

customers of broker-dealers) impose unnecessary risk and disproportionately large expense to the industry and to investors. In an attempt to address this issue, NYSE's rule change, along with those of Amex and Nasdaq, should help expand the use of DRS. As a result, risks, costs, and processing inefficiencies associated with the physical delivery of securities certificates should be reduced, and the perfection of the national market system should be promoted. Additionally, those investors holding securities in listed securities covered by the rule change that decide to hold their securities in DRS should realize the benefits of more accurate, quicker, and more cost-efficient transfers; faster distribution of sale proceeds; reduced number of lost or stolen certificates and a reduction in the associated certificate replacement costs; and consistency of owning in book-entry across asset classes.

The Commission realizes that some issuers and transfer agents may bear expenses related to complying with the rule change. In order to make a security DRS-eligible, issuers of listed companies must have a transfer agent, which is a DRS Limited Participant.<sup>19</sup> In order to make an issue DRS-eligible, issuers may need to amend their corporate governing documents to permit the issuance of book-entry shares. The Commission believes, however, that the long-term benefits of increased efficiencies and reduced risks afforded by DRS outweigh the costs that some issuers and transfer agents may incur. Furthermore, the time frames built into the proposal should allow issuers sufficient time to make any necessary changes to comply with the rule change.

While the proposed rule change should significantly reduce the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates, the proposed rule change will not eliminate the ability of investors to obtain securities certificates, provided the issuer has chosen to issue certificates. Such investors can continue to contact the issuer's transfer agent, either directly or through their broker-dealer, to obtain a securities certificate.

Accordingly, for the reasons stated above, the Commission finds that the rule change is consistent with NYSE's obligation under Section 6(b) of the Act to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

#### V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)(5) of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NYSE-2006-29) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

Nancy M. Morris,

Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54297; File No. SR-Phlx-2006-47]

#### 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

August 9, 2006.

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

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<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).

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 \$0.60 per contract to \$0.70 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 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 *italicized*.

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

\* \* \* \* \*

#### 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.

<sup>5</sup> The Nasdaq-100<sup>®</sup>, Nasdaq-100 Index<sup>®</sup>, Nasdaq<sup>®</sup>, The Nasdaq Stock Market<sup>®</sup>, 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 License Agreement with Nasdaq. The Nasdaq-100 Index<sup>®</sup> ("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).

<sup>19</sup> For a description of DTC's rules relating to DRS Limited Participants, see Securities Exchange Act Release Nos. 37931 and 41862. *Supra* note 5.

Remaining Equity Options, except FXI Options—\$0.670 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.

\* \* \* \* \*

## 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>

<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

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.

#### 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.

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).

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

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

### 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.

## 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

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

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

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 September 6, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54298; File No. SR-Phlx-2006-41]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Automatic Execution of a Customer Limit Order Against an Order Entry Firm's Proprietary Order or a Solicited Broker-Dealer Order After a Three Second Exposure Period

August 9, 2006.

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 28, 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 and II below, which Items have been prepared by the Phlx. The Phlx filed the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the

Act<sup>3</sup> and Rule 19b-4(f)(6) 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 amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM)<sup>5</sup> and Automatic Execution System (AUTO-X), by: (1) Rescinding Exchange Rule 1080(b)(ii)(A), which requires Order Entry Firms<sup>6</sup> to comply with certain order marking and exposure requirements when sending a proprietary order along with a customer limit order to the limit order book; (2) adopting Exchange Rule 1080(c)(ii)(C), which would permit a customer limit order to automatically execute against an Order Entry Firm's proprietary order or quote, or solicited orders for the accounts of member and non-member broker-dealers, after a three second exposure period; and (3) deleting Exchange Rule 1080(b)(ii)(B) and re-inserting similar language into proposed Exchange Rule 1080(c)(ii)(C)(3) providing that it shall be a violation of Exchange Rule 1080(c)(ii)(C) for any Exchange member or member organization to be a party to any arrangement designed to circumvent Exchange Rule 1080(c)(ii)(C) by providing an opportunity for a customer, member, member organization, or non-member broker-dealer to execute immediately against agency orders delivered to the Exchange, whether such orders are delivered via AUTOM or represented in the trading crowd by a member or a member organization.

Exchange Rule 1080(b)(ii) prohibits Order Entry Firms from interacting on a principal basis with a customer limit order without first marking the

customer limit order with a "K" indicator and the proprietary order with an "L" indicator. The customer limit order must also be exposed to the crowd for at least 30 seconds prior to the manual execution of both orders. The Exchange proposes to permit Order Entry Firms, after exposing the customer limit order for three seconds, to automatically execute such order against a proprietary order, or a solicited order for the account of a member or non-member broker-dealer under proposed Exchange Rule 1080(c)(ii)(C). The text of the proposed rule change is set forth below. [Brackets] indicate deletions; *italics* indicate new text.

Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)

(a) No change.

(b) Eligible Orders

(i) No change.

(ii) The Exchange's Options

Committee may determine to accept additional types of orders as well as to discontinue accepting certain types of orders.

[(A) In accordance with this subparagraph (ii), the Options Committee has determined to allow a customer limit order to be delivered via AUTOM onto the limit order book by an Order Entry Firm (as defined in Rule 1080(c)(ii)). If the Order Entry Firm also sends in a proprietary contraside order for the account of such Order Entry Firm, an affiliated firm, or a solicited party (as defined in Rule 1064(c)(ii)), it must label the customer order with a "K" indicator and the proprietary order (which is an immediate-or-cancel order that is not eligible for automatic execution) with an "L" indicator. The customer limit order labeled "K" may be executed by the specialist or crowd at any time. The customer limit order labeled "K" must be exposed to the trading crowd for not less than 30 seconds before it can be executed, in whole or in part, against proprietary orders with a labeled "L" indicator.

(B) It shall be a violation of Rule 1080(b)(ii)(A) for any Exchange member or member organization to be a party to any arrangement designed to circumvent Rule 1080(b)(ii)(A) by providing an opportunity for a customer, member, member organization, or non-member broker-dealer to execute immediately against agency orders delivered to the Exchange, whether such orders are delivered via AUTOM or represented in the trading crowd by a member or a member organization.]

(iii) No change.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</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. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution features, AUTO-X, Book Sweep and Book Match. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. See Exchange Rule 1080.

<sup>6</sup> An Order Entry Firm is a member organization of the Exchange that is able to route orders to AUTOM. See Exchange Rule 1080(c)(ii)(A)(1).

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

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

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