

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51428; File No. SR-Phlx-2005-12)

March 24, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Fees Applicable to Remote Streaming Quote Traders

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 February 11, 2005, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) submitted to 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 March 15, 2005, Phlx filed Amendment No. 1 to the proposed rule change.³ On March 22, 2005, Phlx filed Amendment No. 2 to the proposed rule change.⁴ The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁵ which renders it 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 clarified the proposed RSQT fees in response to comments received from Commission staff.

⁴ Amendment No. 2 made further clarifications to the proposed RSQT fees in response to comments received from Commission staff.

⁵ 15 U.S.C. 78s(b)(3)(A).

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

Phlx proposes to amend its schedule of fees to adopt fees applicable to Remote Streaming Quote Traders (“RSQTs”).⁶ The complete text of the proposed rule change is available on Phlx’s Web site (<http://www.phlx.com>), at the Phlx’s principal office, and at the Commission’s Public Reference Room.

Fees and credits under the proposal would apply as follows:

Category I: \$1700.00 per calendar month

RSQT is eligible to trade:

- 1 issue selected from the top 5 national volume leaders.
- 1 issue selected from the 6th to 10th national volume leaders.
- 3 issues selected from the 11th to 25th national volume leaders.
- 4 issues selected from the 26th to 50th national volume leaders.
- 1 index issue.
- 190 other issues.

Maximum permit credit is \$1200 per calendar month

Category II: \$3200.00 per calendar month

RSQT is eligible to trade:

- 2 issues selected from the top 5 national volume leaders.
- 2 issues selected from the 6th to 10th national volume leaders.

⁶ A RSQT is an Exchange Registered Options Trader (“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. A RSQT may only submit such quotations electronically from off the floor of the Exchange. A RSQT may only trade in a market making capacity in classes of options in which he is assigned. See Phlx Rule 1014(b)(ii)(B).

- 6 issues selected from the 11th to 25th national volume leaders.
- 8 issues selected from the 26th to 50th national volume leaders.
- 2 index issues.
- 380 other issues.

Maximum permit credit is \$2200.00 per calendar month

Category III: \$4700.00 per calendar month

RSQT is eligible to trade:

- 3 issues selected from the top 5 national volume leaders.
- 3 issues selected from the 6th to 10th national volume leaders.
- 9 issues selected from the 11th to 25th national volume leaders.
- 12 issues selected from the 26th to 50th national volume leaders.
- 3 index issues.
- 570 other issues.

Maximum permit credit is \$3200.00 per calendar month.

Category IV: \$6200.00 per calendar month

RSQT is eligible to trade:

- 4 issues selected from the top 5 national volume leaders.
- 4 issues selected from the 6th to 10th national volume leaders.
- 12 issues selected from the 11th to 25th national volume leaders.
- 16 issues selected from the 26th to 50th national volume leaders.
- 5 index issues.
- 759 other issues.

Maximum permit credit is \$4200.00 per calendar month.

Category V: \$7700.00 per calendar month

RSQT is eligible to trade:

- 5 issues selected from the top 5 national volume leaders.
- 5 issues selected from the 6th to 10th national volume leaders.
- 15 issues selected from the 11th to 25th national volume leaders.
- 20 issues selected from the 26th to 50th national volume leaders.
- 7 index issues.
- 948 other issues.

Maximum permit credit is \$5200.00 per calendar month.

Category VI: \$9200.00 per calendar month

RSQT is eligible to trade:

- 5 issues selected from the top 5 national volume leaders.
- 5 issues selected from the 6th to 10th national volume leaders.
- 15 issues selected from the 11th to 25th national volume leaders.
- 25 issues selected from the 26th to 50th national volume leaders.
- 9 index issues.
- 1141 other issues.

Maximum permit credit is \$6200.00 per calendar month.

Category VII: \$10,700.00 per calendar month

RSQT is eligible to trade all equity option and index option issues.

Maximum permit credit is \$7200.00 per calendar month.

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 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 Exchange proposes to adopt a fee schedule for RSQTs. Each RSQT will be assessed a RSQT fee based on the number and type of option issues (as described below) in which a RSQT is assigned. Credit will be given to RSQTs based on the total number of permits⁷ held by

⁷ Appendix A of the Exchange's fee schedule establishes the following permit fees, which may be credited against the RSQT fee:

Order Flow Provider Permit Fee

- 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 Holders: \$200.00 per month

In applying the permit credit against a member organization's RSQT fee, a member organization may only apply the credit for a ROT permit (together with other applicable permit credits) when such ROT is acting as a RSQT or as a Non-SQT ROT (as defined in Rule 1014(b)(ii)(C)).

the RSQT in a particular calendar month. Thus, the proposed fees and credits would be assessed on a monthly basis. If a member or member organization functions as an RSQT at any time during a particular calendar month, the fees and credits would be applied to such member or member organization for that entire calendar month.

RSQT Fees

The proposal would establish seven categories that, based on the number and type of options in which a RSQT is assigned, result in concomitant, progressively higher fees and possible credits as the number of options in which such RSQT is assigned increases. For example, a fee of \$1,700 per calendar month will apply to a RSQT assigned in a maximum of one issue selected from the top five national volume leaders (as calculated by the Exchange),⁸ one issue selected from the 6th through 10th national volume leaders, three issues selected from the 11th through 25th national volume leaders; four issues selected from the 26th through 50th national volume leaders; one index option; and 190 other equity option issues ranked lower than the 50th most actively traded option. This is known as a Category I RSQT. Each additional category would establish a higher fee for a RSQT to submit quotations from off the floor of the Exchange in a progressively greater number of options in each aforementioned national volume grouping and in a greater number of index options. Accordingly, in order to submit electronic quotations from off the floor of the Exchange in all options traded on the Exchange, a RSQT

⁸ For purposes of this fee, the Exchange will calculate the national volume for equity options and options overlying Exchange-Traded Fund Shares every six months, effective from January 1 through June 30, and again from July 1 through December 31. The January - June national volume rankings will be based on the total national volume for a particular option traded during the previous month of October, as determined by the Options Clearing Corporation (“OCC”); the July - December national volume rankings will be based on the total national volume for a particular option traded during the previous month of May, as determined by the OCC.

would be required to pay fees applicable to a Category VII RSQT. The full schedule of fees applicable to the seven categories of RSQTs is described in the proposed rule text.⁹

The RSQT fee will be assessed on a monthly basis. The highest applicable RSQT fee will be assessed based on the highest RSQT category level in which the RSQT was qualified to trade at any time during a particular calendar month. For example, if an RSQT is eligible to trade at any time in a given calendar month as a Category I RSQT, and sometime during that calendar month becomes qualified and eligible to trade as a Category II RSQT, the RSQT will be assessed the fee applicable to a Category II RSQT, regardless of when such RSQT became eligible to trade at the Category II level, and regardless of whether or not, during that calendar month, the RSQT resumed eligibility as a Category I RSQT.

RSQTs are assigned to trade options by the Exchange's Option Allocation, Evaluation, and Securities Committee ("OAESC").¹⁰ Once an RSQT is assigned in an option by the

⁹ The Exchange notes that it has filed separately with the Commission to adopt a fee schedule applicable to on-floor Streaming Quote Traders ("SQTs"). See SR-Phlx-2005-16. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as 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. The proposed SQT fees are lower than the proposed RSQT fees because SQTs have more out-of-pocket costs associated with their streaming quote systems. For example, among other things, SQTs generally have to purchase additional software programs and hardware from outside vendors to support their streaming quote systems, in addition to incurring additional costs associated with market data (known as Hyperfeed) to enable them to price options within their particular options pricing model. The amendments to the fee schedule proposed in this filing does not reflect the SQT fees included in SR-Phlx-2005-16 or other fees that have been filed with the Commission subsequent to the original filing of the instant fee change.

¹⁰ See Exchange Rule 507. The Options Allocation, Evaluation, and Securities Committee has jurisdiction over the allocation, retention, and transfer of the privileges to deal in all options to, by, and among members on the options and foreign currency options trading floors. See also Exchange By-Law Article X, Section 10-7.

OAESC, the Exchange's Financial Automation Department¹¹ activates the connections necessary for access to the Exchange's systems with respect to the option symbol(s) assigned to the RSQT. Thus, a RSQT could not trade options in which it is not assigned, and could not thereby function as an RSQT in a higher category level without having paid the appropriate RSQT fee.

Credits

The RSQT's fees would be subject to credits, based on the amount of permit fees¹² applicable to the RSQT, subject to maximum allowable credit applicable to each RSQT category. Thus, for example, a Category III RSQT would be assessed a monthly RSQT fee of \$4,700, and would be eligible to receive a permit credit against the \$4,700 RSQT fee, depending on the number and type of permits held by the member RSQT. For example, if there is one ROT trading permit held within a member organization, the member organization would receive a permit credit of \$1,200 (the cost of the first ROT permit purchased) against the \$4,700 RSQT fee. If there are two ROT trading permits held within the member organization, the member organization would receive a permit credit of \$2,200 (\$1,200 for the first permit + \$1,000 for the second permit) against the \$4,700 RSQT fee. If the member organization holds two ROT trading permits and one Order Flow Provider permit (allowing the member organization to submit orders to the option trading floor), the member organization would receive a permit credit of \$2,400 (\$1,200 for the first permit + \$1,000 for the second permit + \$200 for the Order Flow Provider

¹¹ The Exchange's Financial Automation Department is responsible for the design, development, implementation, testing, and maintenance of the Exchange's automated trading systems, surveillance systems, and back office systems, and for monitoring the quality of performance and operational readiness of such systems, in addition to user training and validation of user technology as it pertains to such users' interfacing with the Exchange's systems.

¹² See supra note 6.

permit), etc.¹³ The maximum allowable permit credit for a Category III RSQT would be \$3,200, regardless of the number and type of permits held within the member organization.

The maximum allowable credit for each category of RSQT is progressively larger, similar to the progressively higher RSQT fees included in the fee schedule. The highest RSQT fee category, therefore, would receive the highest maximum allowable permit credit.

In addition to the above fees, RSQTs would be subject to the current transaction and other fees applicable to ROTs, as set forth in the Exchange's schedule of fees and charges.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6 of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁵ in particular, in that it provides for the equitable allocation of reasonable fees among its members.

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

The Exchange does not believe that the proposed rule change 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

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 establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of

¹³ See supra note 7.

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(4).

the Act¹⁶ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹⁷ At any time within 60 days of the filing of such 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 purpose of the Act.¹⁸

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-2005-12 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-2005-12. 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

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(2).

¹⁸ For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on March 22, 2005, the date the Phlx filed Amendment No. 2.

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-2005-12 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.¹⁹

J. Lynn Taylor
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).