

SECURITIES AND EXCHANGE COMMISSION  
(Release No.78419; File No. SR-Phlx-2016-78)

July 26, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx Rule 754 (Employees' Discretion as to Customers' Accounts)

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 July 14, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 754 of the Phlx rules. The text of the proposed rule change is available on the Exchange's website at <http://nasdaqphlx.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 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.

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

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

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 amend Rule 754, which deals with employees' discretion as to customers' accounts and retitle the rule "Discretionary Power as to Customers' Accounts." As discussed below, the Exchange has determined that these rules are outdated and it is more appropriate to follow the corresponding FINRA rule on this subject matter. Consequently, the Exchange is proposing to amend Rule 754 in the Phlx rules.

Rule 754 concerns employees' discretion as to customers' accounts. The rule requires that no member or member organization shall permit any of his or its employees or any employee of another member or member organization to exercise discretion in the handling of a transaction for a customer of such member organization and no member, member organization, partner, officer or stockholder therein shall delegate to any such employee any discretionary power vested by a customer in such member, organization, partner, officer, or stockholder, unless in either case the prior written authorization of the customer has been received and, if such discretionary authority runs, directly or by re-delegation, to an employee of another member or member organization, the carrying organization must obtain the prior written consent of the employer of the individual authorized to exercise discretion. The rule also requires that a member, partner, or officer in the carrying organization shall approve and initial each discretionary order entered by an employee of such organization or of another member or member organization on the day the order is entered.

Further, the provisions of the rule do not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed.

The Exchange believes that the updated language in FINRA Rule 2510 would be more appropriate. The language in FINRA Rule 2510 is more comprehensive in that it also covers excessive transactions; the authorization and acceptance of accounts; and the approval and review of transactions for the benefit of customers. The text of the rule is available on the FINRA website.

Furthermore, The Nasdaq Stock Market LLC (“NASDAQ”) references NASD Rule 2510 (which mirrors FINRA Rule 2510) in place of providing alternative language at NASDAQ Rule 2510, and substantially similar language is used by The New York Stock Exchange, Inc. (“NYSE”) at NYSE Rule 408. Therefore changing the rule as proposed would ensure consistency for market participants providing customer account statements to customers which would also benefit customers and avoid the potential for confusion.

Finally, FINRA Rule 2510 has been updated more frequently over the last few years to address issues raised in response to market participant feedback. This feedback is from a broader market participant base than that which is just available to the Exchange, and so making direct reference to this rule is likely to better serve market participants, customers and investors as a whole on an ongoing basis.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>4</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

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<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed changes are consistent with just and equitable principles of trade because they update and delete outdated and potentially confusing rule text. Updating Rule 754 will lead to a more comprehensive rule, which ensures consistency across markets and products, and lends clarity, consistency and certainty to market participants, customers and investors alike. By referencing an existing FINRA rule, the Exchange is also future proofing the rule so that changes made to it to address a wider range of market feedback than that which is just available to the Exchange will be taken into account automatically and consistently.

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. Rather it is designed to promote competition among exchanges by removing archaic rules in comparison to the rules of other exchanges. Last, the proposed changes promote clarity in the application of the Exchange's rule by updating the rule to bring it in line with other similar industry rules and eliminating unneeded rule text.

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, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>5</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>6</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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2016-78 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.

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<sup>5</sup> 15 U.S.C. 78s(b)(3)(a)(iii).

<sup>6</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.

All submissions should refer to File Number [SR-Phlx-2016-78](#). 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 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-2016-78](#) 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>7</sup>

Robert W. Errett  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).