Philadelphia Stock Exchange, Inc. ("Phlx") effecting transactions through Regional Interface Operations ("RIO") and ex-clearing accounts. SCCP will also continue to provide margin accounts to certain participants cleared through an account established by SCCP at the National Securities Clearing Corporation ("NSCC").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP 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 self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78S(b)(1).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to continue SCCP's restructured business for an additional one year period through December 31, 2001.

Background

In an Agreement dated as of June 18, 1997, by and among the Phlx, SCCP, Philadelphia Depository Trust Company ("Philadep"), NSCC, and The Depository Trust Company ("DTC"), Philadep and SCCP agreed to certain provisions, including that: (i) Philadep would cease providing securities depository services; (ii) Philadep would make available to its participants access to the facilities of one or more other organizations providing depository services; (iii) SCCP would make available to SCCP participants access to the facilities of one or more other organizations providing securities clearing services; and (iv) SCCP would transfer to the books of such other organizations the CNS system open positions of SCCP participants on the books of SCCP.

In December, 1997, the Commission approved a proposed rule change which gave effect to the Agreement and which reflected Philadep's withdrawal from the depository business and SCCP's restructured and limited clearance and settlement business.² At that time, the Commission stated that "because a part of SCCP's proposed rule change concerns the restructuring of SCCP's operations to enable SCCP to offer limited clearing and settlement services to certain Phlx members, the Commission finds that it is appropriate to grant only temporary approval to the portion of SCCP's proposed rule change that amends SCCP's By-laws, Rules, or Procedures. This will allow the Commission and SCCP to see how well SCCP's restructured operations are functioning under actual working conditions and to determine whether any adjustments are necessary. Thus, the Commission is approving the portion of SCCP's proposal that amends its By-laws, Rules, or Procedures through December 31, 1998." In December 1998 and December 1999, one year extensions of such approval were granted by the Commission to allow SCCP to continue its restructured and

² Securities Exchange Act Release No. 39444 (December 11, 1997), 62 FR 66703 [File Nos. SR-SCCP-97-04, SR-DTC-97-16, SR-NSCC-97-08, and SR-Philadep-97-04].

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78s(b)(3)(C).

¹⁴ 17 CFR 200.30-3(a)(12).