

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77121; File No. SR-Phlx-2016-22)

February 11, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Rule 505 and Rule 506

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 February 5, 2016, NASDAQ PHLX LLC (“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 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 the Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to delete Rule 505 (Allocation, Reallocation and Transfer of Issues) and update Rule 506 (Allocation Application).<sup>3</sup>

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.

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

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<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> 17 C.F.R. § 240.19b-4.

<sup>3</sup> References to rules are to Phlx rules unless otherwise noted.

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 update its rules to delete Rule 505 (Allocation, Reallocation and Transfer of Issues) and update Rule 506 (Allocation Application).

Rules 505 and 506 were approved more than three decades ago,<sup>4</sup> at which time Exchange options trading was strictly on-floor open outcry through specialists. Exchange options trading developed into a robust hybrid system that is currently largely electronic and off-floor<sup>5</sup> but continues to have on-floor specialists<sup>6</sup> and open outcry trading. The Exchange is now consolidating its Rules 505 and 506.<sup>7</sup> Having found that some of the concepts in Rule 505 are obsolete and that others belong in Rule 506, the Exchange is deleting Rule 505. Simultaneously, the Exchange is updating Rule 506 to make it more easily readable and to transfer certain concepts from Rule 505 to Rule 506. These changes are described below.

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<sup>4</sup> See, e.g., Securities Exchange Act Release No. 37019 (August 17, 1982), 47 FR 37019 (August 24, 1982) (SR-Phlx-81-1) (approval order).

<sup>5</sup> Electronic traders include market makers that are streaming quote traders ("SQTs"), remote streaming quote traders ("RSQTs"), and off-floor specialists ("Remote Specialists"). See Rules 1014(b)(ii)(A), 1014(b)(ii)(B), and 1020.

<sup>6</sup> Remote Specialists do not have a physical presence on the floor of the Exchange. Rule 1020.

<sup>7</sup> While the vast majority of options rules are found in Rule 1000 and higher of the Exchange's rule book, some older options-related rules, such as Rules 505 and 506, are in the Exchange's rule book below Rule 1000.

### Deletion of Rule 505

The Exchange has concluded that with the placement of certain concepts from Rule 505 into Rule 506, Rule 505 is no longer needed. The Exchange believes that it is desirable to discuss the process of allocation or reallocation application, allocation, reallocation, and transfer in one rule, namely Rule 506. Moreover, “leasing” is not practiced on the Exchange and obsolete language in Rule 505 in respect of leasing is no longer needed.<sup>8</sup> The Exchange proposes to therefore delete Rule 505, and to update and clarify Rule 506 to be more descriptive and to add several concepts from deleted Rule 505.

### Updating of Rule 506

First, Rule 506 is updated to make it clear to the reader that the rule applies to the process of allocation application as well as allocation, reallocation, and transfer. Specifically, the title to Rule 506 is expanded to state “Allocation Application, Allocation, Reallocation, and Transfer”. This will allow the reader to more easily understand what Rule 506 is about.

Second, the Exchange is adding language to indicate that applications may be regarding reallocation. Section (b) of Rule 506 is expanded to state that an allocation or reallocation application shall be submitted to the Exchange’s staff in writing. Each allocation or reallocation application will continue to include, at a minimum, the name and background of the head specialist and assistant specialist(s) (except that a Remote Specialist need not include an assistant specialist), the unit’s experience and capitalization demonstrating an ability to trade the

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<sup>8</sup> “Leasing” is the now-obsolete practice of one specialist leasing, or renting, an allocated issue to another specialist.

particular options class sought, and any other reasons why the unit believes it should be assigned or allocated the security.<sup>9</sup>

Third, section (c) of Rule 506 states that allocation decisions and automatic allocations<sup>10</sup> shall be communicated in writing to Exchange members. The Exchange proposes to add into section (c) language to state that reallocation or transfer decisions, like allocation decisions and automatic allocations, shall be communicated in writing to Exchange members.

Fourth, the Exchange is transferring the “Registrant” concept from deleted Rule 505 to section (d) of Rule 506 indicating in whose names an options class needs to be registered; and indicating that Registrant will act as specialist for a period of at least one year (known as “minimum specialist period”). Specifically, the Exchange proposes to add to section (d) the following language:

Upon allocation, reallocation, or transfer of an options class, the options class must be registered in either the name of the specialist unit, or jointly in the name of the unit and the specialist (“Registrant”). Each Registrant must be an Exchange member and an approved specialist. The Registrant shall act as specialist for the options class for at least one year (“minimum specialist period”); unless some other period is defined by the Exchange pursuant to

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<sup>9</sup> The ability of the Exchange to require that the application include other information is continued. Rule 506(b). The Exchange is removing from section (b) antiquated language regarding system acceptance/execution levels and guarantees, as these are not currently used and are therefore obsolete. The language was used with allocation and transfers at a time when there was a lack of uniformity regarding execution levels, as opposed to standardization now (e.g., 1-up, 10-up). Rule 506(b).

<sup>10</sup> Automatic allocations are discussed in Supplementary Material .02 to Rule 506. The Exchange proposes to add “Automatic” in front of the current title “Allocation of Options on Related Securities” so that the title is more descriptive. The Exchange also proposes to rename “Supplementary Material” to “Commentary” to conform with the general naming convention for rules.

this rule. After expiration of the minimum specialist period, the Exchange may re-allocate the options class.

In transferring the “Registrant” concept from deleted Rule 505, the Exchange does not state that the options class can be registered solely in the name of an individual acting as specialist since this is not the current practice. Rather, the Exchange proposes to state that the options class must be registered in either the name of the specialist unit, or jointly in the name of the unit and the specialist. Commensurate with other changes and the language of Rule 506, the Exchange is also proposing to state in Rule 506(d) that once the specialist unit is allocated, reallocated, or transferred an options class,<sup>11</sup> such specialist unit will notify the Exchange in writing regarding any material change in the application for any assigned options class.<sup>12</sup>

Fifth, the Exchange is transferring from Commentary .01 of deleted Rule 505 to new Commentary.03 of Rule 506 the concept that the Exchange may establish a period of less than one year for Registrant to act as a specialist in an options class (known as “alternate specialist period”). This allows the Exchange to establish a period of time that is less than one year, which is shorter than the minimum specialist period. During the alternate specialist period established by the Exchange the Registrant must act as specialist in an allocated options class. If the Exchange decides to establish an alternate specialist period, it will communicate such period in solicitation applications. Also, after the alternate or minimum specialist period the Exchange may re-allocate an options class. Specifically, the Exchange proposes to state in Commentary .03:

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<sup>11</sup> The term “specialist unit” is used for uniformity and readability in section Rule 506(a) and elsewhere in the rule (e.g., sections (d), (e), Commentary .01 (renamed from Supplementary Material .01 to better follow the naming convention)). Similarly, “issue” is proposed to be changed to “options class”.

<sup>12</sup> The Exchange proposes to also remove obsolete language regarding system acceptance/execution levels from Rule 506(d).

### **.03 Alternate Specialist Period.**

The Exchange may establish that a Registrant shall act as a specialist in an allocated options class for a shorter period defined by the Exchange that is less than one year (“alternate specialist period”). If the Exchange establishes an alternate specialist period, it will communicate such period in solicitation applications (notices) pursuant to Rule 506. After expiration of the alternate specialist period, the Exchange may re-allocate the options class.

The Exchange believes that these non-controversial changes to consolidate Rules 505 and 506 and to update and modernize Rule 506 as discussed will make remaining Rule 506 clearer and easier to use.

## **2. Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>14</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by deleting Rule 505 and updating Rule 506 and thereby consolidating the rules as discussed.

The Exchange believes that the rule change will promote just and equitable principles of trade by making the rules clearer and easier to use. The Exchange is proposing to get rid of an older rule, specifically Rule 505, and to consolidate certain concepts from Rule 505 into remaining Rule 506. By doing so the Exchange is deleting obsolete language in Rule 505 regarding options classes that are subject to a lease, as leasing is not practiced on the Exchange. The Exchange is clarifying that Rule 506 will deal with allocation, reallocation, and transfer and that allocation, reallocation, or transfer decisions and automatic allocations will be

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<sup>13</sup> 15 U.S.C. § 78f(b).

<sup>14</sup> 15 U.S.C. § 78f(b)(5).

communicated in writing to Exchange members. The Exchange proposes to transfer from deleted Rule 505 to Rule 506 the Registrant concept indicating that an options class must be registered in either the name of the specialist unit, or jointly in the name of the unit and the specialist; and indicating that Registrant will act as specialist for a one year minimum specialist period. The Exchange proposes to state in Rule 506 that the Exchange can establish an alternate specialist period that is shorter than the minimum specialist period, and that such alternate specialist period will be communicated in solicitation applications. The Exchange will also update language in Rule 506 for clarity and readability (e.g., “specialist unit” and “options class”).

The Exchange believes that the proposed non-controversial change to consolidate Rules 505 and 506 and to update and modernize Rule 506 will make Rule 506 clearer and easier to use to the benefit of market participants.

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, as amended. While the Exchange does not believe that the proposed non-controversial change is a burden on competition, or is competitive in nature, the Exchange believes that clearer, updated rules are always beneficial to market participants.

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 rule change has become effective pursuant to Section 19(b)(3)(A)<sup>15</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>16</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

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:

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

<sup>16</sup> 17 C.F.R. § 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.



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-2016-22 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2016-22. 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 such 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-2016-22, 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>

Robert W. Errett  
Deputy Secretary

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<sup>17</sup> 17 C.F.R. § 200.30-3(a)(12).