

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 NASD. All submissions should refer to file number SR-NASD-2002-118 should be submitted by October 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46534; File No. SR-NASD-2002-86]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish and Set a Fee for a New Data Feed for the Nasdaq InterMarket

September 23, 2002.

On June 27, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to make available a new data feed of market participant quotations from the Nasdaq InterMarket, Nasdaq's facility for over-the-counter trading of exchange-listed securities, and set a fee for purchase of that data feed. The proposed rule change was published for notice and comment in the **Federal Register** on August 20, 2002.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

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 association⁴ and, in particular, the requirements of section 15A(b)(5)⁵ of

the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. The Commission believes it is important that Nasdaq provide real-time market participant quotations, and believes that the iM Quotes data feed should provide broker-dealers and market data vendors with access to real-time InterMarket participant quotations to that effect. Additionally, the Commission believes that the fees Nasdaq will charge for the data feed are reasonable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act⁶, that the proposed rule change (SR-NASD-2002-86) be, and it hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-24700 Filed 9-27-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46527; File No. SR-NYSE-2002-37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending the Exchange's Automatic Execution Facility (NYSE Direct+)

September 20, 2002.

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 29, 2002, 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 NYSE. 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 proposed rule change consists of amendments to Exchange Rules governing NYSE Direct+® ("Direct+"). The rule amendments propose to: (i) Amend Rule 13 to provide for a one-year pilot program to expand Direct+

order size eligibility for Investment Company Units, including Exchange-Traded Funds ("ETFs"), and Trust Issued Receipts, such as Holding Company Depositary Receipts ("HOLDRs");³ (ii) amend Rule 1002 to include ETFs and HOLDRs and provide that ETFs trade until 4:15 p.m.; and (iii) amend Rule 1005 to reflect that the rule applies to ETFs and HOLDRs. Below is the text of the proposed rule change. Proposed new text is *italicized* and proposed deleted text is [bracketed].

Rule 13: Definitions of Orders

* * * * *

Auto Ex Order

An auto ex order is a limit order of 1099 shares or less priced at or above the Exchange's published offer (in the case of an order to buy) or at or below the Exchange's published bid (in the case of an order to sell), which a member or member organization has entered for automatic execution in accordance with, and to the extent provided by, Exchange Rules 1000-1005.

Pursuant to a one-year pilot program, orders in Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipts (as defined in Rule 1200) may be entered as limit orders in an amount greater than 1099 shares. The pilot program shall provide for a gradual, phased-in raising of order size eligibility, up to a maximum of 10,000 shares. Each raising of order size eligibility shall be preceded by a minimum of a one week advance notice to the Exchange's membership.

* * * * *

NYSE DIRECT+™: RULES GOVERNING AUTOMATIC EXECUTION OF LIMIT ORDERS OF A SPECIFIED SIZE

Rules 1000-1001: No change.

Rule 1002: Availability of Automatic Execution Feature

Orders designated as "auto ex" in a particular stock, *Investment Company Unit (as defined in paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipt (as defined in Rule 1200)* shall be eligible to receive an automatic execution if entered after the Exchange

¹³ 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. 46350 (August 14, 2002), 67 FR 54003.

⁴ 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).

⁵ 15 U.S.C. 78o-3(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposal applies to the broader categories of Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual) and Trust Issued Receipts (as defined in Rule 1200), among which ETFs and HOLDRs are a part. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, Terri Evans, Assistant Director, Sonia Patton, Special Counsel, and Steve Williams, Economist, Division of Market Regulation, Commission, September 18, 2002.

has disseminated a published bid or [order] offer [in that stock], until 3:59 p.m. for stocks and Trust Issued Receipts, or 4:14 p.m. for Investment Company Units, or within one minute of any other closing time of the Exchange's floor market. Orders designated as "auto ex" in a particular stock, *Trust Issued Receipt*, or *Investment Company Unit* that are entered prior to the dissemination of a bid or offer [in that stock], [or] after 3:59 p.m. for stocks and *Trust Issued Receipts*, [or] after 4:14 p.m. for *Investment Company Units*, or within one minute of any other closing time, shall be displayed as limit orders in the auction market.

Rules 1003—1004: No change.

Rule 1005: Orders May Not Be Broken Into Smaller Amounts

An auto ex order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 30 seconds between entry of each such order in a stock, *Investment Company Unit* (as defined in paragraph 703.16 of the *Listed Company Manual*), or *Trust Issued Receipt* (as defined in Rule 1200).

* * * * *

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 NYSE 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 and is set forth in Sections A, B, and C below.

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

1. Purpose

NYSE Direct+ provides for the automatic execution of limit orders in a stock ("auto ex" orders) against trading interest reflected in the Exchange's published quotation.⁴ An auto ex order priced at or above the Exchange's published offer price (in the case of an auto ex order to buy), or an auto ex order priced at or below the Exchange's published bid price (in the case of an

⁴ NYSE Direct+ was originally filed as a one-year pilot. It was approved in Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001). The pilot was subsequently extended for an additional year by SR-NYSE-2001-50 and approved by Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002).

auto ex order to sell) would receive an automatic execution without being exposed to the auction market, provided the bid or offer is still available.

Currently, order size eligibility for all auto ex orders for stocks is 1099 shares or less. The Exchange is proposing to expand the size of orders eligible for automatic execution under NYSE Direct+ to a maximum of 10,000 shares for two Exchange products. These are Investment Company Units (as defined in paragraph 703.16 of the *Listed Company Manual*), including ETFs,⁵ and Trust Issued Receipts (such as HOLDERS),⁶ which are defined in Rule 1200. The Exchange believes that the increase in the number of shares eligible for automatic execution for Investment Company Units and Trust Issued Receipts will serve to attract additional order flow to NYSE Direct+.⁷ The expanded order size would be phased in as a pilot program, with order size raised on a gradual, "stair step" basis to a maximum of 10,000 shares as experience is gained. The proposed pilot program time period is one year.

Rule 13

The change to Rule 13 codifies the pilot program.

Rule 1002

Rule 1002 currently provides that auto ex orders may be entered on any day in a particular stock from the time the Exchange has published a bid or offer in that stock until 3:59 p.m. If orders designated as auto ex are entered before a quote is published or after 3:59 p.m., the orders will be treated as limit orders in the auction market.

Exchange Rule 1100 provides that any series of Investment Company Units so designated by the Exchange may be traded on the Exchange until 4:15 p.m. each business day to match the trading hours of related futures contracts. The Exchange may close trading at an early time to coincide with the close of trading in a related futures contract, where applicable. Therefore, the Exchange is proposing to amend Rule 1002 to include orders in Investment

⁵ See Securities Exchange Act Release No. 44616 (July 30, 2001), 66 FR 40761 (August 3, 2001) (NYSE rules and policies were amended to accommodate the trading of certain ETFs on an unlisted trading privileges ("UTP") basis).

⁶ See Securities Exchange Act Release No. 45718 (April 9, 2002), 67 FR 18965 (April 17, 2002) (Adopted listing standards for the listing and trading, or the UTP trading, of Trust Issued Receipts under NYSE Rules 1200 through 1202, and 703.20 of the NYSE's *Listed Company Manual*); and SR-NYSE-2002-15, approved by Securities Exchange Act Release No. 45729 (April 10, 2002), 67 FR 18970 (April 17, 2002) (Adopted standards for UTP trading of HOLDERS).

⁷ See *supra* note 3.

Company Units and Trust Issued Receipts and to provide that orders in Investment Company Units trade until 4:15 p.m.⁸

Rule 1005

Rule 1005 in part provides that auto ex orders for the same customer in the same stock may be entered at time intervals of no less than 30 seconds between entry of each such order. The proposed amendment reflects that the rule will also apply to Investment Company Units and Trust Issued Receipts.⁹

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5),¹⁰ which requires an Exchange to have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change is designed to support the principles of section 11A(a)(1) of the Act¹¹ in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

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 neither solicited nor received written comments on the proposed rule change.

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

⁸ *Id.*

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78k-1(a)(1).

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

(A) By order approve the proposed rule change, 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 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 NYSE. All submissions should refer to File No. SR-NYSE-2002-37 and should be submitted by October 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated Authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-24754 Filed 9-27-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46531; File No. SR-Phlx-2002-47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Increasing the Maximum Guaranteed AUTO-X Size in Options on the Nasdaq-100 Index Tracking Stock ("QQQ") to 2,000 Contracts in the First Two Near-Term Expiration Months

September 23, 2002.

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 29, 2002, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") 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 Phlx. The proposed rule change has been filed by the Phlx as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.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 Phlx proposes to amend Phlx Rule 1080 to provide that, with respect to options in the QQQs, orders of up to 2,000 contracts in the first two near-term expiration months and orders of up to 1,000 contracts for all other expiration months, would be eligible for automatic execution on the Exchange's automatic execution system ("AUTO-X"), which is part of the Exchange's Automated Options Market ("AUTOM") System. AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually or routed to AUTOM's automatic execution feature, AUTO-X, if they are eligible for execution on AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. Currently, orders of up to 1000 contracts in QQQ options are eligible for execution through AUTO-X.⁴

Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)

(a)-(b) No change.

(c) AUTO-X is a feature of AUTOM that automatically executes eligible public customer market and marketable

limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO-X automatically executes eligible orders using the Exchange disseminated quotation (except if executed pursuant to the NBBO Feature in sub-paragraph (i) below) and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO-X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO-X is not engaged, such as pursuant to sub-paragraph (iv) below. An order may also be executed partially by AUTO-X and partially manually.

The Options Committee may for any period restrict the use of AUTO-X on the Exchange in any option or series provided that the effectiveness of any such restriction shall be conditioned upon its having been approved by the Securities and Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder. Any such restriction on the use of AUTO-X approved by the Options Committee will be clearly communicated to Exchange membership and AUTOM users through an electronic message sent via AUTOM and through an Exchange information circular. Such restriction would not take effect until after such communication has been made. Currently, orders up to 250 contracts, subject to the approval of the Options Committee, are eligible for AUTO-X. With respect to options on the Nasdaq-100 Index Tracking Stock ("QQQ")SM, orders of up to 2,000 contracts in the first two (2) near term expiration months, and 1,000 contracts for all other expiration months, are eligible for AUTO-X.

The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO-X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(c)(i)(A)-(E) No change.

(d)-(j) No change.

Commentary. No change.

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¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ See Securities Exchange Act Release No. 46307 (August 2, 2002), 67 FR 52508 (August 12, 2002) (File No. SR-Phlx-2002-43).