

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74592; File No. SR-Phlx-2015-28)

March 26, 2015

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Harmonization of Phlx Rules

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 March 25, 2015, 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 proposes to amend Rules 771 entitled “Excessive Trading of Members;” 832, entitled “Price Adjustment of Open Orders on Ex-Date;” and 1006 entitled “Other Restrictions on Exchange Options Transactions and Exercises.” The Exchange proposes to make minor amendments for rule conformity to Rules 1001, entitled “Position Limits;” 1002 entitled “Exercise Limits;” 1003 entitled “Reporting of Options Positions;” 1040 entitled “Failure to Pay Premium;” 1041 entitled “Options Contracts Of Suspended Members;” 1042 “Exercise of Equity Option Contracts;” 1044 “Delivery and Payment;” 1048 “Stock Transfer Tax;” and 1090 entitled “Clerks.” The Exchange proposes to delete Rules 1021 entitled “Excessive Dealing in Options;” 1038 entitled “Open Orders on Ex-Date;” and 1045 “Officers and Employees Restricted.”

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqomxphlx.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 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 proposed rule change is to update certain of the 1000 series options rules to harmonize the Rulebook and modernize Exchange rules. The Exchange is also proposing to amend other non-options rules as well. The Exchange proposes to amend rule text, make minor technical amendments to certain rules, such as numbering, and to delete other rules. Each proposed rule change will be discussed in greater detail below.

Amendment to Certain Exchange Rules

The Exchange proposes to amend Rule 771, entitled "Excessive Trading of Members," to combine rule text from Rule 1021 entitled "Excessive Dealing in Options. Both of these rules cover the same basic topic, excessive trading of members. Rule 1021 is specific to options, while Rule 771 is broader in nature. The Exchange proposes to add a new paragraph to Rule 771

which contains similar rule text to Commentary .01 of Rule 1021.³ The Exchange does not believe it is necessary to have two rules in the Rulebook which discuss the same restriction, therefore, the Exchange will delete Rule 1021. This rule change is proposed to harmonize the Rulebook.

The Exchange proposes to amend Rule 832, entitled “Price Adjustment of Open Orders on Ex-Date,” to combine rule text from Rule 1038 entitled “Open Orders on Ex-Date.” Both of these rules cover the same basic topic, price adjustment of open orders on “Ex-Date.” Rule 1038 is specific to options, while Rule 832 is broader in nature. The Exchange proposes to add a new paragraph to Rule 832 which contains similar rule text to Rule 1038.⁴ The Exchange does not believe it is necessary to have two rules in the Rulebook which discuss the same restriction; therefore the Exchange will delete Rule 1038. This rule change is proposed to harmonize the Rulebook.

The Exchange proposes to amend Rule 1006 entitled “Other Restrictions on Exchange Options Transactions and Exercises,” to harmonize this rule with NASDAQ Stock Market LLC (“NOM”) and NASDAQ OMX BX, Inc. (“BX”) rules at Chapter III, Section 12.⁵ The Exchange believes the NOM and BX rules are more specific with respect to restrictions as compared to the Phlx rule. The proposed rule likewise imposes restrictions on transactions or exercises in one or more series of options, similar to the Phlx rule.⁶ A similar restriction exists in the current Phlx rule with respect to the ten business days prior to the expiration date of a given series of options, other than index options, which shall include such expiration date for an option contract that

³ The proposed text omits a reference to “options” that are [sic] currently in Rule 1021.

⁴ The proposed text adds a new reference to “options” in Rule 832.

⁵ See NOM and BX Rules at Chapter III, Section 12 entitled “Other Restrictions on Options Transactions and Exercises.”

⁶ See proposed Rule 1006(a) and (a)(i).

expires on a business day.⁷ Specifically the proposed rule would note, “[n]otwithstanding the foregoing, during the ten (10) business days prior to the expiration date of a given series of options, other than index options, which shall include such expiration date for an option contract that expires on a business day, no restriction on exercise under this Section may be in effect with respect to that series of options. With respect to index options, restrictions on exercise may be in effect until the opening of business on the business day of their expiration or, in the case of an option contract expiring on a day that is not a business day, on the last business day before the expiration date.”⁸

The Exchange proposes to add specific language concerning exercise of American-style cash-settled index options, which shall be prohibited during any time when trading in such options is delayed, halted, or suspended.⁹ The Exchange proposes to provide the following exceptions

- (1) The exercise of an American-style, cash-settled index option may be processed and given effect in accordance with and subject to the Rules of The Options Clearing Corporation while trading in the option is delayed, halted, or suspended if it can be documented, in a form prescribed by Phlx Regulation, that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension;
- (2) Exercises of expiring American-style, cash-settled index options shall not be prohibited on the business day of expiration, or in the case of an option contract

⁷ See proposed Rule 1006(a)(ii). The proposed new rule text will not distinguish between European and American settlement with regard to the ten (10) business day restriction. The current Phlx rule does make such a distinction.

⁸ Id.

⁹ See proposed Rule 1006(a)(iii).

expiring on a day that is not a business day, the last business day prior to their expiration;

(3) Exercises of American-style, cash-settled index options shall not be prohibited during a trading halt that occurs at or after 4:00 p.m. Eastern time. In the event of such a trading halt, exercises may occur through 4:20 p.m. Eastern time. [sic] In addition, if trading resumes following such a trading halt pursuant to the procedures described in Rules 1047 and 1047A, exercises may occur during the resumption of trading and for five (5) minutes after the close of the resumption of trading. The provisions of this subparagraph (a)(iii)(3) are subject to the authority of the Board to impose restrictions on transactions and exercises pursuant to paragraph (a) of this Rule; and

(4) Phlx may determine to permit the exercise of American-style, cash-settled index options while trading in such options is delayed, halted, or suspended.¹⁰

Further, whenever the issuer of a security underlying a call option traded on Phlx is engaged or proposes to engage in a public underwritten distribution (“public distribution”) of such underlying security or securities exchangeable for or convertible into such underlying security, the underwriters may request that Phlx impose restrictions upon all opening writing transactions in such options at a “discount” where the resulting short position will be uncovered (“uncovered opening writing transactions”). The rule notes conditions which are necessary for the imposition of restrictions, such as:

(1) less than a majority of the securities to be publicly distributed in such distribution are being sold by existing security holders;

¹⁰ See proposed Rule 1006(a)(iii).

- (2) the underwriters agree to notify Phlx Regulation upon the termination of their stabilization activities; and
- (3) the underwriters initiate stabilization activities in such underlying security on a national securities exchange when the price of such security is either at a “minus” or “zero minus” tick.¹¹

Upon receipt of such a request and determination that the conditions listed above are met, Phlx Regulation shall impose the requested restrictions as promptly as possible but no earlier than fifteen (15) minutes after members or member organizations shall have been notified and shall terminate such restrictions upon request of the underwriters or when Phlx Regulation otherwise discovers that stabilizing transactions by the underwriters has been terminated.¹² An uncovered opening writing transaction in a call option will be deemed to be effected at a “discount” when the premium in such transaction is either: in the case of a distribution of the underlying security not involving the issuance of rights and in the case of a distribution of securities exchangeable for or convertible into the underlying security, less than the amount by which the underwriters’ stabilization bid for the underlying security exceeds the exercise price of such option; or in the case of a distribution being offered pursuant to rights, less than the amount by which the underwriters’ stabilization bid in the underlying security at the subscription price exceeds the exercise price of such option.¹³

The Exchange believes that adopting the NOM and BX rules provides greater specificity with respect to restrictions on options transactions and exercises.

¹¹ See proposed Rule 1006(b)(i).

¹² See proposed Rule 1006(b)(ii).

¹³ See proposed Rule 1006(b)(iii).

Minor Technical Amendments to Options Rules

The Exchange proposes to amend Rule 1001, entitled “Position Limits,” to remove the header “Commentary” from the rule and replace it with consecutive numbering. The remainder of the changes correct cross-references to the newly renumbered sections, remove extraneous dashes and add a period and outside parentheses to the numbering in the rule text to conform the text to the portion that is not in the Commentary today.

The Exchange proposes to amend Rule 1002 entitled “Exercise Limits,” to similarly remove the header “Commentary” from the rule and replace it with consecutive lettering.

The Exchange proposes to amend Rule 1003 entitled “Reporting of Options Positions,” to remove the footnote in the rule and instead place the language in the footnote within the body of the rule. A minor grammatical correction was made to remove a dash in this section in the word “market maker.”

The Exchange proposes to amend Rule 1040 entitled “Failure to Pay Premium,” to capitalize the certain terms and also utilize a newly defined term “OCC” throughout the rule.

The Exchange proposes to amend Rule 1041 entitled “Options Contracts Of Suspended Members,” to utilize a newly defined term “OCC” throughout the rule.

The Exchange proposes to amend Rule 1042 “Exercise of Equity Option Contracts,” to define the term “CEA” within the Rule and to remove the header “Commentary” and renumber the remainder of the rule. The Exchange is also proposing to remove a specific reference to The Options Clearing Corporation’s Articles and instead refer to the by-laws more generally and utilize a newly defined term “OCC” throughout the rule.

The Exchange proposes to amend Rule 1044 “Delivery and Payment,” to utilize a newly defined term “OCC” throughout the rule.

The Exchange proposes to amend Rule 1048 “Stock Transfer Tax, utilize a newly defined term “OCC” throughout the rule.

The Exchange proposes to amend Rule 1090 entitled “Clerks,” update a reference to an outdated “DOT machine” and replace that reference with the updated term “order handling entry device.” The Exchange also proposes to remove the header “Commentary” and renumber the remainder of the rule.

Deleted Rules

The Exchange proposes to delete Rules 1021 entitled “Excessive Dealing in Options;” and 1038 entitled “Open Orders on Ex-Date;” because these Rules are being combined with Rules 771 and 832, respectively, as described above. The Exchange is also proposing to delete Rule 1045 “Officers and Employees Restricted,” which is covered in detail by the Exchange’s Code of Ethics.¹⁴ Rule 1045 does not apply to members, but rather applies to employees of the Exchange. The Exchange has policies and procedures which are applicable to employees which

¹⁴ Phlx Rule 1045(a) requires every salaried officer or employee of the Exchange and every salaried officer or employee of any corporation in which the Exchange owns the majority of the stock to promptly report to the Exchange every purchase or sale for his own account or the account of others of any security which is the underlying security of any option contract admitted to dealings on the Exchange. Today, Phlx employees are subject to the NASDAQ Code of Ethics, which refers to the Global Trading Policy which requires an annual and other periodic reporting of securities holdings to the Exchange. Phlx Rule 1045(b) provides that no salaried officer or employee of the Exchange or salaried officer or employee of any corporation in which the Exchange owns the majority of the corporate stock may purchase or sell for his own account or for the account of others any option contract which entitles the purchaser to purchase or sell any security described in paragraph (a) of Rule 1045 or any foreign currency option contract admitted to dealings on the Exchange. The NASDAQ Code of Ethics refers to the Global Trading Policy which prohibits employees from holding or trading certain securities noted on the prohibited list. The prohibited list prohibits employees from holding or trading certain securities because those companies have dealings on the Exchange. The Code of Ethics is more expansive in scope as compared to Phlx Rule 1045.

are not contained in the Rulebook. The Exchange believes that this rule, which does not apply to members, is not necessary to retain in the Rulebook.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁶ 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, 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 Exchange believes that these proposed rule changes will harmonize and modernize the Phlx Rulebook.

The proposed rule changes to amend various options rules should harmonize the Exchange's Rulebook by removing duplicate rules by combining general Phlx rules with options rules, conforming the language in certain rules by defining terms within the rules and removing Commentary sections and instead renumbering the rule; and deleting unnecessary rules. It is in the interests of the protection of investors to eliminate any confusion among market participants with respect to the Rulebook. The rule changes are intended to provide a clearer Rulebook in order that market participants are aware of their obligations. The Exchange believes that these amendments will make clear the manner in which the Exchange operates and thereby remove impediments to and provide free and open markets.

The Exchange's proposed deletion of Rule 1045 would not impact members because this rule applies solely to employees of the Exchange. The Exchange has policies and procedures

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

which are applicable to employees which are not contained in the Rulebook. The Exchange believes that this rule, which does not apply to members, is not necessary to retain in the Rulebook. The proposed amendment to Rule 1006 to adopt similar NOM and BX Rules¹⁷ will provide members with additional specificity with respect to restrictions on options transactions and exercises, similar to the current practice at NOM and BX.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed amendments seek to harmonize the Rulebook by combining duplicative rules, conforming the text of the rules and also deleting unnecessary rules. Certain of these amendments apply to all members, equity and options, and other rules related to options, apply specifically to options members. The rules uniformly apply to members transacting a specific product. The proposed amendments do not unduly burden competition on the Exchange.

The proposed amendment to Rule 1006 will provide members with a rule substantially similar to rules on NOM and BX.¹⁸ The Exchange believes that adopting the NOM and BX rules¹⁹ will assist the Exchange in competing more effectively with respect to options.

The proposed deletion of Rule 1045 applies specifically to employees of the Exchange. This rule does not impact the competition among members transacting business on the Exchange but rather concerns the operation of the Exchange and conduct of its employees.

¹⁷ See note 5.

¹⁸ See note 25.

¹⁹ Id.

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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act²⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.²¹

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:

²⁰ 15 U.S.C. 78s(b)(3)(a)(ii).

²¹ 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. The Exchange has satisfied this requirement.

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-2015-28 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2015-28. 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 offices 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-2015-28, 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.²²

Brent J. Fields
Secretary

²² 17 CFR 200.30-3(a)(12).