

deadline until September 30, 2005 is necessary to give ETP Holders a reasonable amount of time come into compliance with the new rules.

## 2. Statutory Basis

PCXE believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and further the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

PCXE does not believe that the proposed rule change will impose 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 become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(3)<sup>10</sup> thereunder because it constitutes a stated policy with respect to the enforcement of an existing rule of the self-regulatory organization. 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.

## 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-PCX-2005-24 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-PCX-2005-24. 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 PCX. 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-PCX-2005-24 and should be submitted on or before March 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51302; File No. SR-Phlx-2005-09]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Fees for Data Provided to Streaming Quote Traders Trading Options on the Exchange's Electronic Trading Platform, Phlx XL

March 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on January 28, 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 proposed rule change 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>3</sup> and Rule 19b-4(f)(2)<sup>4</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.

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

The Phlx proposes to amend its fee schedule relating to its electronic trading platform for options, Phlx XL.<sup>5</sup> Specifically, the Exchange proposes to establish charges applicable to Exchange Registered Options Traders ("ROTs") that submit proprietary electronic quotations ("streaming quotes").<sup>6</sup>

The Exchange has determined to charge SQTs a 100% pass-through charge relating to costs borne by the Exchange for data it will provide to SQTs who desire to obtain real-time underlying data to enable them to price the underlying options (known as "Hyperfeed" costs)<sup>7</sup> in addition to any

<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 Securities Exchange Act Release No. 49832 (June 8, 2004), 69 FR 33442 (June 15, 2004) (SR-Phlx-2003-59).

<sup>6</sup> Such ROTs are known as Streaming Quote Traders ("SQTs"). See Exchange Rule 1014(b).

<sup>7</sup> SQTs trading options on Phlx XL generally use handheld devices for the purpose of streaming quotations in options in which they are assigned. The Exchange does not supply the handheld devices; SQTs generally obtain the handheld

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(3).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

other applicable fees.<sup>8</sup> The 100% pass-through charge will be implemented beginning on February 1, 2005.

The text of the proposed rule change is available on Phlx's website (<http://www.phlx.com>), at the Phlx's Office of the Secretary, and at the Commission's Public Reference Room.

## 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 is to adopt fees relating to Phlx XL to reflect the expiration of a pilot program under which the Exchange absorbed 50% of the Hyperfeed costs for data it supplied to SQTs.<sup>9</sup> The pilot program was intended to recoup 50% of the costs borne by the Exchange for data supplied by the Exchange to SQTs in connection with Phlx XL. The purpose of the instant proposal is to recoup 100% of the costs borne by the Exchange for such data.<sup>10</sup> The Exchange

devices from one of several Exchange-approved vendors. Some vendors provide underlying data to the SQT who uses their handheld as a service to enable such SQT to price overlying options, while other vendors do not. The Exchange provides such underlying data, obtained from a third-party service provider, to those SQTs whose vendors do not provide such data as part of the service they provide to the SQT. The proposed Hyperfeed fee represents a pass-through of 100% of the costs borne by the Exchange in obtaining and providing such data to such SQTs.

<sup>8</sup> SQTs will also pay any Exchange transaction-related fees as well as non transaction-related fees and membership-related fees, when applicable, such as trading post/booth, floor facility, shelf space and permit fees.

<sup>9</sup> See Securities Exchange Act Release No. 50332 (September 9, 2004), 69 FR 55858 (September 16, 2004) (SR-Phlx-2004-49) (implementing the 50% pass-through cost on a 180-day pilot basis, to expire January 28, 2005).

<sup>10</sup> The Commission notes that the Phlx pilot program, which implemented a 50% pass-through charge for SQTs, expired on January 28, 2005 and the instant proposal is effective starting on February 1, 2005. Thus, the Phlx did not account for January 31, 2005 when it implemented the 50% and 100% pass-through charges for SQTs. Accordingly, the Exchange has represented that it will assess SQTs

believes that the 100% pass-through cost applicable to SQTs is an appropriate fee for data provided by the Exchange to SQTs.

#### 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees, and charges is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>12</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members functioning as SQTs.

#### 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 become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>13</sup> and Rule 19b-4(f)(2)<sup>14</sup> thereunder, because it establishes or changes a due, fee, or other charge. 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.

## 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:

a pass-through charge for only 19 of the 20 business days in January 2005. This prorated amount will reflect the exclusion of any pass-through charge for January 31, 2005. Telephone conversation between Richard Rudolph, Director and Counsel, Phlx, Marc McKayle, Special Counsel, and A. Michael Pierson, Attorney, Division of Market Regulation, Commission, on March 1, 2005.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2005-09 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-2005-09. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. 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-2005-09 and should be submitted on or before March 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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<sup>15</sup> 17 CFR 200.30-3(a)(12).