

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64591; File No. SR-Phlx-2011-79)

June 2, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Allow Qualified Exchange Members to Act as Off-Floor Option Specialists in One or More Options Classes

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 June 1, 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 is filing with the Commission a proposal to amend Exchange Rule 501 (Specialist Appointment) and Rule 1020 (Registration and Functions of Options Specialists) to allow qualified Exchange members to act as off-floor option specialists in one or more options classes.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's website at www.sec.gov.

¹ 15 U.S.C. 78s(b)(1).

² 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 this proposal is to amend Exchange Rules 501 and 1020 to allow qualified Exchange members to act as off-floor option specialists in one or more options classes (known as “Remote Specialists”).

a. Background

There are several types of market makers on the Exchange, including Registered Options Traders (“ROT”),³ Streaming Quote Traders (“SQTs”),⁴ Remote Streaming Quote Traders (“RSQTs”),⁵ and specialists.⁶

³ An ROT is 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 Rule 1014 (b)(i).

⁴ An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically in 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).

⁵ 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 options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Rule 1014(b)(ii)(B).

Specialists are Exchange members who are registered as options specialists pursuant to Rule 1020(a)⁷. Current subsection (a) states that specialists include qualified RSQTs approved by the Exchange pursuant to Rule 501 to function as off-floor Remote Specialists in one or more options; and that Remote Specialists have all the rights and obligations of an options specialist, unless Exchange rules provide otherwise.⁸

Rule 1020 sets forth additional provisions that are specifically applicable to specialists. Subsection (b) of Rule 1020, for example, states that as a condition of a member being registered as a specialist in one or more options, it is understood that, in addition to the execution of orders entrusted to him in such options, a specialist is to engage in a course of dealings for his own account to assist in the maintenance insofar as reasonably practicable, of a fair and orderly market on the Exchange in such options. Subsection (c) states that a specialist or his member organization shall not effect on the Exchange purchases or sales of any option in which such specialist is registered, for any account in which he or his member organization is directly or

⁶ Rule 1014 also discusses other market makers including Directed SQTs and Directed RSQTs, which receive Directed Orders as defined in Rule 1080(l)(i)(A). Specialists may likewise receive Directed Orders.

⁷ The performance of all specialists, including Remote Specialists, is evaluated pursuant to Rule 511.

⁸ Following is a list of such rules, which are influenced by the fact that Remote Specialists do not have a physical floor presence. Rule 1014(g) indicates that Remote Specialists have priority that is coextensive with that of electronic market makers such as RSQTs. Options Floor Procedures Advice (“OFPA”) B-3 indicates that Remote Specialists are exempted from the requirement that an ROT including a specialist trade a certain percentage of volume on the Exchange in person. Rule 501 indicates that, unlike on-floor specialists, Remote Specialists do not need to retain an assistant specialist or a back-up specialist unit. Commentary .01 to Rule 1014 indicates that, like RSQTs, Remote Specialist do not have an in-person trade execution requirement. OFPA E-1 indicates that, unlike specialists that must have a representative available on the floor for the thirty minutes before the opening and the thirty minutes after the close of trading and one hour after the preliminary trade reports are distributed, Remote Specialists must have a representative available via telephonic and/or electronic communication access.

indirectly interested, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market.

Rule 501 generally deals with the process of applying for approval as a specialist that would be eligible to receive allocations of options issues. Current subsection (f) discusses how RSQTs on the Exchange may become Remote Specialists in one or more options, where the Remote Specialists do not have a physical presence on the trading floor of the Exchange and where the Exchange determines that it cannot allocate such options to a floor-based specialist. Subsection (f)(ii) states that Remote Specialists must be accessible to Exchange staff and members during all trading hours and must provide telephonic and/or electronic access to such specialists and/or associated staff at all times during trading hours. Subsection (f)(iii) states that Remote Specialists have all the rights and obligations of specialists, unless Exchange rules provide otherwise.

Until such time that the rule filing proposing Remote Specialists was approved this year,⁹ all option classes and series listed on the Exchange had to have a floor-based specialist with a physical presence on the options floor.¹⁰ The floor-based specialist system is historically based in the traditional open outcry auction market system that has trading crowds at physical trading

⁹ See Securities Exchange Act Release No. 63717 (January 14, 2011), 76 FR 4141 (January 24, 2011) (SR-Phlx-2010-145) (order approving proposal to establish Remote Specialist on Exchange under specified circumstances) (the “initial Remote Specialist filing”).

¹⁰ At least one exchange that uses a specialist system has allowed certain option series to trade without a designated lead market maker (specialist). See Securities Exchange Act Release No. 56001 (July 2, 2007), 72 FR 37557 (July 10, 2007) (SR-NYSEArca-2007-34) (order approving). And at least one exchange that does not have a specialist system has allowed options to be traded without any market maker. See Securities Exchange Act Release No. 61735 (March 18, 2010), 75 FR 14227 (March 24, 2010) (SR-NASDAQ-2010-007) (order approving).

posts on the floor and Floor Brokers¹¹ that represent orders on the floor on behalf of others (“auction market system” or “open outcry system”). The auction market system is necessary, and indeed invaluable, to certain types of market participants (e.g., institutional traders and certain large-volume traders). The Exchange has developed, in parallel to the auction market system, an extensive electronic means to execute option orders.¹² As a result, the Exchange operates an options market that combines a traditional open outcry auction market trading floor with electronic trading.¹³ In January 2011, the Commission approved the initial Remote Specialist filing in which the Exchange proposed to allow RSQTs to act as Remote Specialists that are not physically present on the trading floor, where a floor-based specialist was not willing to accept (or retain) allocation of an option.¹⁴ The Exchange is expanding the Remote Specialist position by this filing.

The Exchange notes that this proposal is in no way meant to diminish the need for the physical options trading floor on the Exchange. To the contrary, the Exchange recognizes the

¹¹ An Options Floor Broker is an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and executing options orders received from members and member organizations. An Options Floor Broker shall not accept an order from any other source unless he is the nominee of a member organization qualified to transact business with the public in which event he may accept orders from public customers of the organization. See Rule 1060.

¹² See Rule 1080 regarding the Exchange’s electronic order, trading, and execution system. See also Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32) (order approving the Exchange’s enhanced electronic platform, XL II).

¹³ The current Phlx market model combining open outcry and electronic trading is also used by other options exchanges, such as Chicago Board Options Exchange, Inc. (“CBOE”), NYSE Amex LLC (“NYSE Amex”) and NYSE Arca, Inc. (“NYSE Arca”). Only electronic options trading is done on other exchanges, such as the International Securities Exchange, LLC (“ISE”) and The NASDAQ Stock Market LLC (“NASDAQ”).

¹⁴ See Securities Exchange Act Release No. 63717 (January 14, 2011), 76 FR 4141 (January 24, 2011) (SR-Phlx-2010-145) (order approving proposal to establish Remote Specialists on the Exchange pursuant to Rules 501 and 1020).

value of a physical trading floor and confirms its need and importance to the market place while expanding, through this proposal, the ability for floor specialists to engage in remote market making.

b. The Proposal

The Exchange proposes to enhance the current Remote Specialist model so that all eligible ROTs on the Exchange¹⁵ may function as Remote Specialists. The Exchange also proposes to eliminate the requirement that an option may be allocated to a Remote Specialist only to the extent that the option cannot be allocated to (or retained by) an on-floor specialist. Significantly, all of the key principles now applicable to Remote Specialists will continue in force with this proposal: a) Remote Specialists would be subject to all of the obligations and privileges of floor-based specialists unless otherwise noted in Exchange rules; b) Remote Specialists and on-floor specialists would have equivalent quoting requirements;¹⁶ and c) RSQTs approved to act as Remote Specialists would have heightened quoting obligations when acting as Remote Specialists in contrast to when acting as RSQTs.¹⁷

The Exchange believes that this proposal would significantly expand the universe of market participants that could assume the role of Remote Specialist. The Exchange also believes that allowing more eligible ROTs to assume the role of Remote Specialist would further ensure the listing, or continued listing, of options on the Exchange to its benefit and the benefit of traders on the Exchange, market participants, and the investing public.

¹⁵ SQTs would not be eligible to be Remote Specialists because they can function only on the physical options trading floor of the Exchange.

¹⁶ See Rule 1014(b)(ii)(D)(2).

¹⁷ See Rule 1014(b)(ii)(D)(1).

In making the proposed changes, the Exchange would consolidate portions of the definition of Remote Specialist from current Rule 501(f) into proposed Rule 1020(a). This would clarify the function of these rules such that Rule 501 would deal predominantly with the Remote Specialist application process and Rule 1020 would deal with the definitional prerequisites of being a Remote Specialist.

The Exchange proposes the following specific changes to Rules 501 and 1020. First, the Exchange proposes to move the concept that a Remote Specialist may not have a physical presence on the Exchange floor from Rule 501(f) into Rule 1020(a)(ii). Proposed subsection (a)(ii) would state that a Remote Specialist is an options specialist in one or more classes that may not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501. The Exchange notes that this language is in conformity with the goal of allowing all eligible ROTs (and not only RSQTs) to be off-floor specialists.

Second, the Exchange proposes to move language regarding Remote Specialist rights and obligations from Rule 501(f) into Rule 1020(a)(iii). Proposed subsection (a)(iii) would state that a Remote Specialist has all the rights and obligations of an options specialist, unless Exchange rules provide otherwise.¹⁸ At the same time, the current language in Rule 501(f) that a Remote Specialist does not need to have an assistant specialist or a back-up specialist unit, as required in subsections (b) and (d) of Rule 501 for traditional specialists, would remain in Rule 501.

Third, the Exchange proposes to move the concept that a Remote Specialist must be available during trading hours from Rule 501(f) into Rule 1020(a)(iv). Proposed subsection (a)(iv) would state that a Remote Specialist shall be accessible to Exchange staff and members during all trading hours for the product(s) allocated to such specialist and shall provide Exchange

¹⁸ The language regarding rights and obligations of Remote Specialists also currently exists in Rule 1020(a), albeit in a different location.

staff and members with telephonic and/or electronic communication access to such specialist and/or associated staff at all times during trading hours. This is compatible with the principal that all specialists must be available and reachable during trading hours.

Fourth, the Exchange clarifies subsection (f) of Rule 501 and subsection (a) of Rule 1020 to indicate that RSQs are no longer the only ROTs that may be Remote Specialists. Rather, the Exchange proposes to state in Rule 501(f) and Rule 1020(a) that options specialists currently operating from the Exchange's physical trading floor may likewise be Remote Specialists. This is crucial to the Exchange's goal of expanding the Remote Specialist position so that it is available to all qualified Exchange members and thereby serves to enhance the depth and liquidity of options traded on the Exchange.

Fifth, the Exchange proposes new subsection (a)(v) of Rule 1020 to state that a Remote Specialist may have a representative on the trading floor of the Exchange during trading hours (known as a "Designee"). The Designee of a Remote Specialist may represent the specialist in open outcry trades in a trading crowd, which would enable the Remote Specialist to priority, if any, to the extent of the open outcry trades.¹⁹ A Remote Specialist would not be eligible to receive a participation entitlement with respect to orders represented by the Designee in open outcry.²⁰

The Exchange proposes language in subsection (a)(v) of Rule 1020 to establish requirements for Designees. Specifically, proposed subsection (a)(v)(A) would state that a Designee is an individual who is approved by the Exchange for the time period specified by the Exchange to represent a Remote Specialist in its capacity as a Remote Specialist. Moreover, the Exchange may require specified supervision of a Designee and/or limit a Designee's authority to

¹⁹ See Rule 1014(g).

²⁰ See Rule 1014(g)(v).

represent a Remote Specialist. Proposed subsection (a)(v)(B) would state that a Designee must be a member of the Exchange, an affiliate of the Remote Specialist, and a registered Remote Options Trader pursuant to the rules of the Exchange.²¹ And subsection (a)(v)(C) would state that a Designee may not trade as a Market-Maker in securities allocated to the Remote Specialist unless the Designee is acting on behalf of the Remote Specialist in its capacity as a Remote Specialist.

The Exchange notes that its Remote Specialist Designee concept is similar to that of CBOE's off-floor Designated Market Maker ("DPM") Designee concept in CBOE Rules 8.81 and 8.83 Interpretations and Policies .01.

Sixth, the Exchange proposes to add the ability of the Exchange to evaluate whether a request of an on-floor specialist to operate as a Remote Specialist on a class-by-class basis is in the best interest of the Exchange. Specifically, proposed new subsection (f)(i) of Rule 501 would allow the Exchange to consider information that it believes will be of assistance in determining whether a current on-floor specialist may become a Remote Specialist. This information may include any one or more of the following: performance, operational capacity of the Exchange or options specialist, efficiency, number and experience of personnel of the options specialist who will be performing functions related to the trading of the applicable securities, number of securities involved, number of ROTs and SQTs affected and trading volume of the securities. The Exchange notes that proposed subsection (f)(i) is verbatim, to the extent

²¹ However, the Exchange would have the discretion to permit an individual who is not affiliated with a Remote Specialist to act as a Designee for the Remote Specialist on an emergency basis, provided that the individual satisfies the other requirements of subparagraph (a)(v)(B) of this Rule.

practicable, like the language of CBOE Rule 8.83 Interpretations and Policies .01, which discusses information that CBOE may consider when appointing an off-floor DPM.²²

The Exchange notes further that its Remote Specialist concept as amended is similar to that of CBOE's off-floor DPM concept that was approved by the Commission more than four years ago and remains one of the principal market making classes on CBOE.²³ The Exchange believes that its Remote Specialist proposal is, from a competitive perspective, justified and proper. The proposal ensures the listing, or continued listing, of options on the Exchange and furthers its ability to compete effectively in the market place to the benefit of traders, market participants, and the investing public.

Finally, rule-based principles that are now applicable to Remote Specialists on the Exchange will continue to be applicable to Remote Specialists without change when this proposal is approved. The firm quoting (market making) obligations for market makers on Phlx will remain the same as set forth in Rule 1014 in subsection (b)(ii)(D)(2) for specialists and SQST that are acting as Remote Specialists, and in subsection (b)(ii)(D)(1) for SQTs and RSQTS when they are not acting as Remote Specialists.²⁴ Bid ask differentials will remain the same as

²² The Exchange intends to set up a defined area or post on the options floor that would enable market makers that have a physical floor presence (e.g., Floor Brokers) to interact with Remote Specialist quotes and trades.

²³ See Securities Exchange Act Release No. 34-55531 (March 26, 2007) 72 FR 15736 (April 2, 2007) (SR-CBOE-2006-94) (order approving proposal that, among other things, established off-floor DPMs pursuant to CBOE Rule 8.83).

²⁴ In addition, subsection (b)(ii)(B) states that an RSQT must quote in the capacity of RSQT or Remote Specialist but not both. Thus, where an RSQT functions as a traditional RSQT and also as a Remote Specialist, if an RSQT is allocated two option classes as a Remote Specialist, in those two classes the Remote Specialist will have the very same quoting (market making) requirements that are currently applicable to all specialists, including continuous quoting obligations. In the remaining classes to which an RSQT is appointed, the RSQT will have the same quoting (market making) requirements that are applicable to all RSQTs. The RSQT will not be able to submit quotes or act as RSQT in the two allocated Remote Specialist classes.

forth in Rule 1012. Minimum increments will remain the same as set forth in Rule 1034.²⁵ Information barriers will remain the same.²⁶ And, all specialists including Remote Specialists will be subject to the same specialist performance evaluation procedures set forth in Rule 511.

c. Surveillance

The Exchange has developed surveillance procedures for its electronic and auction markets that include Remote Specialists. The Exchange will use the surveillance procedures now in place to perform surveillance of Remote Specialists.

d. Conclusion

The Exchange believes that its proposal to allow eligible ROTs to act as off-floor Remote Specialists in one or more options classes would ensure the listing, or continued listing, of options on the Exchange to the benefit of traders, market participants, and public customers making hedging and trading decisions. The Exchange believes that the proposed rule change is designed to promote just and equitable principles of trade and to be in the public interest.

The Exchange notes that the Commission has approved proposals that allow competing options exchanges to have off-floor (remote) market makers that are similar in concept to the proposed Remote Specialists.²⁷ The Exchange does not believe that this filing raises any novel issues.

²⁵ Minimum increments for certain listing programs, such as the \$.50 Program and the \$1 Strike Program, are also discussed in Commentary .05 to Rule 1012.

²⁶ Commentary .06 to Rule 1014 states, for example, that RSQTs are required to maintain information barriers with affiliates that may act in a specialist or market maker capacity.

²⁷ See Securities Exchange Act Release No. 55531 (March 26, 2007), 72 FR 15736 (April 2, 2007) (SR-CBOE-2006-94) (order approving proposal to establish off-floor Designated Primary Market-Makers). See also Securities Exchange Act Release Nos. 57747 (April 30, 2008), 73 FR 25811 (May 7, 2008) (SR-CBOE-2008-49) (notice of filing and immediate effectiveness to establish off-floor Lead Market-Makers); 57568 (March 26, 2008), 73 FR 18016 (April 2, 2008) (SR-CBOE-2008-32) (notice of filing and immediate effectiveness to establish ability of off-floor Delegated Primary Market-

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act²⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system by allowing, similarly to other options markets, eligible Remote Options Traders on the Exchange to function as off-floor Remote Specialists.

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

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)³⁰ of the Act and Rule 19b-4(f)(6)(iii)

Makers to operate in any options class traded on Hybrid); and 52827 (November 23, 2005), 70 FR 72139 (December 1, 2005) (SR-PCX-2005-56) (approval order establishing Lead Market Makers).

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ 15 U.S.C. 78s(b)(3)(A).

thereunder³¹ 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 from the date on which it was filed, or such shorter time as the Commission may designate.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-2011-79 on the subject line.

³¹ 17 CFR 240.19b-4(f)(6)(iii). 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. The Exchange has satisfied this requirement.

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-2011-79. 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 publicly available. All submissions should refer to File Number SR-Phlx-2011-79 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.³²

Cathy H. Ahn
Deputy Secretary

³² 17 CFR 200.30-3(a)(12).