

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77916; File No. SR-Phlx-2016-38)

May 25, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rules 900.1, 910, and 921

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 May 12, 2016, NASDAQ PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“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 the following Rules: 900.1, General Powers and Duties of Membership Department; 910, Qualifications [sic] as Member Organization; and 921, Qualifications [sic]; Designation of Executive Representative.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 proposes to modify certain Phlx membership rules in order to harmonize them with Nasdaq and BX rules and to modernize the Exchange's Rulebook. Specifically, Exchange proposes to amend Rule 900.1 entitled, "General Powers and Duties of Membership Department" by eliminating sections (b) and (d) which are the provisions regarding partnerships as distinct membership classifications. The exchange also proposes to eliminate the provisions regarding partnerships from Rule 910(j), Qualifications [sic] as Member Organization. The Exchange will reserve those sections of the rules in order to allow for future membership needs. Sections of each of these Rules were more relevant to the Phlx membership review process prior to demutualization in 2004 and specifically related to the review of partnerships and no longer reflect the information needed as part of the membership review. These provisions were retained following changes to the Exchange Bylaws in 2009, yet no longer were relevant to the regulatory needs of the Exchange. The proposed changes related to ownership structures of partnerships that the Exchange no longer needs as discussed in greater detail below. An additional amendment relates to the organizational changes that occurred following demutualization such that responsibilities that formerly were handled by the Board of Directors are now a responsibility of the Membership Department. The final change to Rule 921 entitled, "Qualification; Designation of Executive Representative" is proposed to align Phlx rules with existing NASDAQ and BX rule 1150.

The membership distinctions in Rule 900.1(b) and (d) and Rule 910(j) were applicable when Phlx offered seats to its members, prior to demutualization, yet remained in the rules after this was concluded in 2004. Before demutualization, Phlx seats conveyed ownership of the Exchange, in addition to access, which created a greater obligation on Phlx to gather information on the members' legal business structure. Specifically, Phlx was obligated to maintain a heightened vigilance on the structure, ownership, and change of control in a partnership in order to ensure the financial integrity of its ownership and members ability to honor their trades and obligations. Rule 900.1(b) and 900.1(d) articulates obligations of partners and general partners as they relate to the Exchange that are no longer relevant as the partnership no longer conveys specific obligations that are distinct from any other member organization. Rule 910(j) relates to liabilities that were unique to the partnership, as a member, which are no longer applicable today.

Today, permits are issued to Exchange members and member organizations. The Exchange no longer needs to differentiate among types of entities because the permit structure conveys no ownership to the member. These membership rules related to partnerships are no longer applicable today. The distinctions regarding the admission of a member or member organization as a partnership, as compared to another ownership structure, are no longer relevant.

The Exchange also proposes to replace the references to the "Board of Directors" with the "Membership Department" as part of Rule 910(h). The responsibilities of the Board of Directors have changed. Consequently, the Board of Directors is no longer actively involved in the membership process, which is now operated in the same way as Nasdaq's and BX's and the review of the qualifications of Member Organizations is handled by the Membership Department, as defined in Rule 1(p). This rule has become outdated and no longer reflects current business practices.

The final change relates to Rule 921(b); Phlx seeks to harmonize 921(b) with the existing Nasdaq and BX Rule 1150 by not requiring an executive representative to provide evidence of their acceptance of designation in writing. The membership form will continue to require the designation of the Executive Representative, but will no longer require the designated person to provide their signature. The elimination of the evidence of acceptance provision of 921(b) does not impose any burden on competition rather it aligns the requirements of PHLX with that of Nasdaq and BX.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act³ in general, and furthers the objectives of Section 6(b)(5) of the Act⁴ in particular, in that it is designed to protect investors and the public interest by streamlining various aspects of the membership process. The Exchange believes that the provisions identified in Rule 900.1, 910, and 921 are outdated and unnecessary. These rules regarding partnerships and changes to the partnership rules no longer serves the needs of the Exchange.

As described above PHLX's former ownership required the Exchange to be vigilant of the ownership structure of its members in case of financial distress or bankruptcy as the seat structure was vital to the financial condition of the Exchange and the relationships among members. Before demutualization, members had an ownership interest in the Exchange. Today, permits convey no ownership and therefore such vigilance as to the ownership structure of members is no longer warranted.

The removal of Rules 900.1(b) and (d), Rule 910(j) and part of 921(b) will promote just and equitable principles of trade, and foster cooperation and coordination with persons engaged

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

in facilitating transactions in securities by removing burdensome requirements so that members and member organizations may properly focus on other relevant requirements which benefit the marketplace.

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 delete certain unnecessary rules which today burden partnerships over corporations. The deletions of the Rules 900.1(b) and (d), Rule 910(j) will remove a current burden on competition which requires members and member organizations that are partnerships to disclose unnecessary information as compared to other corporate entities not structured as a partnership.

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 Act⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁶

⁵ 15 U.S.C. 78s(b)(3)(a)(iii) [sic].

⁶ 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.

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-2016-38 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-2016-38](#). 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 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-2016-38](#) 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.⁷

Brent J. Fields
Secretary

⁷ 17 CFR 200.30-3(a)(12).