

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49856; File No. SR-Phlx-2004-32)

June 15, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment Nos. 1 and 2 thereto, by the Philadelphia Stock Exchange, Inc. Relating to Permit Holder 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 May 3, 2004, the Philadelphia Stock Exchange, Inc. (“Phlx” or the “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. On June 3, 2004, the Phlx submitted an amendment to the proposed rule change.³ On June 14, 2004, the Phlx submitted via facsimile a second amendment to the proposed rule change.⁴ The proposed rule change, as amended, has been filed by the Phlx as establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Murray Ross, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated June 2, 2004 (“Amendment No. 1”). Amendment No. 1 superseded and replaced the proposed rule change in its entirety.

⁴ See facsimile from Murray Ross, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 14, 2004 (“Amendment No. 2”). In Amendment No. 2, the Exchange clarified the categories of permit holders to which the proposed new permit fee category would be applicable. Amendment No. 2 superseded and replaced Amendment No. 1 in its entirety.

Act⁵ and Rule 19b-4(f)(2)⁶ thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Phlx proposes to amend its schedule of fees and charges to adopt a new category of permit holders for billing purposes to address situations where permit holders do not fall under one of the existing permit fee categories. These permit holders, delineated as “other”, will be assessed a fee of \$200 per month. The text of the proposed rule change is available at the Exchange and at the Commission.

Current Permit Fees

Monthly permit fees are assessed based on how each permit is used. Current permit fees are as follows:⁷

Order Flow Provider Permit Fee:⁸

- | | | |
|----|--|-----------------|
| a. | Permits used only to submit orders to the equity, foreign currency options or options trading floor (one floor only) | \$200 per month |
| b. | Permits used only to submit orders to more than one trading floor | \$300 per month |

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ See Securities Exchange Act Release No.49157 (January 30, 2004), 69 FR 5883 (February 6, 2004) (SR-Phlx-2004-02).

⁸ 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 Registered Options Trader (“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.

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

- | | | |
|----|---|-------------------|
| a. | First permit | \$1,200 per month |
| b. | Additional permits for members in the same organization | \$1,000 per month |

Permit holders may also be designated as “excess” permit holders in cases where permit holders in the same organization, other than the permit holder who qualifies the member organization, are either: (1) not Floor Brokers, Specialists or ROTs (on any trading floor) or Off-Floor Traders; or (2) not associated with a member organization that meets the definition of an order flow provider.⁹ Member organizations that have excess permit holders are assessed \$200 for each “excess permit.”

Permit Fee Changes

The Exchange is proposing to adopt a permit fee category to address the limited situations where a permit holder does not fit within any of the existing permit fee categories. The Exchange represents that it has found that a few permit holders have not fit in the other permit fee categories, and, consequently, no permit fee was applicable. For example, a member organization may determine to have a permit holder in order to be a Phlx member organization and reflect such status on its letterhead, which is common in the securities industry. The Exchange states that, if such member organization does not send any business to the Exchange, it would not qualify for the “order flow provider permit fee,” and if it does not qualify for the other existing permit fees, then it would not be subject to a permit fee at all. This is an example of a

⁹ See Securities Exchange Act Release No. 49320 (February 25, 2004), 69 FR 10091 (March 3, 2004)(SR-Phlx-2004-09).

situation that the Exchange intends to capture by adopting an “other permit holder” fee category.

In this regard, the “other” category is intended to apply to permit holders who solely qualify their respective member organization.¹⁰

Additionally, the Exchange proposes to establish the date of notification for terminating a permit as the date that permit fee billing will cease. The Exchange represents that this is a change from using the effective date of the posting period. Currently, upon notice of termination of a permit, the effective date is subject to the posting and notice requirements set forth by the Exchange.¹¹ This generally requires a minimum of seven days notice and publication in the Exchange’s Membership Bulletin. The Exchange states that, if notice occurs over a new billing period, the member would currently be charged a permit fee for a full additional month during which the permit would not be needed or utilized.

Further, the Exchange is proposing to assess only one monthly permit fee in certain limited situations where two monthly permit fees would be imposed. The Exchange states that, pursuant to current Exchange rules, a permit may not be transferred except if the transfer occurs within the permit holder’s member organization. For example, if the permit holder transfers the

¹⁰ This means that there is just one permit holder in that member organization. If there is more than one permit holder in a member organization and that permit holder does not fit within any of the existing permit fee categories, then the fee category proposed herein will not apply. The Exchange notes that it could separately consider adopting a permit fee to cover that category.

¹¹ Therefore, members will not be billed an additional monthly permit fee for the following month after notice of termination has been given, provided that the termination becomes effective. However, if a permit holder terminates a permit at any time within a month, consistent with current practice, that permit holder will still be required to pay the applicable monthly permit fee for that month.

permit to another individual within the same member organization only one monthly permit fee is assessed for that permit. Conversely, 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. The Exchange states that, when a permit holder becomes associated with another member organization as a result of a merger, partial sale of the current member organization, or other business combination, a new permit will be issued but, pursuant to this proposal, the related monthly permit fee for the new permit will not be assessed in these limited situations in order to avoid double billing for monthly permit fees in the month that the merger or business combination occurs. This interpretation of the assessment of only one permit fee when a permit holder becomes associated with another member organization as a result of a merger partial sole or other business combination with another member organization is noted in the fee schedule.

The Exchange represents that this proposal creates no new permits or permit holders, but merely categorizes permit holders for purposes of applicable permit fees.

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, as amended, 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

The purpose of the proposed rule change is to garner additional revenue by creating an additional category of permit fees to cover the limited instances where permit holders do not currently fall within an existing category of permit fees. This should ensure that each permit holder is subject to a permit fee. In addition, allowing monthly billing of permit fees to cease at the time a member notifies the Exchange, as opposed to waiting for the effective date of the posting and notice requirements, should avoid unnecessarily billing a member for permit fees for a month during which their permit was terminated. Also, charging only one permit fee for the month in which a merger or other business combination occurs should avoid unfairly double billing for a permit fee to a permit holder changing affiliation due to a merger or other business organizational changes.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act¹³ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members and is designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

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

The Exchange has designated the foregoing proposed rule change, as amended, as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁴ and Rule 19b-4(f)(2)¹⁵ thereunder. Accordingly, the proposed rule change, as amended, 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.¹⁶

¹⁴ 15 U.S.C. 78(s)(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 14, 2004, the date on which the Phlx submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2004-32 on the subject line.

Paper comments:

- 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-2004-32. 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 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-2004-32 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

Margaret H. McFarland
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).