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)

Rule

[19b-4(f)(5)]

Pilot Extension of Time Period for Commission Action Date Expires

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 brief description of the proposed rule change (limit 250 characters).

Extend Payment for Order Flow Pilot Program until May 27, 2007

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) 496-6729

Signature

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

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

Date 05/12/2006

By Cynthia Hoekstra

Director

(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.
<table>
<thead>
<tr>
<th>Exhibit 1 - Notice of Proposed Rule Change</th>
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<tbody>
<tr>
<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>
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<th>Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications</th>
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<tr>
<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>
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<tr>
<th>Exhibit 3 - Form, Report, or Questionnaire</th>
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<tr>
<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>
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<tr>
<th>Exhibit 4 - Marked Copies</th>
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<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>
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<th>Exhibit 5 - Proposed Rule Text</th>
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<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>
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<th>Partial Amendment</th>
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<tr>
<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>
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</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 extend its payment for order flow pilot program, which is currently in effect until May 27, 2006, for an additional one-year period until May 27, 2007. This 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.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 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 Executive Committee, pursuant to delegated authority, approved the proposal for filing with the Securities and Exchange Commission ("SEC" or "Commission") on May 4, 2006.

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4. 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.
Questions and comments on the proposed rule change may be directed to Cynthia Hoekstra, Director, at (215) 496-5066 or Edith Hallahan, Deputy General Counsel, at (215) 496-5179.

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

   a. **Purpose**

      **Background**

      The following payment for order flow rates are in effect at the Exchange: (1) equity options other than QQQQ\(^5\) and FXI Options are assessed $0.60 per contract; (2) options on QQQQ are assessed $0.75 per contract; and (3) no payment for order flow fees are assessed on FXI Options.\(^6\) Trades resulting from either Directed or non-Directed Orders that are delivered electronically over AUTOM\(^7\) and executed on the Exchange are

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\(^5\) The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares\(^{SM}\), Nasdaq-100 Trust\(^{SM}\), Nasdaq-100 Index Tracking Stock\(^{SM}\), and QQQ\(^{SM}\) 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\(^{SM}\), or the beneficial owners of Nasdaq-100 Shares\(^{SM}\). 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.

\(^6\) 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 an 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.

\(^7\) 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.)
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.\textsuperscript{8}

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.\textsuperscript{9}

Other than extending the date of the pilot program for an additional year, no other changes to the Exchange’s current payment for order flow program are being proposed at this time.

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.

This 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.\textsuperscript{10}

b. \textbf{Statutory Basis}

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act\textsuperscript{11} in general, and furthers the objectives of Section 6(b)(4) of

\textsuperscript{8} Electronically-delivered orders do not include orders delivered through the Floor Broker Management System pursuant to Exchange Rule 1063.


\textsuperscript{10} See Footnote No. 4.

\textsuperscript{11} 15 U.S.C. 78f(b).
the Act\textsuperscript{12} in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

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 establishes or changes a due, fee, or other charge applicable only to a member pursuant to Section 19(b)(3)(A)(ii) of the Act\textsuperscript{13} and Rule 19b-4(f)(2)\textsuperscript{14} 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.


\textsuperscript{14} 17 CFR 240.19b-4(f)(2).
8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

   The proposed rule change is similar to the Chicago Board Options Exchange, Incorporated (“CBOE”) and the International Securities Exchange, Inc. (“ISE.”), who also have payment for order flow pilot programs in effect.\(^{15}\)

9. **Exhibits**

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

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

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SECURITIES AND EXCHANGE COMMISSION
(Release No. ____________ ; File No. SR-Phlx-2006-33)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of
Proposed Rule Change by the Philadelphia Stock Exchange, Inc. 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 ________________ 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
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) of the Act\(^3\) and Rule 19b-4 thereunder,\(^4\)
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 proposal

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(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).
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 on the Exchange’s Website at [http://www.phlx.com](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

Background

The following payment for order flow rates are in effect at the Exchange: (1) equity options other than QQQQ\(^7\) and FXI Options are assessed $0.60 per contract; (2)

\(^6\) 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 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.
options 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 AUTOM\(^9\) 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.\(^{11}\)

Other than extending the date of the pilot program for an additional year, no other changes to the Exchange’s current payment for order flow program are being proposed at this time.

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\(^8\) 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 an 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.

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.

This 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.\(^\text{12}\)

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act\(^\text{13}\) in general, and furthers the objectives of Section 6(b)(4) of the Act\(^\text{14}\) in particular, in that it is an equitable allocation of reasonable 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 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.

\(^{12}\) See Footnote No. 6.

\(^{13}\) 15 U.S.C. 78f(b).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change establishes or changes a due, fee, or other charge applicable only to a member pursuant to Section 19(b)(3)(A)(ii) of the Act and Rule 19b-4(f)(2) 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]; 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.

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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).
REAL-TIME RISK MANAGEMENT FEE

$.0025 per contract for firms/members receiving information on a real-time basis

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 StockSM) $0.75 per contract
Remaining Equity Options, except FXI Options $0.60 per contract

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.

No further changes are being made to the Exchange’s fee schedule pursuant to this proposal.