

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51453; File No. SR-Phlx-2005-16)

March 30, 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 Streaming Quote Trader 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 February 28, 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 30, 2005, Phlx filed Amendment No. 1 to the proposed rule change.³ The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁴ 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.

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 a fee schedule for Streaming Quote Traders (“SQTs”).⁵ The complete text of the proposed rule change is available on Phlx’s Web

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ A SQT is a Registered Options Trader (“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). In July 2004, the Exchange began trading

site (<http://www.phlx.com>), at the Phlx's principal office, and at the Commission's Public Reference Room.

SQT fees and credits would apply as follows:

Category I No Charge

SQT is eligible to trade:⁶

- Up to 200 equity and index options issues
- Not eligible for a permit credit

Category II \$2200.00 per calendar month

SQT is eligible to trade:

- Up to 400 equity and index options issues
- Maximum permit credit is \$2200.00 per calendar month

Category III \$3200.00 per calendar month

SQT is eligible to trade:

- Up to 600 equity and index options issues
- Maximum permit credit is \$3200.00 per calendar month.

Category IV \$4200.00 per calendar month

SQT is eligible to trade:

- Up to 800 equity and index options issues
- Maximum permit credit is \$4200.00 per calendar month.

equity options on Phlx XL, the Exchange's electronic trading platform for options, followed by index options in December 2004.

⁶ A member organization will be assessed an SQT fee based on the aggregate amount of equity options and index options traded by the SQTs in that member organization.

Category V \$5200.00 per calendar month

SQT is eligible to trade:

- Up to 1000 equity and index options issues
- Maximum permit credit is \$5200.00 per calendar month.

Category VI \$6200.00 per calendar month

SQT is eligible to trade:

- Up to 1200 equity and index options issues
- Maximum permit credit is \$6200.00 per calendar month.

Category VII \$7200.00 per calendar month

SQT is eligible to trade:

- All listed equity and index options
- 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 SQTs in order to provide competitive fees for SQTs. The Exchange believes that the proposed SQT fee schedule creates an incentive for SQTs to remain on the Exchange's options floor, thereby providing the necessary liquidity

for floor-brokered orders traded in-crowd. Currently, all Phlx listed equity options and index options trade on Phlx XL, and SQTs have had the opportunity to acclimate themselves to the electronic trading environment. Thus, the Exchange believes that it is now appropriate to assess the proposed SQT fees.

Each member organization will be assessed per month a SQT fee based on the total number of options in which all SQTs in the same member organization are assigned. A member organization will be assessed a SQT fee based on the aggregate amount of equity options and index options traded by the SQTs in that member organization. However, credits may be earned to offset the amount of the SQT fee assessed on the member organization. The amount of credit that can be earned by each member organization on a monthly basis is based on the number of permit holders, who are also SQTs, per member organization, subject to a maximum allowable permit credit applicable to each SQT category.⁷ Thus, the member organization will be eligible

⁷ The amount of the credit is based on \$1200 for the first ROT (acting as a SQT) permit and \$1000 for each additional ROT (acting as a SQT) permit, subject to the maximum permit credit allowed for each category. For example, if a member organization is assessed a monthly Category II SQT fee of \$2200.00 per calendar month, that member organization would be eligible to receive a permit credit against the \$2200.00 SQT fee depending on the number of permits held by ROTs acting as SQTs within that member organization. Thus, if the member organization only had one SQT, it would receive a credit of \$1200 per calendar month and would be assessed a reduced SQT fee of \$1000.00 for that calendar month. However, if the member organization had two SQTs within its organization, it would receive a total credit of \$2200.00 per calendar month (\$1200 for the first ROT acting as a SQT and \$1000 for the second ROT acting as a SQT) and would be charged a reduced SQT fee of \$0.00 for that calendar month. A member organization may receive credit only for an ROT permit fee when such ROT is acting as a SQT because the Exchange has determined, based on current permit statistics, that member organizations with ROT permits do not apply for other types of permits, unlike the Remote Streaming Quote Trader (“RSQT”) fee and corresponding credit. See Securities Exchange Act Release No. 51428 (March 24, 2005), 70 FR 16325 (March 30, 2005) (SR-Phlx-2005-12).

to receive credit against the SQT fee for the number of actual permits issued to the member organization that are utilized by an SQT, resulting in a reduced SQT fee.

The proposed SQT fees and corresponding credits will be assessed on a monthly basis. The highest applicable SQT fee will be assessed based on the highest SQT category level in which the SQT was qualified at any time during a particular calendar month. For example, if a SQT is eligible to trade at any time in a given calendar month as a Category I SQT, and sometime during that same calendar month becomes qualified and eligible to trade as a Category II SQT, the SQT member organization will be assessed the fee applicable to a Category II SQT, regardless of when such SQT became eligible to trade at the Category II level, and regardless if, during that same calendar month, the SQT resumed eligibility as a Category I SQT.⁸

SQTs are assigned to trade options by the Exchange's Options Allocation, Evaluation, and Securities Committee ("OAESC").⁹ Once assigned in an option by the OAESC, the Exchange's Financial Automation Department¹⁰ activates the connections necessary for access to

⁸ For example, if a member organization's SQT is eligible to trade up to 200 equity and index options issues at any time in a given month, and is thus qualified as a Category I SQT, and sometime during that month becomes eligible to trade up to 400 equity and index options issues during that same month, and is thus qualified as a Category II SQT, the member organization employing that SQT will be assessed the fee applicable to a Category II SQT, regardless of when, during that month, the SQT became eligible to trade at the Category II level.

⁹ See Exchange Rule 507. The OAESC 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 Exchange By-Law Article X, Section 10-7.

¹⁰ 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.

the Exchange's systems respecting the option symbol(s) assigned to the SQT. Thus, a SQT could not trade options in which it is not assigned, and could not thereby function as a SQT in a higher category level without being assessed the appropriate SQT fee.

All other applicable Exchange fees will continue to apply, such as transaction and comparison charges. The proposed SQT fees are scheduled to become effective for transactions settling on or after March 1, 2005.

The Exchange is also proposing to make minor technical changes to renumber certain footnotes. The purpose of renumbering the footnotes is to update the fee schedule to reflect certain footnotes that were recently added to the exchange's fee schedule

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6 of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹² in particular, in that it provides for the equitable allocation of reasonable fees among its members. The proposed SQT fees are lower than RSQT fees¹³ because SQTs have more out-of-pocket costs associated with their streaming quote systems. For example, SQTs generally have to purchase additional software programs and hardware from outside vendors to support their

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

¹³ A 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 AUTOM in eligible options to 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 Exchange Rule 1014(b)(ii)(B). See Securities Exchange Act Release Nos. 51126 (February 2, 2005), 70 FR 6915 (February 9, 2005) (SR-Phlx-2004-90) and 51428 (March 24, 2005), 70 FR 16325 (March 30, 2005) (SR-Phlx-2005-12).

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.

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 has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁴ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹⁵ Accordingly, the proposal will take effect upon filing with the Commission. 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.¹⁶

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:

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on March 30, 2005, the date the Phlx filed Amendment No. 1.

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-2005-16 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-2005-16. 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-2005-16 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).