

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53754; File No. SR-Phlx-2006-25)

May 3, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to its Equity Options Payment for Order Flow Program

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 April 19, 2006, 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 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 equity options payment for order flow program to rebate, on a quarterly basis, any excess payment for order flow funds that were collected but not requested for rebate by a specialist or Directed Registered Options Trader (“ROT”). The Exchange would calculate after the end of each calendar quarter, any excess funds from the previous calendar quarter and would rebate, on a pro-rata basis, to the applicable specialists,

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).

Directed ROTs and ROTs who paid into that pool of funds. Rebated funds would be reflected as a credit on the members' invoices.

The Phlx states that the proposal would remain in effect as part of the Exchange's payment for order flow pilot program that is currently scheduled to expire on May 27, 2006.⁵

Below is the text of the proposed rule change. Proposed additions are underlined.

SUMMARY OF EQUITY OPTION CHARGES (p. 3/6)

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REAL-TIME RISK MANAGEMENT FEE

\$.0025 per contract for firms/members receiving information on a real-time basis

EQUITY OPTION PAYMENT FOR ORDER FLOW FEES*

(1) For trades resulting from either Directed or non-Directed Orders that are delivered electronically and executed on the Exchange: Assessed on ROTs, specialists and Directed ROTs on those trades when the specialist unit or Directed ROT elects to participate in the payment for order flow program.***

(2) No payment for order flow fees will be assessed on trades that are not delivered electronically.

QQQQ (NASDAQ-100 Index Tracking Stock SM)	\$0.75 per contract
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Remaining Equity Options, except FXI Options	\$0.60 per contract
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See Appendix A for additional fees.

⁵ The Exchange states that the current payment for order flow program is in effect as a pilot program that is scheduled to expire on May 27, 2006, the same date as the one-year pilot program in effect in connection with Directed Orders. See Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (SR-Phlx-2004-91).

*Assessed on transactions resulting from customer orders. This proposal will be in effect for trades settling on or after October 1, 2005 and will remain in effect as a pilot program that is scheduled to expire on May 27, 2006.

***Any excess payment for order flow funds billed but not utilized by the specialist or Directed ROT will be carried forward unless the Directed ROT or specialist elects to have those funds rebated to the applicable ROT, Directed ROT or specialist on a pro rata basis, reflected as a credit on the monthly invoices. At the end of each calendar quarter, the Exchange will calculate the amount of excess funds from the previous quarter and subsequently rebate excess funds on a pro-rata basis to the applicable ROT, Directed ROT or specialist who paid into that pool of funds.

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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, 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

According to the Phlx, currently, the following payment for order flow rates are in effect at the Exchange: (1) equity options other than QQQQ⁶ and FXI Options are assessed \$0.60 per

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

contract; (2) options on QQQQ are assessed \$0.75 per contract; and (3) no payment for order flow fees are assessed on FXI Options.⁷ Trades resulting from either Directed or non-Directed Orders that are delivered electronically over AUTOM and that are executed on the Exchange, are assessed a payment for order flow fee, while non-electronically-delivered orders (i.e., represented by a floor broker) are not assessed a payment for order flow fee.⁸

The Exchange states that currently specialist units or Directed ROTs may request that any excess funds (funds collected but not requested by a specialist unit or Directed ROT) be rebated, on a pro-rata basis, to the applicable members who paid into that pool of funds. If any excess funds are rebated, they would be reflected as a credit on the invoices.⁹ The amount a specialist unit or Directed ROT may request that the Exchange pay to Order Flow Providers is limited to the amount billed and collected for that month, plus any excess funds that were carried over from previous months.

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. The Exchange states that 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 Specialists and Directed ROTs who participate in the Exchange’s payment for order flow program are assessed a payment for order flow fee, in addition to ROTs. See Securities Exchange Act Releases Nos. 52568 (October 6, 2005), 70 FR 60120 (October 14, 2005) (SR-Phlx-2005-58) and 53078 (January 9, 2006), 71 FR 2289 (January 13, 2006) (SR-Phlx-2005-88).

⁸ The Exchange states that electronically-delivered orders do not include orders delivered through the Floor Broker Management System pursuant to Exchange Rule 1063.

⁹ The Exchange states that if a specialist unit or Directed ROT leaves the Exchange mid-month, any excess funds in that specialist unit or Directed ROT pool are rebated to the applicable Exchange members on a pro rata basis.

The Exchange proposes to amend its equity options payment for order flow program to rebate, on a quarterly basis, any excess payment for order flow funds. After the end of each calendar quarter, any excess funds from the previous calendar quarter would be calculated and subsequently rebated, on a pro-rata basis, to the applicable specialists, Directed ROTs and ROTs who paid into that pool of funds.¹⁰ The Exchange believes that this should allow for sufficient time to process any rebates. Consistent with current practice, rebated funds would be reflected as a credit on the invoices.¹¹

Specialists and Directed ROTs would be able to continue to request that any excess funds be rebated, on a monthly basis, to the specialists, Directed ROTs and ROTs who paid into that pool of funds. In addition, specialists and Directed ROTs may continue to request that the Exchange pay to order flow providers an amount limited to the amount billed and collected for that month, plus any excess funds carried over from previous months. However, pursuant to the proposal, excess funds from the previous quarter would no longer be available to the specialists and Directed ROTs once they have directed the Exchange to make payments to order flow

¹⁰ For example, after the end of March (the last month of the quarter covering the period from January, February and March), any excess funds from October, November and December (the previous quarter) would be calculated.

¹¹ Based on the proposal, the Exchange intends to rebate, in the form of a credit, any excess funds on an invoice reflecting activity in the month following the end of a calendar quarter. For example, after the end of March (the last month of a quarter) any excess funds from the October, November and December (the previous quarter) would be calculated and then reflected as a credit on the invoices that cover activity for the month of April (“April invoices”). The April invoices would typically be issued in the beginning of May.

providers for activity covering order flow received for the last month of each subsequent calendar quarter.¹²

The Exchange states that the purpose of this proposal is to reduce the economic burden on members by rebating excess payment for order flow funds. In addition, the Exchange believes that while specialists and Directed ROTs may carry forward excess amounts that were not paid to order flow providers, there should be a reasonable time frame associated with such amounts that are carried forward.

The proposal would remain in effect as part of the Exchange's payment for order flow pilot program that is currently scheduled to expire on May 27, 2006.

No other changes to the Exchange's payment for order flow program are being proposed at this time.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Sections 6(b)(4) of the Act¹⁴ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

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.

¹² For example, after the specialists or Directed ROTs direct the Exchange to make payments to order flow providers at the end of March (last month of a quarter), any excess funds remaining from the previous quarter (October, November and December) would no longer be available to the specialists or Directed ROTs.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

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 proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁵ and Rule 19b-4(f)(2)¹⁶ thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. 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. 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-Phlx-2006-25 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-Phlx-2006-25. 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 Phlx. 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-Phlx-2006-25 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Nancy M. Morris
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).