

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71470; File No. SR-Phlx-2014-07)

February 4, 2014

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Membership Process

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 January 30, 2014, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 Exchange Rule 910 to permit an expedited application process for firms that are already approved members of The NASDAQ Stock Market, LLC (“NASDAQ”) or NASDAQ OMX BX, Inc. (“BX”).

The text of the proposed rule change is attached as Exhibit 5,³ available on the Exchange’s website at nasdaqomxphlx.cchwallstreet.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that the text of the proposed rule change is attached to the filing as Exhibit 5, not to this Notice.

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 purpose of the proposed rule change is to amend a PHLX membership rule and provide for an expedited review of applicants seeking to become PHLX member organizations that have already successfully undergone a NASDAQ or BX membership evaluation and are currently members in good standing of NASDAQ or BX. Currently, PHLX Rule 910 provides the qualifications for a Member Organization, including the required terms and conditions. The Exchange is proposing to modify Rule 910 in order to recognize the new member review previously conducted by member regulation when a PHLX applicant has already been approved for membership on NASDAQ or BX.⁴ The fundamental membership qualifications are standard across all three domestic exchanges owned by The NASDAQ OMX Group⁵ and are all reviewed by NASDAQ member regulation as part of the new member application process. These membership requirements include but are not limited to: registration as a Broker Dealer with the United States Securities and Exchange Commission, maintaining a pre-determined minimum net

⁴ NASDAQ and BX are filing separate rule changes which would recognize the membership review conducted by PHLX.

⁵ NASDAQ, BX, and PHLX.

capital, qualification of associated persons, maintaining sufficient written supervisory procedures. These and other reviews are considered in each new member review conducted by NASDAQ member regulation or by FINRA on behalf of NASDAQ.⁶

The Exchange is proposing to amend Rule 910 to align PHLX rules with the expedited membership processes that already exist on other exchanges affiliated with PHLX. Specifically, NASDAQ Rule and BX Rule 1013(a)(5)(C) both allow for an expedited membership review process for applicants that are already approved on an affiliated exchange.⁷ The membership review for firms that submit a Waive-In Membership Application largely relies [sic] the information previously supplied to NASDAQ and simply reviews any additional new information which has changed or has not yet been evaluated by NASDAQ or by FINRA on behalf of NASDAQ as part of the membership determination. However, the Exchange notes that there are three differences from NASDAQ Rule 1013(a)(5)(C) and BX Rule 1013(a)(5)(c) [sic] and the proposed rule. The first is that NASDAQ and BX also allow FINRA members to qualify for expedited registration. PHLX does not plan to include FINRA members in the expedited

⁶ FINRA reviews the following membership applications for NASDAQ and BX pursuant to a Regulatory Services Agreement: waive-in applications for FINRA members that seek to become NASDAQ members; applications for NASDAQ applicants that are not FINRA members; applications for applicants that are simultaneously applying for FINRA and NASDAQ Membership; applications for NASDAQ Options Market Participation; applications for NASDAQ OMX BX; NASDAQ and BX membership applications.

⁷ For example, NASDAQ rule 1013(a)(5)(C) states: An applicant that is an approved FINRA or NASDAQ OMX BX, Inc. (“BX”) member shall have the option to apply to become a Nasdaq member and to register with Nasdaq all associated persons of the firm whose registrations with the firm are approved with FINRA or BX in categories recognized by Nasdaq rules through an expedited process by submitting a Waive-in Membership Application Form and a Nasdaq Membership Agreement. NASDAQ and BX will file subsequent rule changes to recognize the membership review conducted on behalf of PHLX.

process.⁸ The second is that both NASDAQ and BX have a Short Form Membership application for firms that are already members of the other exchange. PHLX will still require applicants to complete an Organization Membership Application, which must be signed by the Authorized Applicant, the Executive Representative and the Qualifying Permit Holder but will not, as part of the rule change, require the submission of duplicative documentation. The final difference is that the proposed amended rule will still require applicants that require access to the physical trading floor demonstrate knowledge of floor rules and procedures through an on-floor examination.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular, in that 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. NASDAQ's membership department on behalf of PHLX, which performs similar functions for NASDAQ and BX, reviews: applicant business plans, clearing arrangements, FOCUS reports, organizational charts, and Written Supervisory Procedures for firms applying to

⁸ NASDAQ and BX recognize the FINRA membership approval because the membership rules are the same and are covered under a 17d-2 agreement. PHLX does not plan to recognize FINRA's approval because of the slight differences in membership rules but will review this issue if PHLX membership rules are modified and become more closely aligned with NASDAQ and BX rules.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

any NASDAQ OMX market.¹¹ These fundamental documents are required for membership to FINRA, as well as for membership on other national securities exchanges.

PHLX believes that the proposed rule change is consistent with Section 6(b)(5) of the Act¹² because it would eliminate the duplicate review for prospective PHLX firms that have already been reviewed and approved for membership by NASDAQ or BX and would require firms only to provide additional information if there had been a change in status from when the firm previously applied to become a member on a NASDAQ OMX exchange. As a consequence, the proposed change will both bring efficiency to the Exchange's membership review process and reduce the burden on applicants that have already been approved for membership on another NASDAQ OMX domestic market by reducing the duplicative information and documentation required to be provided in the process. As a further consequence, the Exchange will be able to focus its regulatory efforts on reviewing any changes or new information that may affect the applicant's eligibility for Exchange membership. Applicants must attest that the information previously provided as part of a new membership review is complete and accurate. Additionally, the proposed expedited review process replicates a process that is currently available to members of NASDAQ and BX under their rules, with the additional requirement that applicants must complete an Organization Membership Application, and to the extent access to the trading floor is sought, pass an on-floor examination. As discussed, PHLX would continue to apply additional scrutiny to applicants in instances where PHLX would be the Designated Examining Authority ("DEA") or where the applicant's

¹¹ FINRA conducts the new member application review for NASDAQ and BX pursuant to a 17d-2 agreement and Regulatory Services Agreement. These application reviews are administered by FINRA and subject to NASDAQ's final review and decision.

¹² Supra note 8 [sic].

proposed business activities required additional review.¹³ PHLX is required to conduct additional examinations for firms that which [sic] PHLX is the DEA which includes examining firms for compliance with financial responsibility requirements imposed by the Securities Exchange Act of 1934 and by SEC or SRO rules.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The expedited review of membership for PHLX applicants will not impose any burden on competition and will remove unnecessary burdens that currently exist for NASDAQ and BX firms when seeking PHLX membership. Currently, existing NASDAQ or BX firms that seek to become PHLX member firms are required to undergo a duplicative membership review in order to add a PHLX membership. This redundant review would not exist if they sought membership on one of the other NASDAQ exchanges. The Exchange seeks this rule modification in order to harmonize the rules and minimize duplicative membership reviews across all NASDAQ OMX exchanges.

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.

¹³ Prospective members seeking to conduct business on the PHLX trading floor requires [sic] a particularized understanding of the PHLX trading floor rules. Additionally, applicants for which PHLX will be the DEA are required to file the following material; Branch Office Disclosure Form, FOCUS filings, Verification of an error account, Proprietary Account of Introducing Broker Dealer Agreement, Confirmation of U4 registrations, Copy of Joint Back Office Agreements (if applicable), Notification of Applicant's intent to use Electronic Storage Media for maintaining and storing records.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. Please include File Number SR-Phlx-2014-07 on the subject line.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2014-07. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2014-07 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).