

Ms. Mary Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-Phlx-2010-48 Amendments to Regulation SHO, Rule 201.

Dear Chairman Shapiro:

The PHLX market makers listed below appreciate this opportunity to respond to the NASDAQ OMX PHLX, Inc. (“PHLX”) proposed rule change to amend its fee schedule by establishing fees for a direct data product, Top of Phlx Options Plus Orders (“TOPO Plus”). We believe that the Commission should reject this rule filing because the PHLX has not demonstrated that a significant portion of TOPO Plus is non-core data. Furthermore, we believe that the PHLX has not demonstrated that fees for TOPO Plus are competitive nor are they equitable, fair, reasonable or non-discriminatory. We believe that that TOPO Plus will unnecessarily place a huge burden on individual market makers and will significantly reduce market transparency. Regardless of whether the Commission approves the TOPO Plus fee schedule, the Commission should require the PHLX to preserve the market makers ability to electronically interact with the customer order book. Lastly, the PHLX should explain the Live Auction features in detail to the Commission prior to including it in TOPO Plus.

TOPO Plus data is Core Data

In the NetCoalition Order, the Commission defined “Core data” to mean “the best-priced quotations and comprehensive last sale reports of all markets...” (Release No. 34-57917 p. 3). We believe that TOPO Plus data epitomizes the type of essential information that should be included in Core data. PHLX TOPO Plus is not like the ARCA depth of book data as described in the NetCoalition Order. The key difference is that the ARCA depth of book data is included with the exchange’s consolidated distribution whereas the PHLX TOPO Plus includes essential information that is not disseminated to OPRA.

The PHLX claims that it created TOPO Plus to include “Exchange top-of-market data (including order, quotes and trades) [(“TOPO”)], together with all information that is included in the Exchange’s Specialized Order Feed (“SOF”)...” (SR-Phlx-2010-48 p.1). The purpose of TOPO is to provide subscribers “a direct data feed that includes the Exchange’s best bid and offer position ...” and that “[t]he data contained in the TOPO data feed is identical to the data sent to the processor for the Options Price Regulatory Authority (“OPRA”), and the TOPO and OPRA data leave the Phlx XL II system at the same time.” (SR-Phlx-2010-48 p. 2)

As stated in the Proposed Rule Filing, the TOPO Plus product is a combination of the TOPO as well as all information included in the SOF. (SR-Phlx-2010-48 p.1) The

“SOF provides real-time information to keep track of the single order book(s), single and complex orders, complex strategy and Live Auction for all symbols for which the user is configured” (SR-Phlx-2010-48 p. 3). It seems that SOF provides three distinct data products. First, it provides the status of single orders on the order book as disseminated to OPRA. Second, it provides all order book information for both single and complex orders on the PHLX order book (which is not disseminated to OPRA). Third, it provides access to the “Live Auction”. It is the second and third component of SOF that we believe is Core data and should be available to all market participants in a fair and equitable way to promote market transparency.

In their request, the PHLX states that “[t]he market data provided in TOPO Plus is non-core data that is governed by the same analysis the Commission set forth in the NetCoalition Order.” (SR-Phlx-2010-48 p. 9). The PHLX however does not offer any explanation or analysis as to how the TOPO Plus product is “non-core data.” We would like the Commission to request that the PHLX demonstrate how TOPO Plus fails to meet the Commission’s definition of “Core data.” Although the TOPO portion of TOPO Plus is available through OPRA, the SOF portion of TOPO Plus is critical “core” information not available anywhere else. This fact makes TOPO Plus critically different than the ARCA data that the Commission ruled upon in the NetCoalition Order.

It seems that the complete single and complex order book on the PHLX is exactly the type of data that the Commission considers “Core data.” The complete single and complex order book predominantly provides information to PHLX members and the public of “executable” trades that are within the disseminated PHLX best bid or offer. Although the order book also provides “depth” information similar to the information offered by ARCA in the NetCoalition Order, such information is generally regarded as of little value in the option marketplace. Market participants are primarily interested in the single and complex order book information only when such orders are close enough to be marketable as to necessitate inclusion in the nationally disseminated best bid or offer. We would emphasize when the single or complex orders are relevant (and within the national best bid or offer) they are “best-priced quotations” and should be classified as essential “Core data.” The PHLX has failed to offer any explanation of how the orders on the single or complex order book could possibly be “non-core” data.

The single and complex order book is “Core data” and it is essential to our ability to effectively meet our market making obligation to provide continuous two-sided markets. Unlike on ARCA, market makers on the PHLX are required to continuously quote two sided markets and have a duty to respond to customer bids and offers. It is essential to have access to the order book in order to effectively perform these functions. We are not aware of any other means to electronically respond to the single or complex orders except with SOF or TOPO Plus. In the NetCoalition Order neither ARCA nor the Commission were required to consider these same obligations.

There are also no similarities between the framework established in the NetCoalition Order and the application to the PHLX complex order book. The

information contained in the complex order book should also be classified as “Core data” because the customers have an expectation that those orders are displayed to all market participants in a transparent manner just as single option orders must be disseminated to OPRA. Once the PHLX begins to charge for TOPO Plus, broker dealers as well as customers will have no means of viewing or interacting with public orders on the PHLX complex order book. Unlike the ARCA depth of book data in the NetCoalition Order, there will be no alternative available to TOPO Plus and this information will not be disseminated to OPRA.

TOPO Plus fails the two-part test outlined in the NonCoalition Order

We urge to Commission to find that even if the PHLX is able to demonstrate to the Commission that the single and complex order book is not Core data, it would still fail the Commission’s two part test outlined in the NetCoalition Order. The PHLX cannot demonstrate that fees to view the complex order book were competitive because there is no alternative available. Any broker dealer or customer wishing to see the PHLX complex order book must either have SOF or TOPO Plus and must pay whatever the PHLX wishes to charge. Individual or smaller market making firms do not enjoy the same low cost portability of business enjoyed by customers of ARCA. Unlike the broker dealers who use ARCA, many individual PHLX market makers are required to be on the PHLX trading floor and cannot switch to another exchange without incurring significant costs or inconvenience. These market makers are subject to the whims of the PHLX and rely on the Commission to help ensure non-discriminatory, equitable, fair and reasonable fees and rules.

The TOPO plus fees fail the test of “equitable, fair, reasonable, and not unreasonably discriminatory.” The PHLX’s proposal to charge \$4,000 per broker dealer is discriminatory because it proposes to charge the same amount per broker dealer regardless of the quantity of issues traded. By doing this, smaller broker dealers are put at a severe competitive disadvantage. For example, if a floor trader is allocated 10 issues to make markets in then that would equate to an additional \$400 per book per month. On the contrary, a large firm streaming all the issues offered on the PHLX would spread that \$4,000 across all of their books thus incurring a cost of as low as \$1 to \$2 per book for adding the TOPO Plus service. For this example we assume that the large firm makes markets in all of the approximately 3,500 issues available on the PHLX.

The PHLX claims that TOPO Plus includes all information that is included in the Exchange’s SOF. However, the SOF feed is provided in a format that is “useable” whereas our vendors inform us that the TOPO Plus data feed comes from the PHLX as a very large raw data feed. The TOPO Plus raw data feed will require a subscriber to purchase redundant data lines to the PHLX as well as invest in sophisticated hardware and software technology to convert the data from its raw state to a “usable” format for commercial autoquoting software. The PHLX cannot have any expectation that small or even medium sized market making firms or broker dealers have this technological capability nor could reasonably afford to purchase and upkeep such technology. These

small and medium firms will have no choice but to buy the “useable” TOPO Plus product from a third party vendor. TOPO Plus data acquired through third party vendors will add an extra layer of latency to the data feed that may result in it becoming almost useless to the individual market makers. This will aid in furthering the large firm advantage and is thus not equitable or fair but rather is unnecessarily discriminatory. For comparison, the current SOF system provides the same data to all market participants at the same time with much lower latency because it is provided by the PHLX directly to the streaming quoters in a “useable” format. SOF currently does not necessitate additional lines or expensive software or hardware.

All market makers must be permitted to electronically respond to the order book

Even if the Commission finds that the single and complex order book is not Core data and further determines that PHLX has satisfied the two part test in the NetCoalition order, we strongly urge the Commission to insist that the PHLX adopt rules to permit its market makers to adjust their electronic quotation systems to interact electronically with the single or complex order book. The PHLX has informed the market makers that even if they receive TOPO Plus through an external distributor and pay the “Professional” rate to the PHLX, the market makers will still be prohibited from electronically adjusting their market quotations to interact with the single or complex order book. The PHLX has explained that this is a “PHLX policy.” We urge the Commission insist that the PHLX change this policy and at the very least require the PHLX to follow the formal rule request procedures prior to implementing this “policy.” The market makers have an affirmative duty to provide continuous two sided quotations and respond to customer bids and offers. Any “policy” restricting some of the participants from electronically trading with customer orders is certainly not furthering the Commission’s objective of promoting just and equitable principles of trade. We would ask the Commission to further investigate whether such a “policy” is anti-competitive in that it prevents one class of market makers from interacting with the single and complex order book and effectively competing with other classes of market makers. We believe this “policy” is discriminatory and a form of “electronic discrimination.” This policy is in effect, the PHLX instructing us not to electronically improve our markets to give the customers best execution. Furthermore, as stated above, the small and medium sized firms cannot even use the raw data feed without significant assistance from third party vendors. These small and medium sized firms would have to pay the PHLX \$4,000 as well as several hundred dollars per month to third party vendors in order to be able try to compete with larger firms for orders on the single or complex order book. We believe that this is neither equitable, fair, reasonable nor non-discriminatory

Live Auction is just disguised “flash orders”

The last component of the TOPO Plus product is “Live Auction.” In its request, the PHLX does not give any explanation as to what “Live Auction” is nor how it constitutes “non-core data.” We assume that Live Auction is the process whereby

members may interact and trade with new single or complex orders just prior to that order being placed on the PHLX order book and disseminated to OPRA. We assume that the “Live Auction” is the mechanism that the PHLX utilizes to grant certain users priority access to the single and complex order book in order for those users to trade “fractions” of a second prior to the time the orders are made available to the public through OPRA. For example, if the PHLX market is 1.00 bid and 1.20 offered and a single order is entered into the PHLX order book system to buy 10 contracts for 1.18, our vendors inform us that only TOPO Plus subscribers will be given this “flash” order information. Only TOPO Plus subscribers will be able to trade with the 1.18 order book prior to the time it would go out to OPRA. If any TOPO Plus subscriber trades this order before it hits the PHLX book then the only data that is disseminated to OPRA is the fact that there was a bid and that it traded immediately. Only a TOPO Plus subscriber will have had an opportunity to participate and compete for this trade. We would ask the Commission whether such a first look or “flash” of the order is “Core data” or non-core data. If the Commission approves the TOPO Plus product, only TOPO Plus subscribers and no other broker dealers or customers will be able to interact with single or complex orders prior to posting. In regards to complex orders, not only will there be no mechanism for non TOPO Plus subscribers to interact with the complex order book but they will not even be provided any means to view the orders as they rest on top of the complex order book because the complex orders are not disseminated to OPRA.

Pre-market Data

In addition to the above issues, we would hope that the Commission would inquire about pre-market orders on the PHLX order book. We are aware that the pre-market order book is available with the current SOF product. There is no mention of this data in the rule filing or whether TOPO Plus will offer this data. If this data is included in TOPO Plus, the same questions arise as to whether pre-market data is Core data and if not, whether it can meet the Commission’s two part test outlined in the NetCoalition Order. We believe that the pre-market order book is essential to our ability to send quotations for purposes of providing liquidity upon “opening rotation.”

In summary, we would like the Commission to ask the PHLX how the TOPO Plus data can be non-core data if it is necessary in order to effectively trade and make markets and respond to customers as a streaming quote trader. Without the SOF components of the TOPO Plus, then a PHLX market maker or customer will have only limited access to the single order book and no means of interacting with the complex order book. The “flash” orders will be provided only to those firms large enough to be able to afford to pay almost \$50,000 per year for data that we believe is “core” to our business. We would hope that the Commission would require the PHLX to demonstrate how limiting the availability of crucial “Core” market data will foster and promote just and equitable principles of trade. We believe that the approval of TOPO Plus will place huge impediments to a free and open market and will create a situation where only the largest firms can afford to purchase and maintain the necessary data to make markets and trade. Only these largest of firms will get to see the orders prior to them hitting the book.

Furthermore, due to an oral NASDAQ “policy” market makers who do not pay the full \$4,000 per month will be prohibited from interacting electronically with the single and complex order book. Lastly, the Commission should request that the PHLX demonstrate how approval of the TOPO Plus data together with implementation of the NASDAQ “policy” restricting electronic interaction with the order book will be in the public’s best interest if it serves only to provide access to the order book to a select few participants and completely circumvents any concept of market transparency.

Sincerely,

Bullock Trading, LP
By: Lawrence Lempert

Fairview Trading Corp.
By: Michael Waber

Cutler Group, LP
By: Andy Yang

TSR Associates, LLC
By: Theodore Raven

Keystone Trading Partners
By: Tim Lobach