

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62892; File No. SR-Phlx-2010-119)

September 10, 2010

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX
PHLX, Inc. Relating to Limitation of Exchange Liability

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that on September 1, 2010 NASDAQ OMX PHLX, Inc. (“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, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ proposes to amend Exchange Rule 652, titled Limitation of Exchange Liability and Reimbursement of Certain Expenses, to require member organizations on the Exchange’s trading floor to procure and maintain liability insurance.

The text of the proposed rule change is available on the Exchange’s website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, on the Commission’s website at <http://www.sec.gov/>, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 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 the proposed rule change is to amend Rule 652 titled Limitation of Exchange Liability and Reimbursement of Certain Expenses to require member organizations conducting business on the Exchange's trading floor to procure and maintain liability insurance. The Exchange is proposing this amendment to limit the liability of the Exchange and obtain reimbursement for any action or proceeding brought against the Exchange.

Legal proceedings can significantly divert staff resources away from the Exchange's regulatory and business purposes. In addition, these proceedings often require the Exchange to secure outside counsel, a costly undertaking. The Exchange believes that establishing a rule that limits the Exchange's liability may reduce non merit-based or vexatious legal proceedings against the Exchange by member litigants and help protect against the Exchange's resources being unnecessarily diverted from regulatory and business objectives, thus strengthening the overall organization.

Specifically, the Exchange is proposing to require that member organizations located on the Exchange's trading floor procure and maintain liability insurance. The insurance would

provide defense and indemnity coverage for the member organization, any person associated with the member organization and the Exchange for any action or proceeding brought, or claim made, to impose liability upon the member organization, associated person or the Exchange which results from the member organization's or associated person's conduct.

The Exchange has a physical trading floor where certain Exchange member organizations physically conduct their trading activities. The Exchange does not intend this amendment to provide relief associated with financial loss related to buying and selling securities. The insurance coverage is intended to provide coverage to the Exchange for its sole, concurrent, or contributory negligence or other wrongdoing connected to a claim arising from the member organization's or associated person's conduct.

The Exchange would require that the member organization name the Exchange as an additional insured on the insurance policy by endorsement. The Exchange would retain the same rights under the insurance coverage as the named insured. The Exchange would be entitled to the full policy limits. The member organization would be required to maintain insurance with a limit that is not less than \$1,000,000 without erosion by defense costs.⁵ The insurance would indicate that it is primary to any insurance maintained by the Exchange.⁶

Finally, each member organization located on the trading floor would be required to provide a certificate of insurance to be issued directly to the Exchange demonstrating the insurance was procured and is maintained. Each member organization would be required to furnish a copy of the insurance policy upon request as well.

⁵ In other words, the \$1,000,000 requirement would be in addition to legal costs.

⁶ This requirement applies to the endorsement on the policy and would require coverage to be sought under the member's policy prior to any Exchange policy.

The Exchange incurs cost related to the conduct of Exchange member organizations utilizing the Exchange's facilities on the trading floor to conduct business. The Exchange is seeking to shift the burden arising from actions or proceedings brought, or claims made, to impose liability on the Exchange back to the member organization.

The Exchange also proposes to expand the language in Rule 652 to apply the rule to individuals of the Exchange, specifically officers, directors and employees. The Exchange believes that this language serves to clarify that individuals serving as officers, directors or employees are also the subject of Rule 652.

The Exchange proposes to require members to procure such insurance by December 31, 2010.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular, in that it is designed to promote just and equitable principles of trade, 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, by requiring member organizations physically located on the trading floor to procure and maintain insurance. The proposed amendment would assist the Exchange in limiting its resources [sic] which can be easily diverted to defending litigation claims.

The Exchange believes that member organizations that are physically located on the Exchange's trading facilities are already subject to rules and procedures that are separate and

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

apart from member organizations that are not located on the Exchange's trading floor. While the Exchange does have rules which govern a member organization's order and decorum while on the Exchange's trading floor, the Exchange believes that requiring such member organizations to also obtain insurance coverage to protect the Exchange from claims resulting from their own conduct is not an undue burden.

The Exchange's trading floor environment must be free from conduct that could distract or interfere with market activity as well as conduct which could deplete the Exchange's resources and divert staff when dealing with claims and litigation that results from the conduct of a member organization or associated person of that member organization. The Exchange believes that this proposal will conserve Exchange resources and provide additional coverage for member organizations as well because they are also subject to the coverage.

The Exchange believes that amending Rule 652 to add officers, directors and employees in addition to the Exchange serves to further clarify Rule 652 by making clear that the word Exchange includes such individuals.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to

be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-2010-119 on the subject line.

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-2010-119. 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 will also be available for inspection and copying at the Exchange's principal office. 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 publicly available. All submissions should refer to File Number SR-Phlx-2010-119 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.⁹

Elizabeth M. Murphy
Secretary

⁹ 17 CFR 200.30-3(a)(12).