

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52666; File No. SR-Phlx-2005-60)

October 25, 2005

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 Program in Effect in September and October 2004

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 October 12, 2005, 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 rebate payment for order flow funds that were collected from Registered Options Traders ("ROTs"), but not requested by specialists in connection with the Exchange's payment for order flow program that was in effect in September and October 2004 ("September/October 2004").

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).

Background:

In September/October 2004, the Exchange assessed a payment for order flow fee as follows when ROTs traded against a customer order: (1) \$1.00 per contract for options on the Nasdaq-100 Index Tracking StockSM traded under the symbol QQQQ;⁵ and (2) \$0.40 per contract for the remaining top 150 equity options, other than the QQQQs.⁶ The Exchange states that, pursuant to the Exchange's September/October 2004 payment for order flow program, any excess payment for order flow funds (funds not requested by specialists to pay for order flow) were carried forward to the next month by option and could not be applied retroactively to past deficits, which may be incurred when a specialist requested more than the amount billed and collected. Thus, ROTs did not receive a rebate of any excess payment for order flow funds in a particular option pursuant to the September/October 2004 payment for order flow program.

In November 2004, the Exchange modified its payment for order flow program to allow, among other things, any excess payment for order flow funds billed but not reimbursed to

⁵ 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 calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

⁶ See Securities Exchange Act Release Nos. 50471 (September 29, 2004), 69 FR 59636 (October 5, 2004) (SR-Phlx-2004-60) and 50572 (October 20, 2004), 69 FR 62735 (October 27, 2004) (SR-Phlx-2004-61).

specialists to be returned to ROTs, by option, on a pro rata basis.⁷ However, the Exchange states that the rebates only applied to transactions settling on or after November 1, 2004 and therefore, did not include any excess funds from the September/October payment for order flow program because, at that time, it did not know whether there would be any excess payment for order flow funds due to the specialist reimbursement process then in effect.

The specialist reimbursement process has been completed and the Exchange now proposes to rebate to ROTs on a pro rata basis those payment for order flow funds collected, but not reimbursed to specialists in connection with the September/October 2004 payment for order flow program

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

The Exchange states that the purpose of returning excess payment for order flow funds to ROTs on a pro rata basis is to help minimize the financial impact to them in connection with the collection of the September/October 2004 payment for order flow fees.

⁷ See Securities Exchange Act Release No. 50723 (November 23, 2004), 69 FR 69978

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Sections 6(b)(4) of the Act⁹ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among the Phlx's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition 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 Act¹⁰ and Rule 19b-4(f)(2)¹¹ 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.

(December 1, 2004) (SR-Phlx-2004-68).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 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. Please include File Number SR-Phlx-2005-60 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Phlx-2005-60. 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-2005-60 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.¹²

Jonathan G. Katz
Secretary

¹² 17 CFR 200.30-3(a)(12).