

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53043; File No. SR-Phlx-2005-72)

December 29, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Remote Streaming Quote Trader Permit Fees

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 November 10, 2005, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On December 19, 2005, the Phlx submitted Amendment No. 1 to the proposed rule change.³ The Exchange has designated the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Phlx pursuant to Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange revised the proposed rule text to clarify that RSQs and SQTs will be included in the ROT permit fee category. The Exchange also amended the purpose section to clarify that, by including RSQs in the ROT permit fee category, the Exchange will be assessing a new permit fee on RSQs.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

⁶ The effective date of the original proposed rule change is November 10, 2005, and the effective date of Amendment No. 1 is December 19, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its permit fee schedule to assess a permit fee on Remote Streaming Quote Traders (“RSQTs”)⁷ under the Registered Options Trader (“ROT”) permit fee category. In addition, the Exchange proposes to amend its permit fee schedule to clarify that Streaming Quote Traders (“SQTs”)⁸ are currently included in the ROT permit fee category.⁹ The text of the proposed rule change is available on the Exchange’s Web site (<http://www.phlx.com>), at the Phlx, and at the Commission’s Public Reference Room.

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

commence on December 19, 2005, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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 the Exchange’s Automated Options Market in eligible options in which such RSQT has been assigned. An RSQT may only trade in a market making capacity in classes of options in which he is assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Phlx Rule 1014(b)(ii)(B).

⁸ An SQT is a ROT who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with the Exchange’s automated options market (“AUTOM”) via an Exchange approved proprietary electronic quoting device in eligible options to which the SQT is assigned. See Exchange Rule 1014(b)(ii).

⁹ Currently, SQTs are assessed a permit fee under the ROT (on any trading floor) category, but are not specifically referred to on the Exchange’s fee schedule.

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

Phlx recently adopted equity option fees applicable to RSQTs.¹⁰ In addition to the equity options fees assessed on RSQTs, RSQTs must also pay a monthly permit fee. Presently, RSQTs do not pay a ROT permit fee because they are not on any trading floor¹¹ and are thus not included in the ROT permit fee category on the Exchange's fee schedule. However, RSQTs pay a permit fee under another category of permit fees such as a specialist or an order flow provider.¹²

Currently, monthly permit fees are assessed as follows:

¹⁰ See Securities Exchange Act Release No. 51428 (March 24, 2005), 70 FR 16325 (March 30, 2005) (SR-Phlx-2005-12).

¹¹ See definition of "RSQT," supra note 7.

¹² The Exchange assesses permit fees on its members. Monthly permit fees are assessed based on how each permit is used, for example, order flow provider, specialist or floor broker. However, any member who qualifies a member organization in more than one category of permit fees pays the higher of the applicable fees for such permit. For example, if an RSQT permit holder qualifies a member organization as an order flow provider and the RSQT permit holder associated with the member organization then registered as a floor broker on the Exchange for that or another member organization, that RSQT permit holder would be subject to a permit fee of \$1,200, the higher of \$200 (the order flow provider permit fee) and \$1,200 (the floor broker permit fee), but not both fees.

Permit Fees¹³

Order Flow Provider Permit Fee¹⁴

- a. Permits used only to submit orders to the equity, foreign currency options, or options trading floor (one floor only) \$ 200.00 per month
- b. Permits used only to submit orders to more than one trading floor \$ 300.00 per month

Floor Broker, Specialist, or ROT (on any trading floor) or Off-Floor Trader Permit Fee

- a. First Permit \$ 1,200.00 per month
- b. Additional permits for members in the same organization \$ 1,000.00 per month

Excess Permit Holders \$ 200.00 per month

Other Permit Holders¹⁵ \$ 200.00 per month

¹³ The Exchange has established the date of notification of termination of a permit as the date that permit fee billing will cease. Additionally, a permit holder will be billed only one monthly permit fee if the holder transfers from one member organization to another previously unrelated member organization as a result of a merger, partial sale or other business combination during a monthly permit fee period in order to avoid double billing in the month the merger or business combination occurred. If the permit holder transfers from one member organization to another unrelated member organization in the same month, both member organizations are assessed a permit fee in the same billing period.

¹⁴ This fee applies to a permit held by a permit holder who does not have physical access to the Exchange's trading floor, is not registered as a Floor Broker, Specialist or ROT (on any trading floor) or Off-Floor trader, and whose member organization submits orders to the Exchange. Phlx Rule 620(a) requires such registration.

¹⁵ A permit holder or the member organization they solely qualify must apply for "other" status in writing to the Membership Services Department. This status requires that a permit holder or the member organization have no transaction activity for the applicable monthly billing period. Should a permit holder actively transact business during a particular month, the highest applicable monthly permit fee will apply to such permit holder and member organization for that monthly period. The "other" status only applies

Any member who is associated with one or more member organizations and uses a permit in more than one category pays the higher of the applicable fees for such permit.

Because RSQTs do not have a physical presence on the trading floor, but are a subset of ROTs, the Exchange proposes to assess the same permit fees on RSQTs as ROTs on any trading floor. As such, the Exchange proposes to replace the words “on any trading floor” that appear after the ROT category with “including RSQTs and SQTs.”¹⁶

In addition, although SQTs have a physical presence on the trading floor and are thus currently included in the ROT (on any trading floor) permit fee category, the Exchange proposes to specifically refer to SQTs on the fee schedule in order to help clarify that SQTs are also included in the ROT category.

to permit holders who solely qualify their member organization. These policies were effective as of February 2, 2004.

¹⁶ As a practical matter, the effect of including RSQTs in the ROT permit fee category should not increase overall costs to the RSQTs due to the fact that RSQTs receive a permit credit, which is applied against a member organization’s RSQT fees. Specifically, pursuant to the Exchange’s fee schedule, RSQTs are assessed an RSQT fee based on the number and type of option issues in which an RSQT is assigned. A credit is given to RSQTs based on the total number of permits held by the RSQT in a particular calendar month. For example, currently an RSQT may receive a monthly credit of \$200 (which is the same amount as the permit fee) because the permit holder qualifies a member organization as an order flow provider. Now, under this proposal, the RSQT will be charged a higher permit fee of \$1,200, but receive a permit credit of \$1,200 to be applied against the RSQT fee. See Securities Exchange Act Release No. 51428 (March 24, 2005), 70 FR 16325 (March 30, 2005) (SR-Phlx-2005-12).

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁸ in particular, in that it is an equitable allocation of reasonable fees 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.

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 Act¹⁹ and Rule 19b-4(f)(2)²⁰ thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of Amendment No. 1 to 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.²¹

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4).

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁰ 17 CFR 240.19b-4(f)(2).

²¹ See supra note 6.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2005-72 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-Phlx-2005-72. 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 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 Number SR-Phlx-2005-72 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.²²

Jonathan G. Katz
Secretary

²² 17 CFR 200.30-3(a)(12).