

brokers with a credit of \$.25 per trade executed during the Exchange's E-Session extended hours trading session; and (ii) the waiver of all transaction, order processing and floor broker fees for transactions that occur during the E-Session. The text of the proposed rule change is available upon request from the CHX and the Commission.

## 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 CHX proposes to amend the Schedule to eliminate, through June 30, 2001, order processing, transaction and floor broker fees for transactions that occur during the E-Session.<sup>5</sup> This proposal is designed to allow CHX members to continue to participate in the E-Session without incurring the fees normally associated with their CHX transactions.<sup>6</sup> According to the

<sup>5</sup> On October 13, 1999, the Commission approved, on a pilot basis, the CHX's proposed rule change that allowed the CHX to implement an extended hours trading session. See Securities Exchange Act Release No. 42004 (October 13, 1999), 64 FR 56548 (October 20, 1999) (SR-CHX-99-16). The Commission recently approved the CHX's proposal to make the E-Session a permanent part of the CHX's operations. See Securities Exchange Act Release No. 43304 (September 19, 2000), 65 FR 57850 (SR-CHX-00-26). The E-Session takes place from 3:30 p.m. to 5:30 p.m., Central Time, Monday through Friday.

<sup>6</sup> E-Session fees have been waived since the beginning of the E-Session. See Securities Exchange Act Release Nos. 42089 (November 2, 1999), 64 FR 60864 (November 8, 1999) (SR-CHX-99-23) (waiving fees from October 13, 1999 through December 31, 1999); 42329 (January 11, 2000), 65 FR 3000 (January 19, 2000) (SR-CHX-99-29) (waiving fees from January 1, 2000 through March 1, 2000); 42486 (March 2, 2000), 65 FR 12601 (March 9, 2000) (SR-CHX-005) (waiving fees from March 2, 2000 through June 30, 2000); and 42929 (June 13, 2000), 65 FR 38620 (June 21, 2000) (SR-CHX-00-18) (waiving fees from July 1, 2000 through October 1, 2000); and 43403 (October 2, 2000), 65 FR 60234 (October 10, 2000) (SR-CHX-00-30) (waiving transaction, order processing and floor broker fees through December 31, 2000). This proposal extends the waiver of the same fees through June 30, 2001.

Exchange, the vast majority of the securities that trade during the E-Session are already subject to order processing and transaction fee waivers under the current fee schedule because they are either Nasdaq/NMS issues or issues within the S&P 500. Waiving fees on the few remaining securities and on floor broker transactions in all securities simplifies the Exchanges' fee-related communication with its members.

Additionally, this proposal would extend the current E-Session credit program through June 30, 2001. Exchange management developed this program to encourage members to seek additional order flow during the E-Session. Under the program, Exchange specialists and floor brokers receive a credit of \$.25 per trade executed during the E-Session. This credit program was approved in May 2000,<sup>7</sup> and has been extended through December 31, 2000.<sup>8</sup>

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>9</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

### 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 solicited or received.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and subparagraph (f) of Rule 19b-4 thereunder,<sup>11</sup> because it involves a due, fee, or other charge. At any time with 60 days of the filing of the proposed rule change,<sup>12</sup> the Commission may summarily abrogate such rule change if

<sup>7</sup> See Securities Exchange Act Release No. 42784 (May 15, 2000), 65 FR 33383 (May 23, 2000) (SR-CHX-00-12).

<sup>8</sup> See Securities Exchange Act Release No. 43402 (October 2, 2000), 65 FR 25867 (October 6, 2000) (SR-CHX-00-29).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> The Commission considers the proposal to have been filed as of December 19, 2000. See footnote 3, *supra*.

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 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR-CHX-00-39, and should be submitted by January 25, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 01-316 Filed 1-4-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43778; File No. SR-CHX-00-38]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Membership Dues and Fees

December 28, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice hereby is given that on December 18, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in

<sup>13</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.

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 CHX proposes to amend its membership dues and fees schedule ("Schedule"), effective January 1, 2001, to: (1) Increase the special fixed fees for Nasdaq/NMS securities; (2) assess a new fixed fee on "dedicated odd-lot dealers"; (3) revise the fees for transactions in listed securities executed through a floor broker; (4) raise the cap on the maximum transaction fees that can be incurred by a member firm; and (5) increase the earned credits available through the floor broker credit program. Additionally, the Exchange proposes to reconfigure its Schedule to include all of its transaction fees in one portion of the Schedule. The proposed rule change is available at the principal office of the CHX and at the Commission's Public Reference Room.

### **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 CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX 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*

##### **A. Purpose**

The proposed rule change amends the Schedule in several ways. These changes are designed to allow the Exchange to continue its exponential growth while providing a strong market for its members and for investors.

First, the proposal would increase the specialist fixed fees for Nasdaq/NMS Securities and assess a new fixed fee on "dedicated odd-lot dealers." The specialist fixed fee for Nasdaq/NMS Securities is paid by the specialist in each particular security; the amount of the fee is based on a market share

calculation in that security.<sup>3</sup> The new dedicated odd-lot dealer fee is a flat fee assessed on any odd-lot dealer (as defined in Article XXXI, Rule 3 of the Exchange's Rules) whose principal business is the trading of odd-lots.<sup>4</sup>

The proposal also makes changes to the CHX's transaction fee schedule by: (a) Setting a flat per share fee, instead of a graduated fee based on the number of shares traded, for agency transactions in Dual Trading System Securities that are executed through a floor broker; and (b) raising the current caps on transaction fees paid by member firms.<sup>5</sup>

Additionally, the proposal would revise the floor broker credit program by increasing the earned credits available under the program and by providing that the Exchange will pay floor brokers for any unused credits each month. This credit program is designed to stimulate growth on the Exchange, enhance the competitive capability of floor brokers, and foster cooperation on the Exchange's trading floor by rewarding floor brokers for their work to increase Exchange revenue.

Finally, the proposed would reconfigure the Schedule to include all of its transaction fees in one section of the Schedule.

##### **2. Statutory Basis**

The CHX believes that the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>6</sup> in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

<sup>3</sup> The fixed fee for Nasdaq/NMS Securities was first assessed in April 2000. Before that date, the Exchange had charged its members a fixed fee on Dual Trading System Securities (securities listed on the New York Stock Exchange or the American Stock Exchange) for many years. The Nasdaq/NMS-related fixed fees allow the Exchange to at least partially defray the costs associated with the continued development and anticipated growth of its Nasdaq/NMS program. The Exchange originally began assessing a Nasdaq/NM Securities fixed fee at a somewhat lower level than the fee that had been in place for Dual Trading System Securities to allow members time to adjust their business models to this new requirement. Now, nine months later, the Exchange proposes to increase the fee to more closely resemble the one charged for Dual Trading System Securities.

<sup>4</sup> This fee is designed to at least partially defray the costs associated with the continued development and anticipated growth of the Exchange's odd-lot program.

<sup>5</sup> Under the current Schedule, firms are subject to either a \$78,000 or \$54,000 cap on transaction fees for orders that are not sent through the Exchange's MAX<sup>®</sup> trading system, depending upon whether or not the firm has a market maker or floor broker presence. The revised Schedule would remove the reference to a floor presence and impose separate \$110,000 caps on non-MAX transaction fees for transactions in Nasdaq/NMS Securities and in dual Trading System Securities.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

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

The CHX 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 establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(B)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> 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 Exchange. All submissions should refer to File No. SR-CHX-00-38 and should be submitted by January 26, 2001.

<sup>7</sup> 15 U.S.C. 78f(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-317 Filed 1-4-01; 8:45 am]

BILLING CODE 8010-01-M

## 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> The proposal has been approved.<sup>5</sup> 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.<sup>6</sup>

#### 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.<sup>7</sup> 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.<sup>8</sup> 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,<sup>9</sup> in general, and furthers the objectives of Section (6)(b)(4)<sup>10</sup> 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.

<sup>8</sup> *Id.*

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78s(b)(4).

<sup>9</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> 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").

<sup>4</sup> File No. SR-PHLX-00-54.

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

<sup>6</sup> The Nasdaq-100<sup>®</sup>, Nasdaq-100 Index<sup>®</sup>, Nasdaq<sup>®</sup>, The Nasdaq Stock Market<sup>®</sup>, 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 purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index<sup>®</sup> ("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>7</sup> The \$1.00 fee for non-PACE trades will be paid by a member who is trading with a specialist, either