

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54297; File No. SR-Phlx-2006-47)

August 9, 2006

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 31, 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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 increase its payment for order flow fee from \$.60 per contract to \$.70 per contract for equity options other than options on the Nasdaq-100 Index Tracking Stock<sup>SM</sup> traded under the symbol QQQQ (“QQQQ”),<sup>5</sup> which would continue to be assessed a

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares<sup>SM</sup>, Nasdaq-100 Trust<sup>SM</sup>, Nasdaq-100 Index Tracking Stock<sup>SM</sup>, and QQQ<sup>SM</sup> 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

payment for order flow fee of \$0.75, and options on the iShares FTSE/Xinhua China 25 Index (“FXI Options”), which would continue to not be assessed a payment for order flow fee. The Exchange represents that other than the rate change described above, no other changes to the Exchange’s current payment for order flow program are being proposed at this time.

This proposal would become effective for trades settling on or after August 1, 2006.<sup>6</sup>

Below is the text of the proposed rule change. Proposed deletions are in [brackets].

Proposed additions are underlined.

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

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#### 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 <sup>SM</sup> )	\$0.75 per contract
Remaining Equity Options, except FXI Options	\$0.[6]70 per contract

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License Agreement with Nasdaq. The Nasdaq-100 Index® (“Index”) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust<sup>SM</sup>, or the beneficial owners of Nasdaq-100 Shares<sup>SM</sup>. 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.

<sup>6</sup> The Exchange’s payment for order flow program is currently in effect until May 27, 2007. See Securities Exchange Act Release No. 53841 (May 19, 2006), 71 FR 30461 (May 26, 2006) (SR-Phlx-2006-33).

See Appendix A for additional fees.

\*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, 2007.

\*\*\*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

Currently, the Exchange assesses a payment for order flow fee of \$0.60 per contract for equity options other than options on QQQQ and FXI Options. Further, options on QQQQ are assessed \$0.75 per contract and no payment for order flow fee is assessed on FXI Options.

Specialists,<sup>7</sup> Directed Registered Options Traders (“Directed ROTs”) and Registered Options Traders (“ROTs”) are assessed a payment for order flow fee when a customer order is directed to a specialist unit or Directed ROT who participates in the Exchange’s payment for order flow program.<sup>8</sup> Trades resulting from either Directed<sup>9</sup> or non-Directed Orders that are delivered electronically over AUTOM<sup>10</sup> 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.<sup>11</sup>

The Phlx states that the purpose of the proposal is to remain competitive with other options exchanges. The Phlx notes that the International Securities Exchange, Inc. recently increased its payment for order flow fee to \$0.65 per contract and the Chicago Board Options Exchange, Incorporated also assesses a payment for order flow fee of \$0.65 per contract.<sup>12</sup>

The Phlx states that the proposal is effective for trades settling on or after August 1, 2006.

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<sup>7</sup> The Exchange uses the terms “specialist” and “specialist unit” interchangeably herein.

<sup>8</sup> The Phlx states that 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.

<sup>9</sup> The term “Directed Order” means any customer order to buy or sell, which has been directed to a particular specialist, Remote Streaming Quote Trader or Streaming Quote Trader by an Order Flow Provider.

<sup>10</sup> 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.

<sup>11</sup> Electronically-delivered orders do not include orders delivered through the Floor Broker Management System pursuant to Exchange Rule 1063.

<sup>12</sup> See Securities Exchange Act Release Nos. 54152 (July 14, 2006), 71 FR 41488 (July 21, 2006) (SR-ISE-2006-36); 53969 (June 9, 2006), 71 FR 34973 (June 16, 2006) (SR-CBOE-2006-53); and 53044 (December 30, 2005), 71 FR 957 (January 6, 2006) (SR-CBOE-2005-114). See also Securities Exchange Act Release Nos. 53341 (February 21, 2006), 71 FR 10085 (February 28, 2006) (SR-Amex-2006-15) and 54042 (June 26, 2006), 71 FR 37626 (June 30, 2006) (SR-Amex-2006-59).

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Sections 6(b)(4) of the Act<sup>14</sup> 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 Act<sup>15</sup> and Rule 19b-4(f)(2)<sup>16</sup> 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.

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2006-47 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-2006-47. 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-2006-47 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.<sup>17</sup>

Nancy M. Morris  
Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).