

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51596; File No. SR-Phlx-2005-19)

April 21, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Relating to Fees Relating to Merger Spreads and Dividend Spreads

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 23, 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 Exchange. The Phlx submitted Amendment No. 1 to the proposal on April 19, 2005.<sup>3</sup> 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 Act<sup>4</sup> and Rule 19b-4(f)(2)<sup>5</sup> 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 from interested persons.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 made clarifying and minor technical changes to the text of the proposal and specified that the proposed fee cap will be in effect as a pilot program that will expire on September 1, 2005.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

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 to provide a rebate for certain trades executed pursuant to a merger spread strategy.<sup>6</sup> Specifically, the Exchange proposes to rebate \$0.08 per contract side for Registered Options Trader (“ROTs”) executions and \$0.07 per contract side for specialist executions made pursuant to a merger spread strategy on the business day prior to the date on which shareholders of record are required to elect their respective form of consideration (i.e., cash or stock).

In addition, the Exchange proposes to adopt a fee cap on equity option transaction and comparison charges on both dividend spread transactions<sup>7</sup> and merger spread transactions. ROTs’ and specialists’ equity option transaction and comparison charges will be capped at \$1,750 for transactions effected pursuant to a dividend spread strategy or merger spread strategy executed on the same trading day in the same options class. The cap will be implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges. The proposed rebate and cap would be effective for trades settling on or after March 24, 2005.

The proposed fee cap will be in effect as a pilot program that will expire on September 1, 2005.

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<sup>6</sup> For purposes of this proposal the Exchange defines a “merger spread” transaction as a transaction executed pursuant to a merger spread strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but different strike prices, followed by the exercise of the resulting long options position, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

<sup>7</sup> For purposes of this proposal, a “dividend spread” transaction is any trade done within a defined time frame pursuant to a strategy in which a dividend arbitrage can be achieved between any two deep-in-the-money options.

The Exchange also proposes to delete a reference from its Summary of Equity Option Charges to the Exchange's Specialist Unit Fixed Monthly Fee ("fixed monthly fee"), as that fee is no longer in effect.<sup>8</sup>

The text of the proposed rule change is available on the Phlx's Web site ([www.phlx.com](http://www.phlx.com)), at the Phlx's Office of the Secretary, and at the Commission.

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 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, as amended, is to adopt a rebate for contracts executed in trades occurring as part of a merger spread strategy to create a cost effective environment for these types of transactions to be executed.

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<sup>8</sup> The fixed monthly fee was in effect for transactions settling through August 31, 2004. See Securities Exchange Act Release Nos. 49467 (March 24, 2004), 69 FR 17017 (March 31, 2004) (SR-Phlx-2004-17); 49693 (May 12, 2004), 69 FR 28974 (May 19, 2004) (SR-Phlx-2004-30); and 50229 (August 23, 2004), 69 FR 52953 (August 30, 2004) (SR-Phlx-2004-42). The Exchange previously deleted references to the Exchange's fixed monthly fee from its fee schedule, but inadvertently omitted this reference. See Securities Exchange Act Release No. 50676 (November 16, 2004), 69 FR 68206 (November 23, 2004) (SR-Phlx-2004-67).

The Exchange provides a rebate for certain contracts executed in trades occurring as part of a dividend spread strategy. Specifically, for those options contracts executed pursuant to a dividend spread strategy, the Exchange rebates \$0.08 per contract side for ROTs executions and \$0.07 per side for specialist executions on the business day before the underlying stock's ex-date.<sup>9</sup> Because the Exchange believes that merger spread transactions have similar economic risks and are executed in similar ways as dividend spread transactions, the Exchange believes that adopting these fees will encourage specialists and ROTs to provide liquidity for these types of financial strategies and should permit the Exchange to remain competitive.

Similar to the dividend spread strategy rebate process, the Exchange's billing system is unable at this time to distinguish between merger spread transactions and other types of trades. The Exchange has therefore developed a manual procedure to implement the proposed rebate. Thus, to qualify a transaction for the rebate process, a written rebate request, along with supporting documentation, must be submitted to the Exchange.<sup>10</sup>

The purpose of capping the ROT and specialist transaction and comparison fees for merger spread and dividend spread transactions at \$1,750 is to attract additional liquidity to the

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<sup>9</sup> The ex-date is the date on or after which a security is traded without a previously declared dividend or distribution. After the ex-date, a stock is said to trade ex-dividend.

<sup>10</sup> Specifically, within 30 calendar days of the billing period (i.e., within thirty days from the issue date of the invoice) for these transactions, a written request, along with the appropriate documentation, must be completed and submitted to the Exchange. After the appropriate verification and subsequent acceptance, the Exchange would credit the appropriate member's account for the amount of the rebate (i.e., either \$0.08 or \$0.07 per contract side) on contracts executed in trades occurring as part of a merger-acquisition strategy.

Exchange.<sup>11</sup> The purpose of deleting the reference to the fixed monthly fee is to update the Exchange's fee schedule to eliminate a reference to a fee that is no longer in effect.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>13</sup> 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, 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

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, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and Rule 19b-4(f)(2)<sup>15</sup> thereunder, because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the

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<sup>11</sup> Similar to the rebate process described above, members who wish to benefit from the proposed fee cap will be required to submit to the Exchange a written rebate request with supporting documentation.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78(s)(b)(3)(A)(ii).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

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.<sup>16</sup>

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2005-19 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-2005-19. 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

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<sup>16</sup> See 15 U.S.C. 78s(b)(3)(C). For purposes of calculation the 60-day abrogation period, the Commission considers the period to commence on April 19, 2005, the date the Phlx filed Amendment No. 1.

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 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-2005-19 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.<sup>17</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).