

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66079; File No. SR-Phlx-2011-178)

January 3, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to Stock Execution Clerks

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 December 20, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ proposes to eliminate the stock execution clerk category from its Rules.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the category of stock execution clerk from the Exchange's Rules. This registration capacity is outdated and no longer necessary.

A stock execution clerk is currently defined in Exchange Rule 1090 as any clerk other than a specialist clerk on the Exchange trading floor who functions as an intermediary in a transaction (i) consummated on the Exchange; (ii) entered verbally for execution other than on the Exchange; or (iii) entered into a third party system designed to execute transactions other than on the Exchange.⁵ A stock execution clerk is intended to provide a service to Exchange members on the Options Floor by accepting orders for the purchase and sale of securities underlying options transactions. Once such orders are accepted, the stock execution clerk forwards such orders to the appropriate marketplace for execution. The transactions executed are typically hedging transactions in underlying stocks for Exchange specialists and Registered

⁵ See Exchange Rule 1090, Commentary .01(a). Further, no stock execution clerk shall: (i) act as an intermediary in any transaction other than under the direct supervision of a member; (ii) enter into any clearing transaction or participate in any clearing process; (iii) have discretion or independent authority over any account or transaction. See Exchange Rule 1090, Commentary .01(d).

Options Traders.⁶ Any member or member organization engaged as a stock execution clerk is required to register that person as such with the Exchange's Membership Department. A stock execution clerk that performs any function other than a solely clerical or ministerial function shall, prior to performing any function as a stock execution clerk, (i) comply with the registration requirement(s) set forth in Exchange Rule 604, where applicable; (ii) disclose in detail to the Exchange, on an annual basis, the specific nature of such additional function(s); and (iii) in accordance with Exchange Rule 748, submit to the Exchange written supervisory procedures relating to such member or member organization's activities as a stock execution clerk.⁷

In 1999, the Exchange adopted Exchange Rule 620 entitled "Trading Floor Registration" and required all trading floor personnel, including clerks, interns, stock execution clerks and other associated persons of a member to register with the Exchange in order to more efficiently monitor individuals on the Exchange's trading floor and their current status.⁸ In 2001, the Exchange adopted Rule 1090 entitled "Clerk" to specifically defined a clerk as any registered on-floor person employed by or associated with a member or member organization who is not a member and is not eligible to effect transactions on the Options Floor as a Specialist, Registered Options Trader, or Floor Broker in order to identify a category of all persons that are not members of the Exchange and who are not eligible to effect transactions, but are located on the

⁶ A Registered Options Trader ("ROT") includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

⁷ See Exchange Rule 1090, Commentary .01(b).

⁸ See Securities Exchange Act Release No. 42365 (January 28, 2000), 65 FR 5922 (February 7, 2000) (SR-Phlx-99-46).

Exchange's Options Floor.⁹ Further, the Exchange specifically identified two types of clerks, a stock execution clerk and a specialist clerk.¹⁰ In that rule change, the Exchange noted that stock execution clerks must clear transactions through a NASD (now the Financial Industry Regulatory Authority or “FINRA”) member firm, and determine whether their activities as stock execution clerks require them to be registered as NASD (now FINRA) members.¹¹ The Exchange intended that the activities of stock execution clerks should be conducted consistently with the Act and the rules and regulations thereunder.

The Exchange is proposing to eliminate this registration category because there are no clerks registered as a stock execution clerks today on the trading floor. There are still persons registered as clerks and specialist clerks pursuant to Rule 1090, but there are not individuals performing the duties of a stock execution clerk at the Exchange, nor has there been for some time.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(5) of the Act¹³ 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

⁹ See Securities Exchange Act Release No. 46505 (September 17, 2002), 67 FR 60273 (September 25, 2002) (SR-Phlx-2001-104). The Exchange notes that only Exchange members may bid for and offer securities in the open market on the Exchange Floor. See Exchange Rule 104.

¹⁰ See Rule 1090 at Commentary .01 and 02.

¹¹ See Securities Exchange Act Release No. 46505 (September 17, 2002), 67 FR 60273 (September 25, 2002) (SR-Phlx-2001-104). See also Section 15(b)(8) of the Act.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

investors and the public interest, by eliminating a registration category that is no longer necessary. Today, the function of a stock execution clerk has become largely automated. The transactions that were handled by stock execution clerks take place off-floor today and mostly occur electronically. This type of business is not conducted on the Exchange's trading floor today. For these reasons and in the interest of maintaining current and updated Rules, the Exchange believes that eliminating the stock execution clerk category provides greater clarity to members.

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 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 No. SR-Phlx-2011-178 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 No. SR-Phlx-2011-178. 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 No. SR-Phlx-2011-178 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).