

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78680; File No. SR-Phlx-2016-86)

August 25, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change to Delete or Amend Outdated Rule Language

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 August 12, 2016, NASDAQ PHLX LLC (“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The Exchange proposes to delete or amend outdated rule language contained in Rules 1022, Securities Accounts and Orders of Specialists and Registered Options Traders, 1036, Affiliated Persons of Specialists, and 1037, Floor Reports of Exchanges Options Transactions

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange is proposing to delete or amend several rules pertaining to the obligations of specialists, as follows.³

Rule 1022

Rule 1022 (b) and (c) currently provide that each specialist or Registered Options Trader (“ROT”) shall provide certain reports of options and orders in a manner provided by the Exchange. Section (b) requires each specialist or ROT, no later than 10:00 A.M. on the business day following order entry date, to report to the Exchange opening positions and each purchase and sale in each option in which the Specialist or ROT is registered for each account reported pursuant to Rule 1022.⁴

Likewise, Section (c) requires each specialist or ROT, no later than 10:00 A.M. on the business day following order entry date, to report to the Exchange every order entered by the specialist or ROT for the purchase or sale of a security underlying any stock or Exchange-Traded Fund Share options contract traded on the Exchange or a security convertible into or exchangeable for such underlying security as well as opening and closing positions in all such securities held in each account reported pursuant to the

³ A “specialist” is an Exchange member who is registered as an options specialist pursuant to Exchange Rule 1020(a). Specialists are subject to quoting and registration obligations set forth in Rules 1014(b), 1020 and 1080.02.

⁴ The report is required to designate the time and type of tick at which such transaction was effected.

rule.⁵ The requirements of both Sections (c) and (d) are qualified – the reports are required to be made “in a manner prescribed by the Exchange.”

The Exchange is deleting Sections (b) and (c) as obsolete and reserving those sections. The Exchange has previously stated with respect to Rule 1022 that the required reports of activity in each option, as well as activity in the underlying stock, is reviewed daily to insure compliance with Exchange and SEC rules and regulation.⁶ However, the Exchange does not require nor does it currently receive the reports specified in those sections because it believes that the burden of filing the reports would outweigh the benefits and it does not believe the reports are necessary to fulfill its regulatory obligations given other sources of information now available to the Exchange. While current Exchange staff is unaware whether a circular was issued advising specialists that they were no longer required to provide the reports required under Rule 1022, the reports have not been required by or received by the Exchange for 15 years or more.

The information referred to in Section (b) is available from The Options Clearing Corporation. Much of the information called for in Section (c) is now available to the Exchange in the ISG Equity Audit Trail known among the exchanges as ECAT.

Rule 1036

Section (a) of Rule 1036, Affiliated Persons of Specialists, currently requires every limited partner, approved person and every party who is affiliated with a specialist member organization to agree, in a stipulation approved by the Exchange, not to violate

⁵ The report pertaining to orders must include the terms of each order, identification of the brokerage firms through which the orders were entered, the times of entry or cancellation, the times reports of executions were received and, if all or part of the order was executed, the quantity and execution price.

⁶ See Securities Exchange Act Release No. 19940 (July 1, 1983), 48 FR 31950 (July 12, 1983).

any Exchange rule or cause a specialist or a specialist member organization to violate these or any other rules relating to specialists. The Exchange currently does not collect such stipulations. The violation of such a stipulation would have provided the Exchange with a separate basis for proceeding against the provider of the stipulation in the event of an Exchange rule violation by that person or by a specialist or specialist member organization. However, the Exchange has determined that the burden of collecting such stipulations would outweigh any benefits and is accordingly proposing to delete and reserve Section (a) of Rule 1036.

Rule 1036(b) provides that no issuer, or parent or subsidiary thereof, or any officer, director or 10% stockholder thereof, may become an approved person in a specialist member organization whose members are registered in a security of that issuer. Rule 1036(b) however applies only to options trading on the Exchange. Therefore, the Exchange is amending Rule 1036(b) to refer to members who are registered in options overlying a security of that issuer.⁷

Rule 1037

Rule 1037, Floor Reports of Exchanges Options Transactions, provides for a specialist's liability for missed orders on the book. Under the rule a specialist was liable for any loss sustained for orders entrusted to him which should have been executed, and for which he should have sent an execution report, when the specialist was made aware of the error by 9:30 on the business day following the submission of the order.⁸ Rule 1037

⁷ The Exchange is also correcting the rule by changing the word "who" to "whose".

⁸ In a May 17, 1991 amendment to SR-Phlx-91-21, the Exchange amended the introductory language of Rule 1037 by replacing "12:00 noon" with "9:30 AM". The same change was also made to Commentary .03. It appears that although the change to Commentary .03 was then carried over into the rulebook, the same

is being deleted as obsolete and reserved. Due to the migration of the Exchange to a new electronic trading system (“Phlx XL II”) in 2009, missed orders by Specialists no longer occur because Specialists no longer handle orders for other market participants in their capacity as Specialists.⁹ Missed orders cannot occur because orders are not held or guaranteed by Specialists, who now trade only for their own accounts in that capacity. The deletion of Rule 1037 should prevent confusion that may result from having obsolete rules in the Exchange’s rulebook.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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 deleting obsolete provisions and generally providing clarity to the rules.

change to the introductory language was inadvertently overlooked and thus not reflected in the rulebook. See Securities Exchange Act Release No. 32695 (July 29, 1993), 58 FR 41821 (August 5, 1993).

⁹ In May 2009, the Exchange enhanced the options trading system and adopted corresponding rules referring to it as “Phlx XL II.” See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). Thereafter, the Exchange submitted a number of filings updating various rules and deleting obsolete provisions. See Securities Exchange Act Release Nos. 61397 (January 22, 2010), 75 FR 4893 (January 29, 2010) (SR-Phlx-2010-07); 63036 (October 4, 2010), 75 FR 62621 (October 12, 2010) (SR-Phlx-2010-131); and 67469 (July 19, 2012), 77 FR 43633 (July 25, 2012) (SR-Phlx-2012-92).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

Rule 1022

The amendments to Rule 1022 are consistent with the Act because they delete requirements that specialists and ROTs provide reports which the Exchange no longer needs in order to fulfill its regulatory responsibilities. The elimination of the requirements reduces an unnecessary burden on ROTs and specialists, which therefore removes an impediment to a free and open market and a national market system.

Rule 1036

The amendments to Rule 1036 are consistent with the Act because they clarify that Rule 1036(b) applies to option specialist member organizations. They also eliminate requirements that certain affiliates of specialists or related persons provide stipulations the collection of which the Exchange believes to be a burden that is not outweighed by its benefits. The elimination of the requirement reduces an unnecessary burden on the Exchange, which therefore removes an impediment to a free and open market and a national market system.

Rule 1037

The deletion of Rule 1037 is consistent with the Act because this rule language is operationally obsolete, as explained above; moreover, having clear and up-to-date rules should promote just and equitable principles of trade on the Exchange. The proposal should result in a more accurate and understandable rule book, particularly for Exchange specialists who no longer operate a book or handle orders for accounts other than their own.

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. The proposal raises neither intra-market nor inter-market competition issues. The proposal deletes or amends obsolete or unnecessary provisions or clarifies rules and therefore does not impact how the market operates today.

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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such 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-2016-86 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2016-86. 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 Web site

(<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-2016-86 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.¹²

Robert W. Errett
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).