

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74533; File No. SR-Phlx-2015-023)

March 19, 2015

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Updating to Certain Phlx Rules

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 12, 2015, 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, II, and III, 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 Rules 50 entitled “Failure to Pay Dues, Fees and Other Charges;” 53, entitled “Liability for Dues Until Transfer or Military Service;” 99 entitled “Back-Up Trading Arrangements;” and 443 entitled “Employees.” The Exchange proposes to delete Rules 51 entitled “Enforcement of Capital Funding Fees;” 54 entitled “Service Fee;” 55 entitled “Claims by Formed or Deceased Members;” and 442 entitled “Communications.”

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqomxphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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 this proposed rule change is to update certain Phlx rules related to the payment of fees to harmonize the Exchange’s Rulebook text and modernize Exchange rules. The Exchange proposes to amend rule text, make minor technical amendments to certain rules and to delete other rules. Each proposed rule change is discussed in greater detail below.

Amendment to Certain Exchange Rules

The Exchange proposes to amend Rule 50, entitled “Failure to Pay Dues, Fees and Other Charges.” The Exchange proposes to conform Rule 50(a) to NASDAQ Stock Market LLC (“Nasdaq”) Rule 9553 and NASDAQ OMX BX, Inc. (“BX”) Rule 9553(a). The Exchange is proposing to adopt rule text similar to Nasdaq Rule 9553 and BX Rule 9553 in place of the current rule text in Rule 50(a), (d) and (f). The Exchange is also proposing to modify the headers to match those of Nasdaq Rule 9553 and BX Rule 9553. The word “termination” in the Phlx rule is replaced with the word “cancellation or bar.” The Exchange’s amendments are not substantive in nature. The amendments seek to align these rules with Nasdaq rules.

The Exchange proposes to amend Rule 53, entitled “Liability for Dues Until Transfer or Military Service” to delete the current rule text and adopt the language in Nasdaq IM-1002 and BX IM-1002-2. This rule allows associated persons to be placed on inactive status, thereby preserving their registration, while serving in the Armed Forces of the United States.<sup>3</sup> The current rule describes the liability for dues of a member that is active in the military or naval service. The current rule notes that the member’s liability continues unless the permit is transferred or the Board of Directors waives dues and assessments. The proposed rule text permits a member serving in the military to retain eligibility to receive transaction related compensation, provided they do not perform the duties of a registered person while inactive. The inactive military member would not be subject to fees or be required to complete Regulatory or Firm Elements requirements. The rule provides similar relief for sole proprietorships that are active in the Armed Forces. Finally, the rule affords relief to persons currently not registered with a member or member organization and subsequently is active in the Armed Forces within two years after the date a person ceases to be registered with a member or member organization with respect to registration requirements provided notice is given within a specified time.<sup>4</sup> If a

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<sup>3</sup> See Nasdaq IM-1002 and BX IM-1002-2.

<sup>4</sup> Phlx must be properly notified of the person's period of active military service within 90 days following his or her completion of active service or upon his or her re-registration with a member or member organization, whichever occurs first. The deferral will terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person does not re-register with a member or member organization within 90 days following his or her completion of active service in the Armed Forces of the United States, the amount of time in which the person must become re-registered with a member or member organization without being subject to the qualification examination requirements shall consist of the standard two-year period provided in Phlx Rules 611, 613, and 3228 reduced by the period of time between the person's Phlx is properly notified of the person's period of active military service within 90 days following his or her completion of active service or upon his or her re-registration with a member or member organization, whichever occurs first. The deferral

person placed upon inactive status while serving in the Armed Forces of the United States ceases to be registered with a member or member organization, Phlx will defer the lapse of registration requirements during the pendency of his or her active service in the Armed Forces of the United States.

Nasdaq based its adoption of the rule on a National Association of Securities Dealers (hereinafter “FINRA”) rule. FINRA tolled the two-year licensing expiration provisions under its rule for a person previously registered with a member who commences active military duty within two years after he or she has ceased to be registered with the member, and also tolled the expiration provisions for a person placed upon “inactive” status, who, while serving in the Armed Forces of the United States, ceases to be registered with a member.<sup>5</sup>

NASD’s Rule IM-1000-2 relieves active duty professionals from continuing education requirements. With respect to the Firm Element requirement of continuing education, FINRA provides that only persons who have “direct contact with customers” in the conduct of securities activities are subject to the Firm Element requirement.<sup>6</sup> active duty professionals are excluded from the Firm Element requirement because they do not have contact with customers. FINRA’s rule expressly states that active duty professionals are not required to complete either of the Regulatory or Firm Elements of the continuing education requirements during the pendency of

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will terminate 90 days following the person's completion of active service in the Armed Forces of the United States.

<sup>5</sup> See Securities Exchange Act Release No. 53182 (January 26, 2006), 71 FR 5391 (February 1, 2006) (SR-NASD-2005-135).

<sup>6</sup> See FINRA Rule 1250(b)(1).

such inactive status.<sup>7</sup> The proposed rule change will harmonize the Phlx rule with the Nasdaq and BX rules as well as FINRA's rule.

The Exchange proposes to amend Rule 99, entitled "Back-Up Trading Arrangements," to make technical conforming amendments to the rule text. This rule change is not substantive in nature; rather, the rule text amendments seek to conform the word usage within the text of this rule.

The Exchange proposes to amend Rule 443, entitled "Employees" by renaming the rule "Trading Floor Admittance" and making minor rule amendments to clarify the rule text. Rule 443 states, "[n]o employee of a member or member organization shall be admitted to the floor unless he is registered with and approved by the Exchange, which may in its discretion require the payment of a fee with respect to each employee so approved, and may at any time in its discretion withdraw any approval so given." The Exchange proposes to reference Options Regulation 5 regarding non-member visitors within this rule to add clarity to admittance to the options trading floor for non-members. The other amendments to this rule are technical in nature. There are no substantive changes proposed to current Phlx Rule 443.

#### Deleted Rules

The Exchange proposes to delete Rule 51 entitled "Enforcement of Capital Funding Fees." This rule is no longer applicable today. This rule permits the Exchange to take certain specified measures if an owner of a membership fails to pay (or have paid on its behalf) any capital funding fee imposed by the Exchange when due. The rule specifies what enforcement action may be taken against an owner for failure to pay any capital funding fee imposed by the Exchange. The rule delineates the remedies that shall be taken by the Board if the capital

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<sup>7</sup> Id.

funding fee is not paid and allows for a variety of remedies ranging from the imposition of a late fee to reversion and sale by the Exchange of the equitable title to a membership. The remedies are set forth in such a way as to apply the less onerous remedies (i.e., late fees) first and the more serious remedies (i.e., suspension of right to trade or lease and reversion of membership) only after the Exchange has not received payment within 90 days after the date of the original invoice (or such longer period for which a lease agreement is in effect as a result of the election by a lessee to continue paying the capital funding fee). By allowing this graduated scale of remedies, the owners are put on notice as to what remedies will be imposed if payment is not received in a timely manner, with the more serious remedies being applied after a longer period of time. In addition, the rule delineates the Board's responsibilities and authority for handling instances in which an owner fails to pay the capital funding fee when due.<sup>8</sup>

The rule was designed to protect innocent lessees from being unexpectedly dispossessed from their memberships and trading rights in the event of a nonpayment by their lessors. This was important in the days when Phlx had seats, prior to demutualization; there are no longer any seats, owners or lessors. Today permits are issued to members and member organizations. Permits provide trading rights<sup>9</sup> today and the Exchange collects fees via direct debit.<sup>10</sup> This rule is outdated and the Exchange proposes to remove it from the Rulebook.

The Exchange also proposes to delete Rule 54 entitled "Service Fee" because the rule is outdated. The rule provides, "[m]embers and member organizations who are not also members of a subsidiary of the Exchange but who use or benefit from the facilities or services of such

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<sup>8</sup> See Securities and Exchange Commission 44872 (September 28, 2001), 66 FR 51084 (October 5, 2001) (SR-Phlx-99-52).

<sup>9</sup> See Rule 908.

<sup>10</sup> See Rule 909.

subsidiary, may be required by the Board of Directors to pay fees or charges to the Exchange for such use or benefit; provided, however, that such fees or charges may be imposed only if they are similar in structure and rate to those imposed by such subsidiary on its own members using or benefiting from the same facilities or services.” The Exchange does not have any active subsidiaries today.<sup>11</sup> This rule is therefore not applicable and should be deleted from the Rulebook. The Exchange also proposes to remove the reference to Rule 54 from Rule 3202, entitled “Application of Other rules of the Exchange.” Rule 3202 adopts certain rules into the equity rules. The Exchange proposes to remove the reference to Rule 54 from Rule 3202 as well.

The Exchange proposes to delete Rule 55, entitled “Claims by Formed or Deceased Members.” This rule states, “[w]hen a member is in debt to another member the death of the creditor member shall not affect the rights of such creditor or member, his organization or estate in respect of such debt.” As noted above, the Exchange issues permits today for access to trading on the Exchange. At the time, prior to demutualization, when the Exchange issued seats, those seats could be leased. This is no longer the case. Members are not indebted to other members in the same manner today. This rule is no longer applicable and should be removed from the Rulebook. The Exchange also proposes to remove the reference to Rule 55 from Rule 3202, entitled “Application of Other Rules of the Exchange.” Rule 3202 adopts certain rules into the equity rules. The Exchange proposes to remove the reference to Rule 55 from Rule 3202 as well.

The Exchange proposes to delete Rule 442, entitled “Communications.” This rule provides that “[c]ommunications shall not be read to the Exchange nor posted on the bulletin

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<sup>11</sup> Phlx’s only subsidiary is the Stock Clearing Corporation of Philadelphia. This subsidiary is inactive.

board without the consent of the Secretary.” This rule is outdated. Today, the Exchange uses electronic means such as email, electronic alerts and its website to issue communications. There is no longer a bulletin board on the Exchange’s trading floor as there was when the rule was enacted. The Exchange proposes removing this outdated rule from the Rulebook.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>13</sup> 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. The Exchange believes that these proposed rule changes will harmonize the text of its rules and modernize the Phlx Rulebook. The Exchange is updating certain rules in order to ensure consistency in the rule text. The Exchange is proposing to delete other rules because they are outdated.

The proposed rule change to Rule 53 seeks to harmonize this rule with Nasdaq and BX Rules. The proposed new rules addresses not only fees, which are addressed by the current rule, but also registration, compensation, Regulatory and Firm Element requirements, sole proprietor members and formerly registered persons. The proposed rule states that a registered person placed on inactive status shall not be included within the scope of fees, whereas the Phlx rule indicates a member serving in the military in active status is liable for dues to the Exchange. The

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

<sup>13</sup> 15 U.S.C. 78f(b)(5).



Exchange desires to conform the treatment of members serving in the military to that of other exchanges. The NASDAQ, BX and NASD rules provide inactive members serving in the military with a reprieve from certain obligations registration and other requirements.<sup>14</sup> The Exchange desires to adopt a similar treatment of these members, which it believes will foster cooperation and coordination with persons engaged in facilitating transactions in securities.

The remaining rule amendment proposals either modernize the rule text and add clarity or delete outdated rule text. The Exchange believes that these proposals will benefit members and member organizations by bringing additional clarity to the Rulebook.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed amendments seek to harmonize the Rulebook by conforming the text of certain rules throughout the rule and also deleting certain unnecessary rules. These rule amendments do not place an undue burden on competition but rather bring clarity to the Rulebook.

The proposed amendments to Rule 53 will provide members with a rule similar to rules on Nasdaq and BX. The Exchange's amendment will conform the treatment of members serving in the military to that of other exchanges. The Exchange believes that adopting the Nasdaq and BX rules will provide members and member organizations with processes similar to other self-regulatory organizations and therefore does not create an undue burden on either intra-market or inter-market 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.

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<sup>14</sup> See Nasdaq IM-1002, BX IM-1002-2 and NASD IM-1002-2.

### 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, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>15</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup>

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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

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

<sup>16</sup> 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.

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2015-023 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2015-023. 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 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2015-023, 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.<sup>17</sup>

Brent J. Fields  
Secretary

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