

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53841, File No. SR-Phlx-2006-33)

May 19, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to its Payment for Order Flow Pilot 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 May 12, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") 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 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 extend its payment for order flow pilot program, which is currently in effect until May 27, 2006,⁵ for an additional one-year period until May 27, 2007. This

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 See, e.g., Securities Exchange Act Release Nos. 53754 (May 3, 2006), 71 FR 27301 (May 10, 2006) (SR-Phlx-2006-25); 53078 (January 9, 2006), 71 FR 2289 (January 13, 2006) (SR-Phlx-2005-88); 52568 (October 6, 2005), 70 FR 60120 (October 14, 2005) (SR-Phlx-2005-58); and 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (SR-Phlx-2004-91).

proposal is scheduled to expire on the same date as the one-year pilot program in effect in connection with the provisions of Exchange Rule 1080(l) relating to directed orders.⁶

The text of the applicable section of the Exchange's Summary of Equity Option Charges is available at the Commission's Public Reference Room, at the Phlx, and on the Exchange's Website at <http://www.phlx.com>.

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

Currently, the following payment for order flow rates are in effect at the Exchange: (1) equity options other than QQQQ⁷ and FXI Options are assessed \$0.60 per contract; (2) options

⁶ The provisions of Rule 1080(l) are in effect for a one-year pilot period currently scheduled to expire on May 27, 2006. The Exchange has filed a proposed rule change to extend the one-year pilot program for an additional year until May 27, 2007. See SR-Phlx-2006-27.

⁷ 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 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

on QQQQ are assessed \$0.75 per contract; and (3) no payment for order flow fees are assessed on FXI Options.⁸ Trades resulting from either Directed or non-Directed Orders that are delivered electronically over AUTOM⁹ and 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.¹⁰

The Exchange recently amended 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 ROT.¹¹

The Exchange states that, other than extending the date of the pilot program for an additional year until May 27, 2007, no other changes to its current payment for order flow program are being proposed at this time.

The Exchange states that the purpose of extending the Exchange's payment for order flow program for an additional year is to remain competitive with other options exchanges that administer payment for order flow programs.

⁸ calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.
The Exchange states that specialists and Directed Registered Options Traders ("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. Therefore, the payment for order flow fee is assessed, in effect, on equity option transactions between a customer and a ROT, a customer and a Directed ROT, or a customer and a specialist when a customer order is directed to a specialist or Directed ROT who participates in the Exchange's payment for order flow program.

⁹ AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. See Exchange Rules 1014(b)(ii) and 1080.

¹⁰ Electronically-delivered orders do not include orders delivered through the Floor Broker Management System pursuant to Exchange Rule 1063.

¹¹ See Securities Exchange Act Release No. 53754 (May 3, 2006), 71 FR 27301 (May 10, 2006) (SR-Phlx-2006-25).

The proposal, consistent with the Exchange's current payment for order flow program, will remain in effect as a pilot program that is scheduled to expire on May 27, 2007, the same date as the one-year pilot program in effect in connection with the provisions of Exchange Rule 1080(l) relating to Directed Orders.¹²

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 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.

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

¹² See supra note 6.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

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-2006-33 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.

All submissions should refer to File Number SR-Phlx-2006-33. 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 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-2006-33 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).