

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63121; File No. SR-Phlx-2010-119)

October 18, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving Proposed Rule Change to Amend Exchange Rule 652 ("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

I. Introduction

On September 1, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule 652 ("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 proposed rule change was published for comment in the Federal Register on September 17, 2010.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to require that member organizations located on the Exchange's trading floor procure and maintain liability insurance by December 31, 2010. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 62892 (September 10, 2010), 75 FR 57090.

According to the Exchange, it 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 member organization would be required to maintain insurance with a limit that is not less than \$1,000,000 without erosion by defense costs. 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. 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 change will clarify that individuals serving as officers, directors or employees are also the subject of Rule 652.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ which requires, among other things, that the proposed rule change be 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. The Commission believes that the proposed rule change is a reasonable means of protecting the Exchange's financial resources that are normally used to

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

support the Exchange's surveillance and self-regulatory responsibilities, rather than having this capital diverted to defending litigation claims.

The Commission believes that requiring member organizations to obtain insurance coverage to protect the Exchange from claims resulting from their own conduct is not an undue burden. Furthermore, the Commission believes that the proposed rule change may conserve Exchange capital resources, and will provide additional coverage for member organizations since the member organizations are within the scope of the required insurance's coverage.

Finally, the Commission believes that amending Exchange Rule 652 to add officers, directors and employees in addition to the Exchange will remove any ambiguity or confusion by explicitly stating that the word "Exchange" as used in Rule 652 includes such individuals.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁶, that the

⁶ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-Phlx-2010-119) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).