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:

I would like to comment on the filing by NASDAQ OMX PHLX, Inc. relating to Market Data Fees. My primary concern with this filing is that the NASDAQ OMX PHLX, Inc is presenting the Top of the Order Book Plus (TOPO PLUS) as non-core information. The NASDAQ OMX PHLX, Inc then follows with the 2 rule test that is used by the ICE and ARCA to classify TOPO as the same information and therefore justifying the fees. NASDAQ OMX PHLX, Inc. does not explain why it is non-core data. I would suggest that the best bid or offer in any option is core data regardless of what The NASDAQ OMX PHLX, Inc indicates. In addition, complex orders and the live auction are also core data. These are orders that should be disseminated to all market participants so that the customer is afforded the best execution. Transparency is vital for all customer orders. This core data should not be grouped together with the depth of the book that The NASDAQ OMX PHLX, Inc is trying to charge for. The ability to see the depth of the book is non-core data and is very different from core data, and it may be of value to some market participants and would warrant charging a fee.

By charging $4,000 or $5,000 per month, depending on how TOPO is distributed, for this data is not an equitable allocation of fees. As a single trader for my own firm I will be assessed $4,000 per month, whereas, Firm B with four traders will pay the same $4,000. My cost is $4,000 and the cost per trader in Firm B is only $1,000. This does not seem like an equitable distribution of fees. As another example, if I trade only 10 equity options, my cost per issue is $400. A remote trader who is trading 400 issues, their cost per issue is only $10. I am paying 40 times the amount per issue than the remote trading firm. That is clearly a non-equitable distribution of fees. A better solution would be to charge based on usage. That would easily allow for an equitable distribution of fees.

Contrary to what The NASDAQ OMX PHLX, Inc indicates, it will impose a burden on competition. Many participants will not be able to afford this cost and will not be able to interact with these orders. This goes against the basic function of an exchange, which is to provide a fair and orderly market. This will reduce competition not enhance it. This goes against all concerns of transparency. Those firms that pay for this data are the only ones going to see and interact with that order flow. Thus, the best execution for the customer may now be in question.

NASDAQ OMX PHLX, Inc also indicates that they need to attract order flow. I do not see how charging $4,000 or $5,000 per month is going to attract order flow. This cost, if anything, will do just the opposite.

I was told by multiple NASDAQ OMX PHLX, Inc employees that this push for charging for market data feeds is coming from the Securities and Exchange Commission.

This is clearly absurd. The SEC's position on transparency is very clear. The SEC does not support flash trading, dark pools and other anti-competitive trading practices. In addition, in a letter dated July 27th, 2009, Nasdaq CEO Robert Greifeld called for the elimination of "any order types or market structure policies that do not contribute to public price formation and market transparency.' Greifeld's letter listed "flash orders, internalized orders, enhanced liquidity providers, Block Talk orders, and dark pools," as order types that do not support price formation.

Finally, the idea of fairness and transparency should be applied here to ensure that all order flow is given the best opportunity to be executed at the best possible price.

Thank you for giving me the opportunity to express my concerns about this matter.

Sincerely,

Robert Sullivan
Empire Options Corporation