Proposed Rule Change by Philadelphia Stock Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial Amendment Withdrawal

Section 19(b)(2) Section 19(b)(3)(A) Section 19(b)(3)(B)

Pilot Extension of Time Period for Commission Action Date Expires

Rule

- 19b-4(f)(1)
- 19b-4(f)(4)
- 19b-4(f)(2)
- 19b-4(f)(5)
- 19b-4(f)(3)
- 19b-4(f)(6)

Description

Provide a clear and concise description of the proposed rule change and its impact.

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name: Cynthia
Last Name: Hoekstra
Title: Director
E-mail: cynthia.hoekstra@phlx.com
Telephone: (215) 496-5066
Fax: (215) 496-5279

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date: 02/01/2006

By Cynthia Hoekstra

(Note)

(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Cynthia Hoekstra,
<table>
<thead>
<tr>
<th>Form 19b-4 Information</th>
<th>The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit 1 - Notice of Proposed Rule Change</td>
<td>The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3).</td>
</tr>
<tr>
<td>Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications</td>
<td>Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.</td>
</tr>
<tr>
<td>Exhibit 3 - Form, Report, or Questionnaire</td>
<td>Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.</td>
</tr>
<tr>
<td>Exhibit 4 - Marked Copies</td>
<td>The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.</td>
</tr>
<tr>
<td>Exhibit 5 - Proposed Rule Text</td>
<td>The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.</td>
</tr>
<tr>
<td>Partial Amendment</td>
<td>If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e., partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.</td>
</tr>
</tbody>
</table>
1. Text of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, proposes to amend its Equity Option Specialist Deficit (Shortfall) Fee ("shortfall fee"). Specifically, the Exchange proposes to amend its shortfall fee in two ways: (1) eliminate the DROT Exemption as defined herein, thus the specialist will be assessed a shortfall fee, subject to the maximum caps currently in effect, even when one or more Streaming Quote Traders ("SQTs") or Remote Streaming Quote Traders

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3 The Exchange uses the terms "specialist" and "specialist unit" interchangeably herein.

4 Certain shortfall fee caps apply to transactions in any of the top 120 equity options pursuant to the following: (1) If Phlx volume in any top 120 equity option, except options on Nasdaq-100 Index Tracking Stock℠ (traded under the symbol "QQQQ"), is less than or equal to 50 percent of the current threshold volume (presently 6 percent), a cap of $10,000 will apply; (2) If Phlx volume in any top 120 equity option, except options on QQQQ, is greater than 50 percent of the current threshold volume (presently 6 percent) and less than 12 percent of the total national monthly contract volume, a cap of $5,000 will apply; (3) If Phlx volume in options on QQQQ is less than or equal to 50 percent of the current threshold volume (presently 6 percent), a cap of $20,000 will apply; and (4) If Phlx volume in options on QQQQ is greater than 50 percent of the current threshold volume (presently 6 percent) and less than 12 percent of the total national monthly contract volume, a cap of $10,000 will apply. The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ 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® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. 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.

5 An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically
(“RSQTs”)\textsuperscript{6} trading on the Exchange’s electronic options trading platform, Phlx XL,\textsuperscript{7} have been designated to receive Directed Orders\textsuperscript{8} from Order Flow Providers\textsuperscript{9} for the same option in which that specialist unit is acting as the specialist; and (2) establish a shortfall credit of $0.35 per contract in any top 120 equity option\textsuperscript{10} for each specialist unit that exceeds 15% of the total national monthly contract volume effected on the Exchange in that same month, up to the total amount of the shortfall fee that is incurred in through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. 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. \textit{See} Exchange Rules 1014(b)(ii) and 1080.

\textsuperscript{6} An RSQT is an Exchange ROT that is a member or member organization of the Exchange with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. An RSQT may only trade in a market making capacity in classes of options in which he is assigned. \textit{See} Exchange Rule 1014(b)(ii)(B). \textit{See} Securities Exchange Act Release Nos. 51126 (February 2, 2005), 70 FR 6915 (February 9, 2005) (SR-Phlx-2004-90) and 51428 (March 24, 2005) (SR-Phlx-2005-12).


\textsuperscript{8} The term “Directed Order” means any customer order to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider (defined below). \textit{See} Exchange Rule 1080(l). The provisions of Rule 1080(l) are in effect for a one-year pilot period to expire on May 27, 2006. \textit{See} Securities Exchange Act Release No. 51759 (May 27, 2005) (SR-Phlx-2004-91).

\textsuperscript{9} The term “Order Flow Provider” means any member or member organization that submits, as agent, customer orders to the Exchange. \textit{See} Exchange Rule 1080(l).

\textsuperscript{10} A top 120 equity option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for a specified month, based on volume reflected by The Options Clearing Corporation.
connection with the trading of other top 120 equity options that have not met the minimum performance level, which is currently set at 12% of the total national monthly contract volume.

The Exchange also proposes to make a minor, technical change to the shortfall fee section on its Summary of Equity Option Charges by inserting the word “equity” in the phrase “top 120 options” to clarify the type of options to which the Exchange is referring in the shortfall fee section of its fee schedule. In addition, the Exchange proposes, to clarify that the reference to “transition period” in the first paragraph of the shortfall fee section refers to the transition period set forth for any top 120 equity option listed after February 1, 2004 and for any top 120 equity option acquired by a new specialist unit within the first 60-days of operations, which is described in the same shortfall fee section of the Exchange’s fee schedule. These changes are considered to be minor, technical changes because they are consistent with current Exchange practice and should help to clarify the assessment of the shortfall fee.

Under the proposal, when a specialist unit's trading volume in any top 120 equity option, effectuated on the Exchange in one month, exceeds 15% of the total national contract volume for such top 120 equity option in that same month, a shortfall credit of $0.35 per contract will be applied to such specialist unit's invoice, the dollar amount of which shall (i) directly correspond to the number of contracts of such top 120 equity option in excess of 15% of the total national contract volume for such top 120 equity option, and (ii) offset any shortfall fee charged to such specialist unit with respect to any other top 120 equity option traded in that same month; provided that such shortfall credit shall not (a) exceed the total amount of any shortfall fee charged to such specialist unit with respect to any
other top 120 equity option traded in that same month, and (b) be applied against any
other Exchange charges on the invoice(s) of such specialist unit or subsidiary of such
specialist unit. Any excess shortfall credit will not be carried over to subsequent
months.\footnote{The $0.35 per contract credit is imposed on any contracts over the 15% threshold. For
example, if the total national monthly contract volume was 8,000,000 contracts for one
option and the Exchange’s market share in that option was 18% or 1,440,000 contracts,
the specialist unit would receive a credit for the amount of contracts over the 15%
threshold up to the total amount of the shortfall fee that was incurred in connection with
the trading of other top 120 equity options that did not meet the current 12% minimum
performance level. In this case 1,200,000 contracts represents 15% of the total national
monthly contract volume of 8,000,000. Thus, a credit of $84,000 (240,000 contracts
(derived from subtracting 1,200,000 contracts from 1,440,000 contracts) x $0.35) would
be applied against any other shortfall fees incurred by that specialist unit in that month.
If the amount of the shortfall fees totaled less than the amount of the credit (e.g. the
shortfall fees totaled $25,000 and the credit was $84,000) no shortfall fee would be due
the Exchange that month. The excess credit of $59,000 would not carry over to
subsequent months.}

Should the total amount of the shortfall credit exceed the total amount of the
shortfall fee due, no shortfall fee will be due to the Exchange.

The Exchange currently charges a shortfall fee of $0.35 per contract to be paid
monthly in connection with transactions in any top 120 equity options, in most cases, if at
least 12% of the total national monthly contract volume in that option is not effected on
the Exchange in that month.\footnote{An exception to the 12% volume threshold amount relates to a transition period for
newly listed top 120 equity options or for any top 120 equity option (including those
equity options listed on the Exchange before February 1, 2004) acquired by a new
specialist unit. These transition periods are not affected by the current proposal. See
Securities Exchange Act Release No. 49324 (February 26, 2004), 69 FR 10089 (March 3,
2004) (SR-Phlx-2004-08).}

The Exchange currently charges a shortfall fee of $0.35 per contract to be paid
monthly in connection with transactions in any top 120 equity options, in most cases, if at
least 12% of the total national monthly contract volume in that option is not effected on
the Exchange in that month. The purpose of Amendment No. 1 is to clarify the assessment of the shortfall fee
and the application of the shortfall credit.
This proposal is scheduled to become effective for transactions settling on or after January 2, 2006.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, a copy of the changes made to the Exchange’s Summary of Equity Option Charges is attached hereto as Exhibit 4, and a copy of the applicable section of the Exchange’s Summary of Equity Option Charges is attached hereto as Exhibit 5.

2. Procedures of the Self-Regulatory Organization

The Phlx Board of Governors approved the proposal for filing with the Securities and Exchange Commission ("SEC" or "Commission") on December 14, 2005.

Questions and comments on the proposed rule change may be directed to Cynthia K. Hoekstra, Director, (215) 496-5066 or Edith Hallahan, Deputy General Counsel, (215) 496-5179.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The purpose of this proposal is to encourage equity option specialist units to increase their market share and create an incentive, by way of a credit, for specialists to exceed 15% of the total national monthly contract volume on the Exchange in a month.

Previously, effective for trades settling on or after June 6, 2005, the Exchange amended its shortfall fee to no longer charge the shortfall fee when one or more SQTs or RSQTs trading on Phlx XL, have been designated to receive Directed Orders from Order Flow Providers (“Directed Order Flow Program”) for the same option in which that
specialist unit is acting as the specialist (collectively the “DROT Exemption”). At that time, the Exchange believed it would not be reasonable to impose a shortfall fee on specialists when SQTs and RSQTs would be competing for market share on a relatively equal basis, as the shortfall fee was designed, in part, to create an incentive for specialists to promote the options they have been allocated. Thus, given that the Directed Order Flow Program was a new program, the Exchange believed it was important to see how that program would affect the specialists’ market share as well as how the Directed Order Flow Program might influence order routing decisions by order flow providers.

However, specialist market share in certain top 120 equity options currently remains well below the targeted shortfall fee threshold of 12% of the total national monthly contract volume effected on the Exchange. Although the Exchange recognizes that the specialists are competing for market share with the SQTs and RSQTs, it believes that obtaining 12% market share, which would include SQT and RSQT volume, is not unreasonable and wants to encourage specialists to compete in garnering greater market share.

The purpose of making the minor, technical changes to the shortfall fee text, including adding the caption “Transition Period,” is to more clearly describe current Exchange practice, which should, in turn, help to avoid confusion regarding the implementation of the shortfall fee.

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b. **Statutory Basis**

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act\(^{14}\) in general, and furthers the objectives of Section 6(b)(4) of the Act\(^{15}\) in particular, in that it is an equitable allocation of reasonable fees among Exchange members. All specialist units competing in the top 120 equity options will be assessed the same shortfall fee and will be given the same shortfall fee credit, if they exceed 15% of the total national monthly contract volume on the Exchange in a month.

4. **Self-Regulatory Organization's Statement on Burden on Competition**

The Phlx does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

5. **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.

6. **Extension of Time Period for Commission Action**

The Exchange does not consent to an extension of the time period for Commission action.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act\(^{16}\) and Rule 19b-4(f)(2)\(^{17}\) thereunder. Accordingly,

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the proposal will take effect upon filing with the Commission. At any time within 60
days of the filing of the 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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or
   of the Commission

   The proposed rule change is not based on the rules of another self-regulatory
organization or of the Commission.

9. Exhibits

   1. Notice of proposed rule for publication in the Federal Register.

   4. Changes made to the Exchange’s Summary of Equity Option Charges.

   5. Applicable section of the Exchange’s Summary of Equity Option Charges.

SECURITIES AND EXCHANGE COMMISSION
(Release No.                  ; File No. SR-Phlx-2005-91)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to its Equity Option Specialist Deficit (Shortfall) Fee

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 ______________________ 2005, 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 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, pursuant to Section 19(b)(1) and Rule 19b-4 thereunder,\(^3\) proposes to amend its Equity Option Specialist Deficit (Shortfall) Fee ("shortfall fee"). Specifically, the Exchange proposes to amend its shortfall fee in two ways: (1) eliminate the DROT Exemption as defined herein, thus the specialist\(^4\) will be assessed a shortfall fee, subject


\(^3\) 17 CFR 240.19b-4.

\(^4\) The Exchange uses the terms “specialist” and “specialist unit” interchangeably herein.
to the maximum caps currently in effect, even when one or more Streaming Quote Traders ("SQTs") or Remote Streaming Quote Traders ("RSQTs") trading on the

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5 Certain shortfall fee caps apply to transactions in any of the top 120 equity options pursuant to the following: (1) If Phlx volume in any top 120 equity option, except options on Nasdaq-100 Index Tracking Stock® (traded under the symbol “QQQQ”), is less than or equal to 50 percent of the current threshold volume (presently 6 percent), a cap of $10,000 will apply; (2) If Phlx volume in any top 120 equity option, except options on QQQQ, is greater than 50 percent of the current threshold volume (presently 6 percent) and less than 12 percent of the total national monthly contract volume, a cap of $5,000 will apply; (3) If Phlx volume in options on QQQQ is less than or equal to 50 percent of the current threshold volume (presently 6 percent), a cap of $20,000 will apply; and (4) If Phlx volume in options on QQQQ is greater than 50 percent of the current threshold volume (presently 6 percent) and less than 12 percent of the total national monthly contract volume, a cap of $10,000 will apply. The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ 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® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. 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 An SQT is an Exchange Registered Options Trader (“ROT”) who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. 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.

7 An RSQT is an Exchange ROT that is a member or member organization of the Exchange with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. An RSQT may only trade in a market making capacity in classes of options in which he is assigned. See Exchange Rule 1014(b)(ii)(B). See Securities Exchange Act Release Nos. 51126 (February 2, 2005), 70 FR 6915 (February 9, 2005) (SR-Phlx-2004-90) and 51428 (March 24, 2005) (SR-Phlx-2005-12).
Exchange’s electronic options trading platform, Phlx XL, have been designated to receive Directed Orders from Order Flow Providers for the same option in which that specialist unit is acting as the specialist; and (2) establish a shortfall credit of $0.35 per contract in any top 120 equity option for each specialist unit that exceeds 15% of the total national monthly contract volume effected on the Exchange in that same month, up to the total amount of the shortfall fee that is incurred in connection with the trading of other top 120 equity options that have not met the minimum performance level, which is currently set at 12% of the total national monthly contract volume.

The Exchange also proposes to make a minor, technical change to the shortfall fee section on its Summary of Equity Option Charges by inserting the word “equity” in the phrase “top 120 options” to clarify the type of options to which the Exchange is referring in the shortfall fee section of its fee schedule. In addition, the Exchange proposes, to clarify that the reference to “transition period” in the first paragraph of the shortfall fee section refers to the transition period set forth for any top 120 equity option listed after

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10 The term “Order Flow Provider” means any member or member organization that submits, as agent, customer orders to the Exchange. See Exchange Rule 1080(l).

11 A top 120 equity option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for a specified month, based on volume reflected by The Options Clearing Corporation.
February 1, 2004 and for any top 120 equity option acquired by a new specialist unit within the first 60-days of operations, which is described in the same shortfall fee section of the Exchange’s fee schedule. These changes are considered to be minor, technical changes because they are consistent with current Exchange practice and should help to clarify the assessment of the shortfall fee.

Under the proposal, when a specialist unit's trading volume in any top 120 equity option, effected on the Exchange in one month, exceeds 15% of the total national contract volume for such top 120 equity option in that same month, a shortfall credit of $0.35 per contract will be applied to such specialist unit's invoice, the dollar amount of which shall (i) directly correspond to the number of contracts of such top 120 equity option in excess of 15% of the total national contract volume for such top 120 equity option, and (ii) offset any shortfall fee charged to such specialist unit with respect to any other top 120 equity option traded in that same month; provided that such shortfall credit shall not (a) exceed the total amount of any shortfall fee charged to such specialist unit with respect to any other top 120 equity option traded in that same month, and (b) be applied against any other Exchange charges on the invoice(s) of such specialist unit or subsidiary of such specialist unit. Any excess shortfall credit will not be carried over to subsequent months. Should the total amount of the shortfall credit exceed the total amount of the shortfall fee due, no shortfall fee will be due to the Exchange.

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12 The $0.35 per contract credit is imposed on any contracts over the 15% threshold. For example, if the total national monthly contract volume was 8,000,000 contracts for one option and the Exchange’s market share in that option was 18% or 1,440,000 contracts, the specialist unit would receive a credit for the amount of contracts over the 15% threshold up to the total amount of the shortfall fee that was incurred in connection with the trading of other top 120 equity options that did not meet the current 12% minimum performance level. In this case 1,200,000 contracts represents 15% of the total national contract volume.
The Exchange currently charges a shortfall fee of $0.35 per contract to be paid monthly in connection with transactions in any top 120 equity options, in most cases, if at least 12% of the total national monthly contract volume in that option is not effected on the Exchange in that month.\textsuperscript{13}

The purpose of Amendment No. 1 is to clarify the assessment of the shortfall fee and the application of the shortfall credit.

This proposal is scheduled to become effective for transactions settling on or after January 2, 2006.

A copy of the applicable section of the Exchange’s Summary of Equity Option Charges is attached hereto as Exhibit 5.

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

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\textsuperscript{13} An exception to the 12% volume threshold amount relates to a transition period for newly listed top 120 equity options or for any top 120 equity option (including those equity options listed on the Exchange before February 1, 2004) acquired by a new specialist unit. These transition periods are not affected by the current proposal. See Securities Exchange Act Release No. 49324 (February 26, 2004), 69 FR 10089 (March 3, 2004) (SR-Phlx-2004-08).
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 purpose of this proposal is to encourage equity option specialist units to
increase their market share and create an incentive, by way of a credit, for specialists to
exceed 15% of the total national monthly contract volume on the Exchange in a month.

   Previously, effective for trades settling on or after June 6, 2005, the Exchange
amended its shortfall fee to no longer charge the shortfall fee when one or more SQTs or
RSQTs trading on Phlx XL, have been designated to receive Directed Orders from Order
Flow Providers (“Directed Order Flow Program”) for the same option in which that
specialist unit is acting as the specialist (collectively the “DROT Exemption”). At that
time, the Exchange believed it would not be reasonable to impose a shortfall fee on
specialists when SQTs and RSQTs would be competing for market share on a relatively
equal basis, as the shortfall fee was designed, in part, to create an incentive for specialists
to promote the options they have been allocated. Thus, given that the Directed Order
Flow Program was a new program, the Exchange believed it was important to see how
that program would affect the specialists’ market share as well as how the Directed Order
Flow Program might influence order routing decisions by order flow providers.

   However, specialist market share in certain top 120 equity options currently
remains well below the targeted shortfall fee threshold of 12% of the total national

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14 See Securities Exchange Act Release No. 51947 (June 30, 2005), 70 FR 39542 (July 8,
monthly contract volume effected on the Exchange. Although the Exchange recognizes that the specialists are competing for market share with the SQTs and RSQTs, it believes that obtaining 12% market share, which would include SQT and RSQT volume, is not unreasonable and wants to encourage specialists to compete in garnering greater market share.

The purpose of making the minor, technical changes to the shortfall fee text, including adding the caption “Transition Period,” is to more clearly describe current Exchange practice, which should, in turn, help to avoid confusion regarding the implementation of the shortfall fee.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act\(^\text{15}\) in general, and furthers the objectives of Section 6(b)(4) of the Act\(^\text{16}\) in particular, in that it is an equitable allocation of reasonable fees among Exchange members. All specialist units competing in the Top 120 equity options will be assessed the same shortfall fee and will be given the same shortfall fee credit, if they exceed 15% of the total national monthly contract volume on the Exchange in a month.

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 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\(^\text{17}\) and Rule 19b-4(f)(2)\(^\text{18}\) thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the 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)](http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2005-91 on the subject line.

Paper comments:

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• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2005-91. 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-2005-91 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.\(^{19}\)

Margaret H. McFarland
Deputy Secretary

\(^{19}\) 17 CFR 200.30-3(a)(12).
**Exhibit 4**

**Additions and Deletions from the previously submitted filing are in bold**

**New Text Underlined; Deleted Text Bracketed**

**SUMMARY OF EQUITY OPTION CHARGES (p. 2/6)**

**New Text Underlined; Deleted Text Bracketed**

**OPTION FLOOR BROKERAGE ASSESSMENT**

<table>
<thead>
<tr>
<th>Monthly Net Floor Brokerage Income</th>
<th>Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 to $300,000</td>
<td>5.5%</td>
</tr>
<tr>
<td>$300,001 - $500,000</td>
<td>6.5% (excess &gt; $300,000)</td>
</tr>
<tr>
<td>$500,001 and Over</td>
<td>7.5% (excess &gt; $500,000)</td>
</tr>
</tbody>
</table>

**Monthly Cap: $100,000**

* * * * *

**SPECIALIST DEFICIT (Shortfall) FEE**

$.35 per contract for specialists trading any top 120 equity option if 12% of the total national monthly contract volume (“volume threshold”) for such top 120 equity option is not effected on the PHLX. The fee shall be limited to the following caps imposed per month per option, subject to the [transition period thresholds] described below:

- If Phlx volume in any top 120 equity option, except options on Nasdaq-100 Index Tracking StockSM (traded under the symbol QQQQ), is less than or equal to 50 percent of the current volume threshold (presently 6 percent), a cap of $10,000 will apply,
- If Phlx volume in any top 120 equity option, except options on QQQQ, is greater than 50 percent of the current volume threshold (presently 6 percent) and less than the volume threshold, a cap of $5,000 will apply,
- If Phlx volume in options on QQQQ, is less than or equal to 50 percent of the current volume threshold (presently 6 percent), a cap of $20,000 will apply,
- If Phlx volume in options on QQQQ, is greater than 50 percent of the current volume threshold (presently 6 percent) and less than the volume threshold, a cap of $10,000 will apply.

[The shortfall fee will not be charged when one or more Streaming Quote Traders (“SQT”) or Remote Streaming Quote Traders (“RSQT”) have been designated to receive Directed Orders (any customer order to buy or sell which has been directed to a particular specialist, RSQT or SQT by an order flow provider). Any applicable cap will be pro rated in the month that the Exchange’s system designates the option(s) to be directed to a specific SQT or RSQT.]

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

A shortfall credit of $0.35 per contract in any Top 120 option will be applied to the specialist unit’s invoice up to the amount of the shortfall fee generated in the other Top 120 options that have not met the minimum performance levels stated above when a specialist unit exceeds 15% of the total national monthly contract volume effected on the Exchange in that same month.

When a specialist unit's trading volume in any top 120 equity option, effected on the Exchange in one month, exceeds 15% of the total national contract volume for such top 120 equity option in that same month, a shortfall credit of $0.35 per contract will be applied to such specialist unit's invoice, the dollar amount of which shall (i) directly correspond to the number of contracts of such top 120 equity option in excess of 15% of the total national contract volume for such top 120 equity option, and (ii) offset any shortfall fee charged to such specialist unit with respect to any other top 120 equity option traded in that same month; provided that such shortfall credit shall not (a) exceed the total amount of any shortfall fee charged to such specialist unit with respect to any other top 120 equity option traded in that same month, and (b) be applied against any other Exchange charges on the invoice(s) of such specialist unit or subsidiary of such specialist unit. Any excess shortfall credit will not be carried over to subsequent months.

**Transition Period**

For any top 120 equity option listed after February 1, 2004 and for any top 120 equity option acquired by a new specialist unit** within the first 60-days of operations, the following thresholds will apply, with a cap of $10,000 for the first 4 full months of trading per month per option provided that the total monthly market share effected on the Phlx in that top 120 equity option is equal to or greater than 50% of the volume threshold in effect:

<table>
<thead>
<tr>
<th>Month</th>
<th>National Market Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>First full month of trading</td>
<td>0%</td>
</tr>
<tr>
<td>Second full month of trading</td>
<td>3%</td>
</tr>
<tr>
<td>Third full month of trading</td>
<td>6%</td>
</tr>
<tr>
<td>Fourth full month of trading</td>
<td>9%</td>
</tr>
<tr>
<td>Fifth full month of trading (and thereafter)</td>
<td>12%</td>
</tr>
</tbody>
</table>

** A new specialist unit is one that is approved to operate as a specialist unit by the Options Allocation, Evaluation, and Securities Committee on or after February 1, 2004 and is a specialist unit that is not currently affiliated with an existing options specialist unit as reported on the member organization’s Form BD, which refers to direct and indirect owners, or as reported in connection with any other financial arrangement, such as is required by Exchange Rule 783.

* * * * *

No other changes are being made to the Summary of Equity Option Charges pursuant to this proposal
SUMMARY OF EQUITY OPTION CHARGES (p. 2/6)

SPECIALIST DEFICIT (Shortfall) FEE

$.35 per contract for specialists trading any top 120 equity option if 12% of the total national monthly contract volume ("volume threshold") for such top 120 equity option is not effected on the PHLX. The fee shall be limited to the following caps imposed per month per option, subject to the transition period described below:

- If PHLX volume in any top 120 equity option, except options on Nasdaq-100 Index Tracking Stock (traded under the symbol QQQQ), is less than or equal to 50 percent of the current volume threshold (presently 6 percent), a cap of $10,000 will apply,
- If PHLX volume in any top 120 equity option, except options on QQQQ, is greater than 50 percent of the current volume threshold (presently 6 percent) and less than the volume threshold, a cap of $5,000 will apply,
- If PHLX volume in options on QQQQ, is less than or equal to 50 percent of the current volume threshold (presently 6 percent), a cap of $20,000 will apply,
- If PHLX volume in options on QQQQ, is greater than 50 percent of the current volume threshold (presently 6 percent) and less than the volume threshold, a cap of $10,000 will apply.

[The shortfall fee will not be charged when one or more Streaming Quote Traders ("SQT") or Remote Streaming Quote Traders ("RSQT") have been designated to receive Directed Orders (any customer order to buy or sell which has been directed to a particular specialist, RSQT or SQT by an order flow provider). Any applicable cap will be pro rated in the month that the Exchange’s system designates the option(s) to be directed to a specific SQT or RSQT.]

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

When a specialist unit's trading volume in any top 120 equity option, effected on the Exchange in one month, exceeds 15% of the total national contract volume for such top 120 equity option in that same month, a shortfall credit of $0.35 per contract will be applied to such specialist unit's invoice, the dollar amount of which shall (i) directly correspond to the number of contracts of such top 120 equity option in excess of 15% of the total national contract volume for such top 120 equity option, and (ii) offset any shortfall fee charged to such specialist unit with respect to any other top 120 equity option traded in that same month; provided that such shortfall credit shall not (a) exceed the total amount of any shortfall fee charged to such specialist unit with respect to any other top 120 equity option traded in that same month, and (b) be applied against any other Exchange charges on the invoice(s) of such specialist unit or subsidiary of such specialist unit. Any excess shortfall credit will not be carried over to subsequent months.

Transition Period

For any top 120 equity option listed after February 1, 2004 and for any top 120 equity option acquired by a new specialist unit** within the first 60-days of operations, the following thresholds will apply, with a cap of $10,000 for the first 4 full months of trading per month per option provided that the total monthly market share effected on the Phlx in that top 120 equity option is equal to or greater than 50% of the volume threshold in effect:

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** A new specialist unit is one that is approved to operate as a specialist unit by the Options Allocation, Evaluation, and Securities Committee on or after February 1, 2004 and is a specialist unit that is not currently affiliated with an existing options specialist unit as reported on the member organization’s Form BD, which refers to direct and indirect owners, or as reported in connection with any other financial arrangement, such as is required by Exchange Rule 783.

* * * * *