

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53046; File No. SR-Phlx-2005-89)

January 3, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt an Account Fee

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 December 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 Phlx. The Phlx has designated this proposal as one changing a fee imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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.

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

The Exchange proposes to amend its schedule of fees to adopt a fee on member organizations of fifty dollars (\$50.00) per month, or any part of a month, for each account that a member organization maintains with the Exchange beyond the number of permits<sup>5</sup> billed to that member organization (the “Fee”). The Exchange states that the Fee would be effective beginning on January 1, 2006.

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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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> See Phlx Rule 908.

Below is the text of the proposed rule change. Proposed new language is underlined.

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**APPENDIX A**

Permit Fees<sup>6</sup>

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 (including RSQTs and SQTs) 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<sup>7</sup>                      \$ 200.00 per month

Foreign Currency User Fee                      \$ 1,200.00 monthly

Application Fee                      \$ 350.00

Initiation Fee<sup>8</sup>                      \$ 1,500.00

Account Fee                      \$ 50.00 monthly for each account beyond the number of permits billed to that member organization

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<sup>6</sup>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. These policies will be effective as of February 2, 2004.

<sup>7</sup>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 to permit holders who solely qualify their member organization. These policies will be effective as of February 2, 2004.

<sup>8</sup>This fee is imposed on a member upon election, on a non-member FCO participant upon the purchase of an FCO participation, and on persons or entities registering as approved lessors.

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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 Exchange 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 states that the purpose of the proposed rule change is to encourage member organizations to discontinue holding inactive trading accounts, which the Exchange believes should, in turn, eliminate the need to expend resources to create additional account fields. Also, the Exchange states that staff time allocated to maintaining account records should be reduced, which should allow for a more efficient use of staff resources.

The Phlx states that its member organizations currently have the option to request an unlimited number of trading accounts through the Exchange's Membership Services Department. In many instances, multiple accounts are assigned at the member organization's request to allow them to track their own activity using the Exchange's account numbers.<sup>6</sup> The Exchange states that in many cases, however, accounts are not released back to it when they are no longer required by the member organization or when a member organization may have requested more accounts than needed. The Exchange states that this practice limits the number of available accounts and adds to increased staff time to maintain accurate records of active accounts and the retiring of inactive accounts.

With this proposed rule change, member organizations may have, without charge, the number of accounts equal to the number of permits billed to that member organization. Any additional accounts requested by the member organization would be \$50.00 per month, or any

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<sup>6</sup> The Phlx states that this proposed rule change does not limit the number of accounts a member organization may request.

part thereof, per account. Each account has 22 suffixes or sub-accounts.<sup>7</sup> The Exchange states that there will be no additional charge for suffixes assigned within the same account.

## 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>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it is an equitable allocation of reasonable fees among the Phlx's members.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is 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

Written comments were neither solicited nor 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 Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such 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.

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<sup>7</sup> For example, account number 202 can actually be used as accounts 202-A, 202-B, etc.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

#### 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-2005-89 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2005-89. 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 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-2005-89 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>12</sup>

Nancy M. Morris  
Secretary

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