PIM and guarantee a price better than the ISE BBO and equal to or better than the NBBO to such order, or to release the order to the book. The DMM's decision about whether to choose to guarantee a particular order at a price better than the ISE BBO and equal to or better than the NBBO may be affected by this proposal because it provides DMMs with information to differentiate between orders from informed traders (*i.e.,* their competitors) and orders from uninformed traders. It is well known in academic literature and industry practice that prices tend to move against market makers after trades with informed traders, often resulting in losses for market makers.[19] Thus, there is a strong economic rationale for market makers not providing informed traders price improvement. Uninformed investors end up bearing the cost of these market maker losses through wider spreads that market makers need to quote to uninformed investors due to informed order flow.[20]

Citadel also argues that the Commission has previously sought to eliminate similar anti-competitive practices allowed by self-regulatory organizations ("SROs") involving lack of order anonymity.[21] In particular, Citadel cites a 1996 investigation of NASD and Nasdaq Stock Market in which "[s]ome market makers, without disclosure to their customers, shared information with each other about their customers' orders, including the size of the order and, on occasion, the identity of the customer." [22] Citadel asserts that the "Commission concluded that this anti-competitive behavior violated the antifraud provisions of the Exchange Act, among other provisions." [23]

The Commission does not believe that the proposal will result in market maker conduct like that in the NASD case, which found that market makers were collaborating with other market participants against the interests of their customers contrary to the fair dealing obligations of market makers.[24] Unlike the NASD case, the interests of the DMM's customers are not harmed by this proposal because information pertaining to a DMM's Directed Orders is not shared among competing DMMs and all orders sent to ISE must be executed at a price no worse than the NBBO.[25]

Finally, Amex contends that the proposal is anti-competitive because providing the identity of an EAM to DMMs provides them with the ability to enter into anti-competitive customer allocation arrangements.[26] Amex argues that if ISE Market Makers know the identities of order flow providers, they could agree to allocate those order flow providers among themselves and provide price improvement to only those that each has been allocated.[27] There is, however, no evidence that customer allocation arrangements exist between Market Makers. The Commission is today approving only the proposed rule change, which permits a DMM to determine from which EAM it will accept Directed Orders. The Commission is not approving any customer allocation arrangements among Market Makers.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular with Section 6(b)(5) of the Act.[28]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–ISE–2006–01) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7285 Filed 3–28–11; 8:45 am]

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[19] *See* Stoll, H. R., "The supply of dealer services in securities of markets," *Journal of Finance* 33 (1978), at 1133–51; Glosten, L. and P. Milgrom, "Bid ask and transaction prices in a specialist market with heterogeneously informed agents," *Journal of Financial Economics* 14 (1985), at 71–100; and Copeland, T., and D. Galai, "Information effects on the bid-ask spread," *Journal of Finance* 38 (1983), at 1457–69.

[20] *Id.*

[21] *See* Citadel Letter II, *supra* note 4, at 6.

[22] *See* Securities Exchange Act Release No. 37542 (August 8, 1996) (File No. 3–8919) (Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and the Nasdaq Market), at 5.

[23] *See* Citadel Letter II, *supra* note 4, at 6.

[24] *See* Securities Exchange Act Release No. 37542, *supra* note 22, at 59.

[25] *See* ISE Rule 811(e).

[26] *See* Amex Letter, *supra* note 4, at 2.

[27] *Id.*

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64113; File No. SR–Phlx–2011–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to the Equity Options Monthly Cap

March 23, 2011.

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 March 17, 2011, NASDAQ OMX PHLX LLC ("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 Exchange. 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 Exchange proposes to amend the Exchange's Fee Schedule to lower the monthly cap applicable to Registered Options Traders ("ROTs") [3] and Specialists [4] for equity options transactions. The Exchange also proposes to assess a $0.05 per contract fee on ROTs and Specialists in certain circumstances when they have reached the monthly cap.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Registered Options Trader ("ROT") includes a Streaming Quote Trader ("SQT"), a Remote Streaming Quote Trader ("RSQT") and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014(b)(i) and (ii).

[4] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

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 Exchange 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 Exchange 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 rule change is to reduce the monthly transaction fee cap applicable to ROTs and Specialists for equity options transactions ("Monthly Cap"). The Exchange believes that by reducing the Monthly Cap, a greater number of members may benefit from the Monthly Cap and the Exchange will attract additional order flow. In addition, another purpose of this proposed rule change is to establish a $0.05 per contract transaction fee when ROTs and Specialists participate as the contra-side of a Customer complex order [5] execution after they have reached the maximum Monthly Cap. The Exchange proposes this amendment to defray the cost of paying Customer complex order rebates, which attracts additional Customer order flow to the Exchange.

The Exchange currently applies a Monthly Cap of $600,000 on equity option transaction fees to ROTs and Specialists, as set forth in Section II of the Exchange's Fee Schedule titled "Equity Options Fees." The Exchange is proposing to reduce the Monthly Cap from $600,000 to $550,000.[6]

The Exchange is also proposing to assess ROTs and Specialists a $0.05 per contract transaction fee when such ROTs and Specialists: (i) participate as the contra-side of a Customer complex order; and (ii) have reached the maximum Monthly Cap, which is proposed to be $550,000. The Exchange currently pays a rebate of $0.05 per contract for Customer complex orders that are electronically-delivered and executed against a non-Customer such as a Specialist, ROT, SQT,[7] RSQT,[8] Professional,[9] Firm or Broker-Dealer, contra-side complex order or if any of the components of such Customer complex order are executed against a non-Customer individual order or quote.[10] The Exchange proposes this fee to defray the cost of the aforementioned rebate. The $.05 per contract transaction fee would only apply to those contracts that are executed after the affected ROT or Specialist has reached the Monthly Cap. For example, when a ROT or Specialist exceeds the proposed $550,000 Monthly Cap, a $0.05 per contract fee would be added to the Monthly Cap over those trades that were counted in reaching the $550,000 Monthly Cap, when such ROT or Specialist is on the contra-side of a Customer complex order. The ROT or Specialist would not be assessed the $0.05 per contract fee until the Monthly Cap is exceeded. The Exchange proposes to amend the current language in the Fee Schedule at Section II to reflect the proposal. The Exchange also proposes to make certain typographical and conforming changes to Section II of the Fee Schedule to make the language consistent in that section.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposal to lower the Monthly Cap is reasonable because it lowers potential transaction fees for ROTs and Specialist providing liquidity on the Exchange.

The Exchange believes that the proposal to lower the Monthly Cap is equitable because it would uniformly apply to all ROTs and Specialists transacting equity options.

The Exchange believes that assessing a $0.05 per contract fee on ROTs and Specialists who have reached the Monthly Cap and are on the contra-side of a Customer complex order is reasonable because it would serve to defray the cost of paying the Customer complex order rebate, which is offered in certain circumstances. The Customer complex order rebate serves to attract Customer order flow to the Exchange, thereby benefiting all market participants.

The Exchange believes that assessing a $0.05 per contract fee on ROTs and Specialists who have reached the Monthly Cap and are on the contra-side of a Customer complex order is equitable because this fee would only be assessed once the Monthly Cap is reached and will uniformly apply to all ROTs and Specialists that have reached the Monthly Cap. In addition, this proposed transaction fee is based upon the $0.05 per contract fee that the Exchange currently assesses Firms who have reached the Firm Related Equity Option Cap and are on the contra-side of a Customer complex order.[13]

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 rule change has become effective pursuant to Section

[5] A complex order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a complex order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund ("ETF") coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[6] The trading activity of separate ROTs and Specialist member organizations are aggregated in calculating the Monthly Cap if there is at least 75% common ownership between the member organizations.

[7] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[8] A RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[9] The Exchange defines a "professional" as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter "Professional").

[10] *See* Exchange's Fee Schedule at Section II, Equity Options Fees.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] *See* Securities Exchange Act Release No. 62518 (July 16, 2010), 75 FR 43219 (July 23, 2010) (SR–Phlx–2010–90). *See also* the Exchange's Fee Schedule at Section II, Equity Options Fees.

19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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–2011–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–36. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. 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 No. SR–Phlx–2011–36 and should be submitted on or before April 19, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7282 Filed 3–28–11; 8:45 am]

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[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[Docket No. 2011–0059]

Notice of Transportation Services' Transition From Paper to Electronic Fare Media

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The Office of Transportation Services (TRANServe) located in the U.S. Department of Transportation, Office of the Secretary of Transportation within the Office of the Assistant Secretary for Administration is adopting a new program distribution methodology. TRANServe is planning to shift to electronic fare media in particular areas, beginning in New York and parts of the National Capitol Region, where paper vouchers are not available for redemption through the Transit Authority. The shift allows for the most effective and efficient delivery mechanism for the qualified transportation fringe benefit in those areas. TRANServe provides services to Federal Government agencies for the qualified transportation fringe benefit. To date, TRANServe has distributed these fringe benefits via a paper voucher process.

DATES: TRANServe will consider all comments received on or before April 19, 2011.

ADDRESSES: You may submit comments by the following methods:

- *Federal eRulemaking Portal:* Go to (*http://www.regulations.gov* Web address) to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. DOT–OST–2011–0059, DOT/TRANServe, 1200 New Jersey Ave., SE., Washington, DC 20590.

Reading Room (Public Terminal): You may read any comments that we receive on this docket in our reading room (Public Terminal). The reading room is located in Room W12–140 of the U.S. DOT, 1200 New Jersey Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m. Monday through Friday, except holidays. To be sure someone is there to help you please call (202) 366–9826 or (202) 366–9317 before arriving.

Other Information: Additional information about TRANServe is available on the Internet at (*http://transerve.dot.gov/index.html*).

FOR FURTHER INFORMATION CONTACT: Ms. Denise P. Wright, Business Office Manager, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of 49 U.S.C. 327, Administrative Working Capital Fund and 26 U.S.C. 132(f)(3), Qualified Transportation Fringe, Cash Reimbursement, TRANServe conducts its Program operations as the service provider by distributing the qualified transportation fringe benefit. Since the enactment of Public Law 103–172, Federal Employees Clean Air Incentives Act, Executive Order 13150, Federal Workforce Transportation, and other enabling legislation, TRANServe has maintained its servicing operations for the distribution of transit benefits to Federal employees via a paper voucher process.

Since 2000, TRANServe has operated a highly sophisticated ordering/inventory/distribution program. TRANServe's program is supported by a complex network of activities, such as statistical forecasting for nationwide distribution, multi-million dollar contract awards, support arrangements for travel and distribution, and an elaborate array of financial analysis for Federal Agency billing. April 2000 served as the transaction baseline year for TRANServe, when significant and measurable transaction activity occurred that accounted for an estimated 800% increase in Federal Agency participant growth. Over time, many State and local transit authorities are transitioning or have transitioned to electronic fare media; thus, compelling the shift from a paper based system (vouchers) to an electronic fare media structure.

In addition to rising program costs related to inventory, travel, and