

to its members to direct losses caused by NSCC's gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action would: (1) Memorialize an appropriate commercial standard of care that will protect NSCC from undue liability;<sup>8</sup> (2) permit the resources of NSCC to be appropriately utilized for promoting the accurate clearance and settlement of securities; and (3) would be consistent with similar rules adopted by other self-regulatory organizations and approved by the Commission.<sup>9</sup>

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>10</sup> and the rules and regulations thereunder applicable to NSCC because it will permit the resources of NSCC to be appropriately utilized for promoting the accurate clearance and settlement of securities.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule change will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Settling Member, Data Services Only Member, TPA Member, TPA Settling Entity, Mutual Fund Processor or Fund Member through Fund/Serv, nor for any errors, omissions or delays which may occur in the transmission of a transaction or instruction to or from a Settling Member, Data Services Only Member, TPA Member, TPA Settling Entity, Mutual Fund Processor or Fund Member.

(f) The Corporation will not be responsible for the completeness or accuracy of any IPS Data and Repository Data received from or transmitted to an Insurance Carrier Member, Member or Data Services Only Member through IPS nor for any errors, omissions or delays which may occur in the transmission of such IPS Data and Repository Data to or from an Insurance Carrier Member, or Data Services Only Member.

<sup>8</sup> NSCC has always operated under a gross negligence standard of care and both internal and external counsel have consistently advised members that this is the case. NSCC is seeking to eliminate any confusion due to the absence of a clear standard set forth in its rules and to memorialize its historical practice. In addition, NSCC has in effect a service agreement with the Fixed Income Clearing Corporation ("FICC") pursuant to which FICC provides services for NSCC's fixed income products. This service agreement provides for a gross negligence standard of care. In the absence of this proposed rule, NSCC could be in the position of having to pay for losses caused by FICC that are not recoverable under the agreement.

<sup>9</sup> See, e.g., Securities Exchange Act Release Nos. 37421 (July 11, 1996), 61 FR 37513 [File No. SR-CBOE-96-02]; 37563 (August 14, 1996), 61 FR 43285 [File No. SR-PSE-96-21]; 48201 (July 21, 2003), 68 FR 44128 [File No. SR-GSCC-2002-10]; and 49373 (March 8, 2004), 69 FR 11921 [File No. SR-FICC-2003-09].

<sup>10</sup> 15 U.S.C. 78q-1.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

NSCC has not solicited or received any written comments on this proposal. NSCC will notify the Commission of any written comments it receives.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

**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-NSCC-2004-09 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-NSCC-2004-09. 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 NSCC and on NSCC's Web site at <http://www.nsc.com/legal>. 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-NSCC-2004-09 and should be submitted on or before April 26, 2005.

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

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

[FR Doc. E5-1566 Filed 4-5-05; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51453; File No. SR-Phlx-2005-16]

**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**

March 30, 2005.

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 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.<sup>3</sup> The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the

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

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

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

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

Act<sup>4</sup> 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").<sup>5</sup>

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. SQT fees and credits would apply as follows:<sup>6</sup>

Category I .....	No Charge.
SQT is eligible to trade: <sup>6</sup>	
<ul style="list-style-type: none"> <li>• Up to 200 equity and index options issues.</li> <li>• Not eligible for a permit credit.</li> </ul>	
Category II .....	\$2200.00 per calendar month.
SQT is eligible to trade:	
<ul style="list-style-type: none"> <li>• Up to 400 equity and index options issues.</li> <li>• Maximum permit credit is \$2200.00 per calendar month.</li> </ul>	
Category III .....	\$3200.00 per calendar month.
SQT is eligible to trade:	
<ul style="list-style-type: none"> <li>• Up to 600 equity and index options issues.</li> <li>• Maximum permit credit is \$3200.00 per calendar month.</li> </ul>	
Category IV .....	\$4200.00 per calendar month.
SQT is eligible to trade:	
<ul style="list-style-type: none"> <li>• Up to 800 equity and index options issues.</li> <li>• Maximum permit credit is \$4200.00 per calendar month.</li> </ul>	
Category V .....	\$5200.00 per calendar month.
SQT is eligible to trade:	
<ul style="list-style-type: none"> <li>• Up to 1000 equity and index options issues.</li> <li>• Maximum permit credit is \$5200.00 per calendar month.</li> </ul>	
Category VI .....	\$6200.00 per calendar month.
SQT is eligible to trade:	
<ul style="list-style-type: none"> <li>• Up to 1200 equity and index options issues.</li> <li>• Maximum permit credit is \$6200.00 per calendar month.</li> </ul>	
Category VII .....	\$7200.00 per calendar month.
SQT is eligible to trade:	
<ul style="list-style-type: none"> <li>• All listed equity and index options.</li> <li>• Maximum permit credit is \$7200.00 per calendar month.</li> </ul>	

**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.<sup>7</sup> Thus, the member

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

<sup>5</sup> 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 equity options on Phlx XL, the Exchange's electronic trading platform for options, followed by index options in December 2004.

<sup>6</sup> 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.

<sup>7</sup> 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

organization will be eligible 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.<sup>8</sup>

SQTs are assigned to trade options by the Exchange's Options Allocation, Evaluation, and Securities Committee ("OAESC").<sup>9</sup> Once assigned in an option by the OAESC, the Exchange's Financial Automation Department<sup>10</sup> activates the connections necessary for access to 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

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).

<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> 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.

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,<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 provides for the equitable allocation of reasonable fees among its members. The proposed SQT fees are lower than RSQT fees<sup>13</sup> 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 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.

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

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

<sup>13</sup> 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).

## 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>14</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>15</sup> 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.<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, 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](mailto: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

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

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

<sup>16</sup> 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.

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 April 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-1553 Filed 4-5-05; 8:45 am]

BILLING CODE 8010-01-P

## DEPARTMENT OF STATE

[Public Notice 5039]

### 60-Day Notice of Proposed Information Collection: Form DS-3053, Statement of Consent or Special Circumstances: Issuance of a Passport to a Minor Under Age 14, OMB Control Number 1405-0129

**ACTION:** Notice of request for public comments.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

*Title of Information Collection:* Statement of Consent or Special Circumstances: Issuance of a Passport to a Minor Under Age 14.

*OMB Control Number:* 1405-0129.

*Type of Request:* Revision of a currently approved collection.

*Originating Office:* Bureau of Consular Affairs, Department of State, Passport Services, Office of Field Operations, Field Coordination Division. CA/PPT/FO/FC.

*Form Number:* DS-3053.

*Respondents:* Individuals or Households.

*Estimated Number of Respondents:* 525,000 annually.

*Estimated Number of Responses:* 525,000 annually.

*Average Hours Per Response:* 1 hour.

*Total Estimated Burden:* 525,000 hours annually.

*Frequency:* On occasion.

*Obligation to Respond:* Required to Obtain a Benefit.

**DATES:** The Department will accept comments from the public up to 60 days from April 6, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

E-mail: [Cowlshawsc@state.gov](mailto:Cowlshawsc@state.gov). You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.

Mail (paper, disk, or CD-ROM submissions): Susan Cowlshaw, US Department of State, CA/PPT/FO/FC, 2100 Pennsylvania Avenue, NW, 3rd Floor/Room 3040/SA-29, Washington DC 20037.

#### FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Susan Cowlshaw, U.S. Department of State, CA/PPT/FO/FC, 2100 Pennsylvania Avenue, NW., 3rd Floor/Room 3040/ SA-29, Washington DC 20037, who may be reached on 202-261-8957 or [Cowlshawsc@state.gov](mailto:Cowlshawsc@state.gov).

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

*Abstract of proposed collection:* The Statement of Consent or Special Circumstances: Issuance of a Passport to a Minor Under Age 14 is used by the parent(s) or legal guardian(s) of a minor U.S. citizen or non-citizen national under the age of 14 to document the written notarized consent to issuance of a U.S. passport to the minor of a parent or legal guardian who is not present at the time the application is made, or to document the existence of exigent or special family circumstances. This form is used in conjunction with Form DS-

11, Application for a U.S. Passport or Registration.

*Methodology:* Passport Services collects the information from U.S. citizens or non-citizen nationals when they voluntarily complete and submit the Statement of Consent or Special Circumstances: Issuance of a Passport to a Minor Under Age 14. Passport applicants can either download the form from the Internet or pick one up from an Acceptance Facility/Passport Agency. The form must be completed and then signed in the presence of a notary. The notary will complete his/her portion of the form and affix the notary seal. The form is then submitted along with the Form DS-11 Application for a U.S. Passport.

Dated: February 16, 2005.

**Frank Moss,**

*Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.*

[FR Doc. 05-6936 Filed 4-5-05; 8:45 am]

BILLING CODE 4710-06-P

## DEPARTMENT OF STATE

[Public Notice 5038]

### Guidelines for the Exercise of the Law Enforcement Authorities by Special Agents of the Diplomatic Security Service

**SUMMARY:** In accordance with section 202 (c) of the Foreign Relations Authorization Act, Fiscal Year 2003, which amended section 37 of the State Department Basic Authorities Act (22 U.S.C. 2709), notice is hereby given that pursuant to letters dated March 7, 2005, the State Department advised appropriate congressional committee members that the Secretary of the Department of Homeland Security and the Attorney General approved the Guidelines for the Exercise of Law Enforcement Authorities by Special Agents of the Diplomatic Security Service. This new subsection of 22 U.S.C. 2709 expands authority for special agents of the Department of State and the Foreign Service to obtain and execute subpoenas and arrest warrants and to make arrests without warrant subject to guidelines approved by the Secretary of State, the Secretary of Treasury (and now the Secretary of Homeland Security per the Homeland Security Act of 2002) and the Attorney General. The approved set of guidelines constitutes a statement of policy that will govern such activities by special agents of the Bureau of Diplomatic Security to the United States pursuant to 22 U.S.C. 2709.

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