

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60785; File No. SR-Phlx-2009-86)

October 2, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Specialist and Registered Options Traders Allocation and Assignment Rules

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 30, 2009, 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, 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 Phlx Rules 501 (Specialist Appointment), 505 (Allocation, Reallocation and Transfer of Issues), 506 (Allocation Application), 507 (Application for Approval as an SQT or RSQT and Assignment of Options), and 513 (Voluntary Resignation of Options Privileges) to clarify and streamline the process for specialist allocations and Streaming Quote Trader ("SQT")³ and Remote Streaming Quote Trader ("RSQT")⁴ assignments, and delete unnecessary or obsolete language.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Rule 1014(b)(ii)(A). See also Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32)(approval order regarding enhancements to

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, 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.

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 Phlx Rules 501, 505, 506, 507, and 513 to clarify and streamline the process for specialist allocations and Streaming Quote Trader and Remote Streaming Quote Trader assignments, and delete unnecessary or obsolete language.

After the merger of The NASDAQ OMX Group, Inc. ("NASDAQ OMX") and the Philadelphia Stock Exchange, Inc. (now NASDAQ OMX PHLX, Inc.),⁵ the Commission in May

opening, linkage and routing, quoting, and order management processes in the Exchange's electronic options order entry, trading, and execution system PHLX XL II.).

⁴ An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

⁵ See Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008)(SR-Phlx-2008-31). See also Securities Exchange Act Release No. 58183 (July 17, 2008), 73 FR 42850 (July 23, 2008)(SR-NASDAQ-2008-035).

2009 approved a Phlx filing that, among other things, eliminated the Options Allocation, Evaluation and Securities Committee (“Allocation Committee”) and transferred all relevant duties from the Allocation Committee to the Exchange staff.⁶ As a result, the Exchange administers Rules 500 through 599 (the “Allocation and Assignment Rules”).

The Allocation and Assignment Rules generally describe the process for: application for becoming and appointment of specialists; allocation of classes of options to specialist units and individual specialists; application for becoming and approval of SQTs and RQTs and assignment of options to them; and specialist, SQT, and RSQT performance evaluations.⁷

Rule 501 deals with the process of applying for approval as a specialist or specialist unit on the Exchange. The Exchange proposes changes to clarify that the Exchange may prescribe the form and/or format for the initial application and subsequent application(s). This proposed change should enhance the uniformity and quality of the application process.⁸ The information

⁶ Securities Exchange Act Release No.59924 (May 14, 2009), 74 FR 23759 (May 20, 2009) (SR-Phlx-2009-23)(approval order). The proposal is similar in nature to previous proposals that, among other things, sought to more closely align the rules of Phlx and other exchanges within NASDAQ OMX, such as of The NASDAQ Stock Market LLC (“Nasdaq”). See, for example, Securities Exchange Act Release Nos. 59794 (April 20, 2009), 74 FR 18761 (April 24, 2009) (SR-Phlx-2009-17)(approval order regarding proposal to modify the process for nominating Phlx Governors); 60431 (August 4, 2009), 74 FR 40265 (August 11, 2009) (SR-Phlx-2009-59)(notice of filing relating to by-laws, Regulatory Oversight Committee, and referee program); and 59923 (May 14, 2009), 74 FR 23902 (May 21, 2009) (SR-NASDAQ-2009-046)(notice of filing and immediate effectiveness relating to criteria for securities that underlie options traded on NOM).

⁷ The Allocation and Assignment Rules also indicate, among other things, under what circumstances new allocations may not be made. See, for example, Supplementary Material .01 to Rule 506 (specialist may not apply for a new allocation for a period of six months after an option allocation was taken away from the specialist in a disciplinary proceeding or an involuntary reallocation proceeding).

⁸ The Exchange notes that specialist applications are submitted for various purposes that may include, for example, requests for approval as new (or returning) specialists or specialist units, initial approval to be a specialist in a particular option class, and approval to be a specialist in additional option classes. The proposed changes should allow the Exchange to have similar applications for use within the various types of applicant

required on such applications is already established in the rule and is not changed.⁹ The exchange also clarifies in the rule that upon application by a member organization to become a specialist, the Exchange may, but is not required, to approve such organization as a specialist unit.

Rule 505 deals with allocating, re-allocating and transferring options classes on the Exchange. Currently, the rule states that a specialist unit that receives an allocation in an option must act as a specialist in it for at least one year. The Exchange is proposing a change indicating that, instead of an inflexible minimum one year time period, the Exchange may establish a minimum period that does not exceed one year (the “minimum specialist period”). The length of the minimum specialist period, if one is chosen by the Exchange, will be indicated by the Exchange when it solicits applications for allocation of a security.¹⁰ The Exchange believes that this rule change would allow the Exchange to more closely tailor minimum specialist periods, to the benefit of specialists and specialist units as well as the Exchange.¹¹

In a similar vein regarding minimum period, the Exchange proposes to codify in Rule 507 that upon initial assignment of an option to an SQT or RSQT, the SQT or RSQT may not withdraw from such assignment for ten or fewer business days after the effective date of assignment. The Exchange may, however, in exceptional circumstances approve withdrawal

classes while affording the Exchange flexibility to modify the form and/or format of such applications and information requested therein.

⁹ The information specified in Rule 501 for applications to be a specialist unit includes the following: (1) the identity of the unit's staff positions and who will occupy those positions; (2) the unit's clearing arrangements; (3) the unit's capital structure, including any lines of credit; and (4) the unit's back up arrangements.

¹⁰ See Proposed Commentary .01 to Rule 505.

¹¹ As an example, in establishing a minimum period the Exchange may, among other things, take into account the desirability of the continuity of a market in a particular class of options.

from an option assignment before such period of time.¹² Where an SQT or RSQT seeks to withdraw from assignment in an option pursuant to Rule 507, the period of time that must pass between an SQT or RSQT notifying the Exchange of his or her desire to withdraw from assignment and the effective date of such withdrawal is reduced from three business days to one business day.¹³ Additionally, proposed Rule 507(b) states that, similarly to Rule 501, the Exchange may prescribe the form and/or format of applications for assignment in an option and the minimum information to be provided thereon.¹⁴

Rule 513 deals with voluntary resignations by specialist units from allocations of particular options. Currently, the rule states that barring any specialist performance or disciplinary issues, the option specialist unit that last traded an option must be given preference in any future allocation decision regarding the same option. The Exchange proposes to clarify that while a preference may be given by the Exchange, the preference will no longer be effective for a one year period in every instance. This should enable the Exchange to make better re-allocation determinations by taking into consideration not only past but also current and prospective factors.

The Exchange also proposes to delete obsolete language regarding SQT and RSQT applicants requesting partial options assignments. Currently, Rule 507 in Commentary .01

¹² As an example, such exceptional circumstances may exist where, within the week after assignment, the entity whose assigned security the SQT or RSQT is quoting is acquired by another, thereby impacting the risk tolerance of the SQT or RSQT and resulting in a request by the SQT or RSQT to cease the assignment.

¹³ The Exchange conforms Rule 506 to similarly state that if a specialist seeks to withdraw from allocation in a security, it should so notify the Exchange at least one business day prior to the desired effective date of such withdrawal.

¹⁴ Moreover, the information noted in the proposed rule (e.g. appropriate Exchange account number, requested start date for each option applied for, and name of member organization) is similar to information currently requested of applicants.

allows an SQT or RSQT applicant to request option assignment by “root symbol,”¹⁵ such that an SQT or RSQT could effectively request not to be assigned in certain options within an options class, such as, for example, those emanating from mergers and acquisitions and spin-offs.¹⁶ In light of the recent enhancements and configurations to the Exchange’s electronic quoting and trading system, which is now known as Phlx XL II,¹⁷ requesting partial assignments is no longer a feasible alternative for SQTs and RSQTs and is therefore being deleted.¹⁸

The Exchange believes that the changes proposed to the Allocation and Assignment Rules as a whole streamline the rules and make their implementation more uniform and predictable to the benefit of the Exchange and market participants such as specialists, specialist units, SQTs and RSQTs on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁰ 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

¹⁵ A root symbol is the options trading mnemonic used for each option as applied by The Options Clearing Corporation (“OCC”) to series overlying the same security (depending, without limitation, on the strike price of the series, the expiration of the series, the price of the underlying security, and/or mergers and acquisitions relating to the underlying security). See Commentary. 01 to Rule 507.

¹⁶ The trend in allocations is, on the other hand, toward inclusivity of options emanating from mergers and acquisitions and spin-offs. See Securities Exchange Act Release No. 60455 (August 6, 2009), 74 FR 40857(SR-Phlx-2009-62)(notice of filing and immediate effectiveness)(providing for automatic allocation of related options).

¹⁷ See Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009)(SR-Phlx-2009-32)(approval order regarding XL II).

¹⁸ Assignment by “root symbol” is not compatible with XL II system requirements.

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

investors and the public interest, by clarifying and streamlining the process for specialist allocations and SQT and RSQT assignments. The Exchange believes that its rule change proposal does not engender unfair discrimination among specialists, specialist units, SQTs and RSQTs in that it clarifies and streamlines (as well as codifies) allocation and assignment procedures that are equally applicable to all members and member organizations at the Exchange.

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

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act²¹ and Rule 19b-4(f)(6)²² thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 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. Phlx has satisfied this requirement.

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-2009-86 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-2009-86. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00

pm. 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 Number SR-Phlx-2009-86 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.²³

Florence E. Harmon
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).