

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76800; File No. SR-Phlx-2015-114)

December 30, 2015

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 1060

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 21, 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 the Substance of the Proposed Rule Change

The Exchange proposes to update Phlx Rule 1060, as described further below.

The text of the proposed rule change is below; proposed deletions are in brackets.

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**Rule 1060. Floor Broker Defined**

An Options Floor Broker is an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling 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].

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 the proposal is to update Phlx Rule 1060, Floor Broker Defined, which is incorrect in a number of ways. Other than the implementation of the Exchange's Options Floor Broker Management System,<sup>3</sup> the rule has not been updated since its adoption in 1984.

Currently, the rule provides that Floor Brokers are registered as such for the purpose of accepting and handling options orders received from members and member organizations.<sup>4</sup> In actuality, Floor Brokers have long been accepting orders from non-members/member organizations. Specifically, Floor Brokers accept orders from broker-dealers who are not Phlx members or member organizations; they have long done so.<sup>5</sup> No additional rules apply as a result of accepting orders from non-member broker-dealers.

In addition, Floor Brokers accept orders from non-broker-dealer customers (meaning, the public). In order to do so, Floor Brokers must be properly qualified to do business with the

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<sup>3</sup> Securities Exchange Act Release No. 69471 (April 29, 2013), 78 FR 26096 (May 3, 2013) (SR-Phlx-2013-09).

<sup>4</sup> See Rules 1(n) and (o).

<sup>5</sup> CBOE Floor Brokers are similarly permitted to accept orders from non-member broker-dealers. See CBOE Rule 6.70.

public.<sup>6</sup> These qualification requirements apply to all members and member organizations that do business with the public, including Floor Brokers, and will continue to do so under the amended rule. In addition, in order to do business with the public, Floor Brokers must abide by the Phlx rules pertaining to handling of customer orders, including fidelity bond coverage,<sup>7</sup> annual audits,<sup>8</sup> approval of the opening of accounts,<sup>9</sup> supervision of accounts<sup>10</sup> and communications to customers.<sup>11</sup>

The Exchange does not believe it is necessary to list in Rule 1060 from what type of market participant a Floor Broker may receive orders, because a Floor Broker can accept orders from any type of market participant. It would be superfluous to add such a list. The rules applicable to doing business with the public apply to Floor Brokers and their member organization regardless of whether such rules are specifically listed in Rule 1060.

Rule 1060 also provides that an Options Floor Broker shall not accept an order from any other source unless the Floor Broker is the nominee of a member organization qualified to transact business with the public in which event the Floor Broker may accept orders from public customers of the organization. The Exchange believes that this provision is incorrect in a number of respects. The term “nominee” is no longer used, except with reference to inactive nominees, which is a separate status, unrelated to defining a Floor Broker.<sup>12</sup> Prior to 2004, the Exchange had a different ownership and membership structure, such that the term “nominee”

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<sup>6</sup> See e.g., Rules 613, 620 and 1024(a).

<sup>7</sup> See Rule 705.

<sup>8</sup> See Rule 712.

<sup>9</sup> See Rule 1024(b).

<sup>10</sup> See Rule 1025.

<sup>11</sup> See Rule 1049.

<sup>12</sup> See Rules 1(l) and 925.

was sometimes used. Specifically, a nominee of a member organization was, in essence, a member.

Furthermore, the Floor Broker, not just his member organization, must be qualified to accept orders from the public.<sup>13</sup> In addition, a Floor Broker's ability to accept orders from the public is not limited to accepting orders from public customers of the Floor Broker's member organization. As explained above, a Floor Broker may accept orders from the public provided the Floor Broker is properly qualified to do so and abides by the rules pertaining to handling of such orders.<sup>14</sup>

Accordingly, the Exchange is deleting the last sentence of Rule 1060.

In sum, the updated rule will continue to state that an Options Floor Broker is an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders. Overall, the Exchange notes that the current language in Rule 1060 was adopted at a time when the options market structure and trading floor community were very different than today. Long ago, there were only a handful of options exchanges, all of which operated trading floors. With the advent of additional exchanges and electronic trading, membership in every options exchange was no longer critical or practical. Many large firms maintained a floor presence in the form of their own "house" Floor Brokers. This has changed dramatically, in that most Floor Brokers now work for member organizations that are solely in the floor brokerage business and not affiliated with large firms that operate trading desks or receive order flow. Because the dynamics have changed so much and the floor brokerage business has evolved accordingly, the Exchange believes that the limitations contained in Rule 1060 no longer make sense.

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<sup>13</sup> See Rule 613.

<sup>14</sup> See supra notes 5 - 10.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>16</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, by correctly identifying what functions a Floor Broker can perform in terms of order acceptance. In its current form, Rule 1060 can be read too narrowly, which would result in a Floor Broker not being permitted to accept orders other than from members and member organizations. Other Phlx members and member organizations are not limited with respect to the participants from whom orders can be accepted, and, thus, the proposal levels the playing field for options Floor Brokers. Persons submitting orders for execution by a Floor Broker on the Exchange would not expect that Exchange membership would be required to do so. Thus, the Exchange believes that updating the rule will help prevent confusion and help ensure that floor brokerage services are widely available to various types of market participants, which should, in turn, promote just and equitable principles of trade.

### 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. With respect to inter-market competition, the Exchange does not believe that the proposed revisions will impose any burden on competition, because at least one other Exchange has a similar rule governing the types of orders a floor broker can submit.<sup>17</sup> With respect to intra-market competition, the proposal applies to all Phlx Floor Brokers.

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<sup>15</sup> 15 U.S.C. 78f(b).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> CBOE Rule 6.70.

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)(iii) of the Act<sup>18</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>19</sup>

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:

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(a)(iii).

<sup>19</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2015-114 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-2015-114. 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 Number SR-Phlx-2015-114, 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.<sup>20</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).