

Pursuant to Section 19(b)(2) of the Act,¹¹ the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds good cause for approving Amendment No. 2 to the proposal prior to the 30th day after publishing notice of Amendment No. 2 in the **Federal Register**. The revisions made to the proposal in CBOE's Amendment No. 2, which sets forth specific and objective criteria for determining whether an electronic transaction in an option quoted no-bid at a nickel is an obvious error, are based on rules of other exchanges that the Commission previously has approved.¹² Thus, the Commission believes that no new issues are raised by the proposal. Accordingly, pursuant to Section 19(b)(2) of the Act,¹³ the Commission finds good cause to approve Amendment No. 2 prior to the thirtieth day after notice of the Amendment is published in the **Federal Register**.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether the proposed amendment 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.

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-CBOE-2004-02. 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 CBOE. 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-CBOE-2004-02 and should be submitted on or before September 7, 2004.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (File No. SR-CBOE-2004-02), as amended, be, and hereby is, approved, and that Amendment No. 2 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-50177; File No. SR-NYSE-2004-33)

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto To Amend Exchange Rule 345A ("Continuing Education for Registered Persons")

August 10, 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 June 28, 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 NYSE. On August 4, 2004, the NYSE filed 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 NYSE Rule 345A ("Continuing Education for Registered Persons" or the "Rule") to rescind all currently effective exemptions from required participation in the Regulatory Element programs. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

Rule 345A.

Continuing Education for Registered Persons

(a) Regulatory Element—No member or member organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of Section (a) of this Rule.

(1) Each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their second registration anniversary date and every three years thereafter or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within one hundred twenty days after the person's registration anniversary date. A person's initial registration date, *also known as the "base date"*, shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the rule.

[(1) Persons who have been continuously registered for more than ten years as of the effective date of this Rule are exempt from the requirements of this rule relative to participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to

³ See letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 3, 2004 ("Amendment No. 1"). In Amendment No. 1, the NYSE made technical corrections and clarifications to the filing.

¹¹ 15 U.S.C. 78s(b)(2).

¹² See *supra* note 10.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

any disciplinary action within the last ten years as enumerated in subsection (a)(3)(i)–(ii) of this Rule. However, persons delegated supervisory responsibility or authority pursuant to Rule 342 and registered in such supervisory capacity are exempt from participation in the Regulatory Element under this provision only if they have been continuously registered in a supervisory capacity for more than ten years as of the effective date of this rule and provided that such supervisory person has not been subject to any disciplinary action under subsection (a)(3)(i)–(ii) of this Rule.

In the event that a registered person who is exempt from participation in the Regulatory Element subsequently becomes the subject of a disciplinary action as enumerated in subsection (a)(3)(i)–(ii), such person shall be required to satisfy the requirements of the Regulatory Element as of the date the disciplinary action becomes final is the person's initial registration anniversary date.]

(2)—No Change

(3) [Re-entry into program]

Disciplinary Actions—Unless otherwise determined by the Exchange, a registered person will be required to [re-enter] *re-take* the Regulatory Element of the program and satisfy the program's requirements in their entirety in the event such person:

(i) becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 (see also Rule 346(f));

(ii) becomes subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(iii) is ordered pursuant to a disciplinary proceeding to [re-enter] *re-take* the *Regulatory Element* [continuing education program] by any securities governmental agency or securities self-regulatory organization.

[Re-entry] *A re-taking of the Regulatory Element* shall commence with [initial] participation within one hundred twenty days of the registered person becoming subject to the statutory disqualification, in the case of (i) above, or the completion of the sanction or the disciplinary action becoming final, in the case of (ii) and (iii) above. The date that the disciplinary action becomes final will be deemed the person's [initial

registration anniversary] *new base* date for purposes of this Rule.

(b)(1)—.50—No Change

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. The Exchange 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

NYSE Rule 345A provides, in part, that no member or member organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the Regulatory Element of the continuing education requirement set forth in this Rule. As described in more detail below, the Regulatory Element component of NYSE Rule 345A⁴ requires registered persons to complete a standardized compliance-based program at prescribed intervals. NYSE Rule 345A also provides for the Firm Element component of continuing education,⁵ requiring "covered registered persons" to regularly participate in specialized programs designed to enhance their professional skills.

NYSE proposes to rescind all currently effective exemptions from required participation in Regulatory Element programs.

Background

The Regulatory Element currently requires each subject registered person to complete a standardized, computer-based, interactive continuing education program within 120 days of their second registration anniversary date and every

⁴ See NYSE Rule 345A(a).

⁵ See NYSE Rule 345A(b). The Firm Element applies to any registered person who has direct contact with customers in the conduct of a member's or member organization's securities sales, trading or investment banking activities, and to the immediate supervisors of such persons, and to registered persons who function as supervisory analysts, and research analysts as defined in NYSE Rule 344 (collectively "covered registered persons").

three years thereafter, or as otherwise prescribed by the Exchange. The purpose is to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice-related industry issues. There are three Regulatory Element programs: The S201 Supervisor Program, the S106 Series 6 Program, and the S101 General Program for Series 7 and all other registrations. Persons who fail to complete the Regulatory Element are deemed inactive and may not perform in any capacity or be compensated in any way requiring registration.

"Grandfathered" Exemptions

Persons who were continuously registered, without a serious disciplinary action,⁶ for more than ten years as of the Rule's effective date (*i.e.*, July 1, 1995) were initially, and continue to be, exempt from Regulatory Element requirements.

"Graduated" Exemptions

The Rule initially required that subject registered persons complete a Regulatory Element program on their second, fifth, and tenth registration anniversary dates. Once the tenth anniversary program requirement was satisfied, the registered person became exempt from Regulatory Element requirements going forward (absent a serious disciplinary event). For instance, a person who became registered July 2, 1985 could "graduate" from future Regulatory Element obligations by completing a single program in July 1995, thereby satisfying their tenth anniversary requirement.

Amendments to NYSE Rule 345A discontinued this "graduation" exemption as of July 1998,⁷ but registered persons who were "graduated" prior to these amendments continue to be exempt from Regulatory Element requirements. Of approximately 685,000 actively registered persons, about 135,000 are currently exempted from ongoing Regulatory Element obligations.

Discussion and Proposal

Initially, the rationale for the Regulatory Element exemptions was that, because the material to be covered would involve regulatory subject matter, individuals registered for more than ten

⁶ For purposes of NYSE Rule 345A, a "disciplinary action" includes statutory disqualification as defined in Section 3(a)(39) of the Act; suspension or imposition of a fine of \$5,000 or more; or being subject to an order from a securities regulator to re-enter the Regulatory Element program. See Rule 345A(a)(3)(i)–(iii).

⁷ See Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998) (File No. SR-NYSE-97-33).

years without a significant disciplinary action were, by virtue of their business tenure, sufficiently familiar with applicable regulatory requirements. Currently, if an exempted person becomes subject to a significant disciplinary action, the Rule requires "re-entry" into the Regulatory Element program.⁸

As part of its ongoing commitment to communicate and reinforce the importance of compliance with just and equitable principles of trade, the Exchange, on behalf of the Securities Industry/Regulatory Council on Continuing Education (the "Council"),⁹ is in the process of developing a Regulatory Element module that focuses specifically on ethics. Although Regulatory Element programs have consistently included ethical considerations in a variety of business scenarios, it has been determined that the importance of ethical conduct should be more prominently featured and more emphatically stressed in the Regulatory Element. Accordingly, participants will be required to make decisions in the context of, for example, peer pressure, the temptation to rationalize, or a lack of clear-cut guidance from existing rules or regulations. In addition, there have been significant new Exchange and industry rules, growth in the types of products and services offered by firms, and areas of regulatory emphasis which the Regulatory Element covers in its curriculum. Subjecting persons who have been exempt from this requirement will be beneficial to them and their firms, as it will help keep them current and knowledgeable on such changes.

Consistent with this new emphasis, the Council believes that there is great value in exposing all registered industry participants to the full benefit of Regulatory Element programs. Accordingly, the Council recommended at its December 2003 meeting that SRO Rules (e.g., NYSE Rule 345A) be amended to eliminate existing exemptions from the Regulatory Element and to require all "grandfathered" and "graduated" persons to fully participate in future standardized continuing education

programs, according to the Rule's prescribed schedule.¹⁰

The NYSE believes that NASD and other SRO Council members are likewise pursuing amendments to their respective rules. The Exchange will coordinate with the staffs of these SROs so that all such amendments are harmonized.

Due to changes that would have to be made to the CRD System, the proposed amendments are expected to become effective on April 4, 2005. Application of the proposed amendments would be based on existing requirements of NYSE Rule 345A(a). As noted above, subject registered persons must complete their Regulatory Element requirement within 120 days of the second anniversary of their initial registration or "base date," and every three years thereafter. Accordingly, those registered persons who were eligible for "grandfathered" or "graduated" exemptions would be required to complete the Regulatory Element as their prescribed anniversaries occur on or after April 4, 2005. For example, a person whose initial registration date is April 4, 1985 would have to complete their Regulatory Element requirements within 120 days of April 4, 2005. A person whose initial registration date is July 1, 1983 would have to complete their Regulatory Element requirements within 120 days of July 1, 2006. Within 120 days of April 4, 2008, all currently exempt registered persons will have been brought back into the Regulatory Element cycle. Should the necessary CRD System changes be delayed, the effective date would be within 30 days of the implementation of such changes. In any case, NYSE membership will be notified via an Information Memo.

It is noted that a person's base date may be revised to be the effective date of a significant disciplinary action in accordance with NYSE Rule 345A(a)(3). NYSE Rule 345A(a)(3) has been amended to clarify that a person subject to a significant disciplinary action would be required to "re-take" rather than "re-enter" the Regulatory Element. A person's base date may also be revised to be the date on which a formerly registered person re-qualifies for association with a member or member organization by qualification exam.

2. Statutory Basis

The statutory basis for this proposed rule change is Section 6(c)(3)(B)¹¹ of the

Exchange Act.¹² Under that section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange is rescinding all currently effective exemptions from required participation in the Regulatory Element programs provided by NYSE Rule 345A.

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

(A) By order approve such 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 proposed rule change, as amended, 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-2004-33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary,

⁸ See Rule 345A(a)(3).

⁹ As of the date of this filing, the Council consisted of eleven representatives from securities firms and representatives from six self-regulatory organizations ("SROs") including: The NYSE, the American Stock Exchange, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, the National Association of Securities Dealers ("NASD"), and the Philadelphia Stock Exchange. The SEC and The North American Securities Administrators Association have liaisons to the Council. See Amendment No. 1, *supra* note 3.

¹⁰ See proposed NYSE Rule 345A(a)(1). Note that the proposed amendments renumber existing paragraphs of the Rule; the Rule's prescribed schedule is currently found in NYSE Rule 345A(a).

¹¹ 15 U.S.C. 78f(c)(3)(B).

¹² 15 U.S.C. 78(a).

Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-33. 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 the 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-2004-33 and should be submitted on or before September 7, 2004.

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. 34-50174; File No. SR-PHLX-2004-52]

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

August 10, 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 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 StockSM (known 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.

* * * * *

NASDAQ-100 INDEX TRACKING STOCKSM FEE SCHEDULE

Phlx Fee Schedule		
Customer		
PACE		none ⁵
Non-PACE		
Transaction [Charge] Fee	<i>\$.0035 per share</i>	<i>[Rate per Share]</i>
[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 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,

¹³ 17 CFR 200.30-3(a)(12).

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 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.