

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77687; File No. SR-Phlx-2016-48)

April 22, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Rule 606

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 April 7, 2016, NASDAQ PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“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 is filing with the Commission a proposal to amend Rule 606 (Communications and Equipment). The proposed amendment is described further below.³

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 proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ References to rules are, unless otherwise stated, to the rules of the Exchange.

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 amend Rule 606 to: (1) Add language that would allow the Exchange to limit the use of a communication device under certain circumstances; (2) Clarify the process for changing registration of user, and delete obsolete language regarding wattage and add language regarding web-based and open microphone (“open mic”)⁴ communication applications; (3) Clarify [sic] language regarding call forwarding and open mic; (4) Delete obsolete language regarding stock execution clerks and in-house phone use; and (5) Add [sic] language regarding records.

Rule 606, which applies to the use of electronic communication devices on the options floor of the Exchange (“Options Floor”), has been around for more than fifty years,⁵ at which time Exchange options trading was strictly on-floor open outcry through specialists. Exchange options trading has, since that time, developed into a robust hybrid system that is currently

⁴ Open mic allows listeners other than the intended party on the other end of a line (e.g., telephone) to listen to the conversation.

⁵ Since the inception of Rule 606 in 1964, the rule was amended about ten times, with the last substantive amendment in 2002. See Securities Exchange Act Release No. 49098 (February 13, 2002), 67 FR 8053 (February 21, 2002) (SR-Phlx-2001-109) (notice of filing and immediate effectiveness regarding tethered communication devices). See also Securities Exchange Act Release Nos. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73) (approval order); 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR-Phlx-2006-43) (approval order); 59924 (May 14, 2009), 74 FR 23759 (May 20, 2009) (Phlx-2009-23) (approval order); and 64338 (April 25, 2011), 76 FR 24069 (April 29, 2011) (SR-Phlx-2011-13) (approval order) (these last four proposals made non-substantive technical or conforming changes to Rule 606).

largely electronic and off-floor⁶ but continues to have an on-floor specialist⁷ and an open outcry trading floor. The Exchange is now updating and modernizing Rule 606 as discussed below.⁸

First, currently Rule 606 states in section (d) that the Exchange may remove any telephonic, electronic, or wireless equipment that violates subsection (b)(2) from any Exchange facility.⁹ The Exchange proposes language in section (d) of Rule 606 to indicate when the Exchange may deny, limit, or revoke the use of any communication device under certain circumstances.

Specifically, the Exchange proposes language in section (d) to state that the Exchange may deny, limit, or revoke the use of any communication device: [sic] whenever it determines that use of such communication device: (1) interferes with normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties; (2) is inconsistent with the public interest, the protection of investors or just and equitable principles of trade; or (3) interferes with the obligations of a member or member organization to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules. This gives the Exchange the opportunity to limit the use of a communication device that interferes or is inconsistent with three specified crucial areas as proposed in the rule.

⁶ Electronic traders include market makers that are SQTs, RSQTs, and off-floor specialists ("Remote Specialists"). See Rules 1014(b)(ii)(A), 1014(b)(ii)(B), and 1020.

⁷ Unlike specialists, Remote Specialists do not have a physical presence on the floor of the Exchange. Rule 1020.

⁸ While the vast majority of options-related rules are found in Rule 1000 and higher (with option index rules found in Rule 1000A and higher), some of the older options-related rules are, as discussed, numbered below 1000.

⁹ Section (b)(2) of Rule 606 states: (2) No member, member organization or person associated with a member organization shall: (i) establish or maintain any telephonic, electronic or wireless transmitting system or device, including related antennas, on the Options Floor or (ii) operate any other equipment on the Options Floor that creates radio frequency (RF) or other interference with the systems of the Exchange or other members.

The proposed section (d) provision is similar in relevant part to a provision in the communication rule of another options Exchange, Chicago Board Options Exchange (“CBOE”),¹⁰ and is similar to certain provisions of other Exchange rules.¹¹

Second, Rule 606 currently states in Section (e)(1) regarding registration that members and member organizations must register, prior to use, any new telephone to be used on the Options Floor. Each phone registered with the Exchange must be registered by category of user; and if there is a change in the category of any user, the phone must be re-registered with the Exchange.¹² The Exchange now proposes to update the process for changing registration of user. Specifically, the Exchange proposes to change the requirement in Section (e)(1) that the phone must be re-registered with the requirement that the member or member organization must immediately inform the Exchange in writing on the same day as when the change occurs.

¹⁰ Proposed Rule 606(d)(1) states: The Exchange may deny, limit or revoke the use of any communication device whenever it determines that use of such communication device: (1) interferes with normal operation of the Exchange’s own systems or facilities or with the Exchange’s regulatory duties, (2) is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or (3) interferes with the obligations of a member or member organization to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules. CBOE Rule 6.23(b) states: The Exchange may deny, limit or revoke the use of any communication device whenever it determines that use of such communication device: (1) interferes with the normal operation of the Exchange’s own systems or facilities or with the Exchange’s regulatory duties, (2) is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or (3) interferes with the obligations of a Trading Permit Holder to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules.

¹¹ See, e.g., Rule 1005 and Rule 1006 (provisions regarding advisable in the public interest or for the protection of investors).

¹² Such users can be, for example, floor broker, specialist, or registered options trader. The users that have originally registered and still remain on the Exchange floor have not changed their category of user.

The Exchange believes that the proposed updated procedure is better because while the rule currently does not indicate a timeline when [a phone must be re-registered, the proposed rule change requires written notification to the Exchange on the same day as when the change occurs.

Rule 606 currently states in Section (e)(2) regarding capacity and functionality that no wireless telephone used on the Options Floor may have an output greater than one watt. No person on the Options Floor may use any device for the purpose of maintaining an open line of continuous communication whereby a person not located in the trading crowd may continuously monitor the activities in the trading crowd. This prohibition covers intercoms, walkie-talkies, and any similar devices. Speed-dialing features are permitted on any member telephone.

The Exchange is now proposing to delete obsolete language regarding wattage and to add new language regarding web-based and open mic communication applications.¹³ Specifically, the Exchange is proposing to delete language in in Section (e)(2) that no wireless telephone used on the Options Floor may have an output greater than one watt. While the power limitation may have made sense when wireless was just initiated as a new technology on the Options Floor,¹⁴ this wattage limitation provision is obsolete and no longer needed. In light of the current development of technology, the one watt power limitation provision is no longer needed to minimize the possibility of radio frequency or other interference with the systems of the Exchange of those of other members.

Rule 606 currently states in Section (e)(2) no person on the Options Floor may use any device for the purpose of maintaining an open line of continuous communication whereby a

¹³ These can be, for example, instant messaging, chat, or Skype.

¹⁴ See Securities Exchange Act Release No. 43972 (February 15, 2001), 66 FR 12579 (February 27, 2001) (SR-Phlx-00-48) (approval order). The order notes that the purpose of the one watt power limitation was to minimize the possibility of radio frequency or other interference with the systems of the Exchange of those of other members.

person not located in the trading crowd may continuously monitor the activities in the trading crowd; and that this prohibition covers intercoms, walkie-talkies, and any similar devices.¹⁵ Because of the advancement of technology and proliferation of the web, the Exchange is proposing in Section (e)(2) to also add web-based, as well as open mic, communication applications.

Third, Rule 606 currently states in Section (e)(4) regarding brokers that work on the Options Floor (“Floor Brokers”)¹⁶ [sic] may use cellular and cordless telephones, but only to communicate with persons located on the Options Floor. These telephones may not include a call forwarding feature.¹⁷ Because of the availability of call forwarding and open mic on virtually all wireless phones, the Exchange is proposing to update this provision. Specifically, the Exchange is proposing in Section (e)(4) to state that telephones used by Floor Brokers may not use a call forwarding or open mic feature on the Options Floor; and that if a call forwarding or open mic feature is available on the phone then such feature must be disengaged at all times when the phone is on the Options Floor.

Fourth, Rule 606 currently discusses in Section (e)(5) phone use by stock execution clerks; and in Section (e)(6) the use of general access in-house phones. Stock execution clerks and general access in-house phones no longer exist and these terms are obsolete. Therefore, the

¹⁵ For clarity, the Exchange is proposing to state that the prohibition in Section (e)(2) covers, “but is not limited to,” the noted devices.

¹⁶ A “Floor Broker” is defined in Rule 1060 as “[a]n individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders.”

¹⁷ Headsets are permitted for Floor Brokers, but if the Exchange determines that a Floor Broker is maintaining a continuous open line through the use of a headset, the Floor Broker will be prohibited from future use of any headset for a length of time to be determined by the Exchange. Rule 606(e)(4)(a).

Exchange specifically proposes to delete reference [sic] to these obsolete terms from Sections (e)(5) and (e)(6).

Fifth, Rule 606 currently discusses in Section (e)(7) that members must maintain their cellular or cordless telephone records, including logs of calls placed, for a period of not less than one year. The Exchange reserves the right to inspect and/or examine such telephone records. The Exchange proposes to modernize this requirement.

Specifically, the Exchange proposes in Section (e)(7) to state that members must maintain their logs of calls and chats, including cellular or cordless telephone records and logs of calls placed, for a period of not less than three years, the first two years in an easily accessible place. The Exchange believes that this proposed change will help with the Exchange's surveillance function. The proposed section (e)(7) provision is similar in relevant part to a provision in the communication rule of another options exchange, CBOE,¹⁸ and to other Exchange record-keeping rules.¹⁹

Finally, in terms of housekeeping changes in Rule 606(e)(4)(b) the Exchange is proposing to substitute the word "orders" for "others" so that the section reads properly.

The Exchange believes that the proposed changes to Rules 606 will make it clearer and better.

¹⁸ Proposed Rule 606(e)(7) states: Members must maintain logs of calls and chats, including their cellular or cordless telephone records and logs of calls placed, for a period of not less than three years, the first two years in an easily accessible place. The Exchange reserves the right to inspect and/or examine such telephone records. CBOE Rule 6.23(g) states: Trading Permit Holders must maintain records of the use of communication devices, including, but not limited to, logs of calls placed; emails; and chats, for a period of not less than three years, the first two years in an easily accessible place. The Exchange reserves the right to inspect such records pursuant to CBOE Rule 17.2.

¹⁹ See Rule 616 (electronic filing requirements for uniform forms) and Rule 605 (advertisements, market letters, research reports and sales literature). See also Rule 1049 (communications to customers).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by proposing to make several changes in Rule 606.

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 in Rule 606(d) to add language that would allow the Exchange to limit the use of a communication device when such device interferes with normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties, is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or interferes with the obligations of a member or member organization to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules. The proposed section (d) provision is, as discussed, practically verbatim like a provision in the communication rule of another options Exchange, CBOE.

The Exchange is proposing in Rule 606(e)(2) to delete language regarding wattage that is obsolete and no longer needed.

The Exchange is also proposing in Rule 606(e)(5) to delete obsolete language regarding stock execution clerks and in-house phone use, as these are not present on the Options Floor. The Exchange believes that the rule change will serve to protect investors and the public by making the rule tighter and better for surveillance regarding communication devices.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

The Exchange is proposing language in Rule 606(e)(1) to clarify the process for changing registration of user so that, instead of having to re-register when user status changes, the member or member organization must immediately inform the Exchange in writing on the same day as when the change occurs.

The Exchange is proposing in Rule 606(e)(2) to add language regarding web-based and open mic communication applications because of the considerable advancement of technology and proliferation of the web and the absence of such language in the rule.

The Exchange is proposing in Rule 606(e)(4) to state, instead of telephones may not include a call forwarding feature, that Floor Brokers may not use a call forwarding or open mic feature on the Options Floor and that the call forwarding or open mic feature must be disengaged at all times when the phone is on the Options Floor.

The Exchange is also proposing in Rule 606(e)(7) to modernize the records retention requirement for telephone records so that, similar in relevant part to the requirement of another exchange, CBOE, and to other Exchange rules, and also to help with the Exchange's surveillance function, members must maintain logs of calls and chats for a period of not less than three years, the first two years in an easily accessible place.

The Exchange believes that the proposed changes to Rules 606 will make it clearer and better and therefore beneficial to market participants. The Exchange believes also that the changes proposed to Rule 606 will protect investors and the public interest. As the Exchange has noted, the changes remove references to obsolete and unused concepts that are no longer needed, strengthen features and add features of the rule to make it more current, and strengthen the record retention requirements. Such proposed changes are in the public interest, and continue to serve to protect investors.

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 that do not refer to obsolete language and are in line with other rule concepts 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

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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²² and Rule 19b-4(f)(6) thereunder.

Phlx has requested that the Commission waive the 30-day operative delay so that it can expeditiously eliminate references to obsolete concepts and modernize Rule 606 to take into account current technology. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public. The Commission notes that, among other things, the proposed rule change will require Phlx members to maintain logs of calls and chats, including their cellular or cordless telephone records and logs of calls placed, for a period of not less than three years, the first two years in an easily accessible place. The waiver of the

²² 15 U.S.C. 78s(b)(3)(A).

operative delay will allow Phlx to implement its maintenance and use of records rules, along with the above-discussed requirements regarding communication equipment, without undue delay. Therefore, the Commission designates the proposal operative upon filing.²³

At any time within 60 days of the filing of this 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2016-48 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.

²³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-Phlx-2016-48. 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-2016-48 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.²⁴

Brent J. Fields
Secretary

²⁴ 17 CFR 200.30-3(a)(12) and (59).