

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79047; File No. SR-Phlx-2016-96)

October 5, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options Floor Procedure Advice F-1, Entitled “Use of Identification Letters and Numbers.”

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 September 23, 2016, NASDAQ 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 Options Floor Procedure Advice F-1, entitled “Use of Identification Letters and Numbers.”

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqphlx.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

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

<sup>2</sup> 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 amend Options Floor Procedure Advice (“OFPA”) F-1, entitled “Use of Identification Letters and Numbers” to eliminate the current fine schedule. Pursuant to this OFPA F-1, today, all Specialists, ROTs, and Floor Brokers must use the complete alpha/numeric identification assigned by the Exchange. Specifically, all Floor Brokers or their employees must indicate their complete alpha/numeric identifiers on the Options Floor Broker Management System (“FBMS”) for each order they receive and represent in the trading crowd. The FMBS system is automated and requires this field to be completed before the transaction may be submitted. These numbers are important because they represent the parties to the particular transaction for purposes of audit trail, clearance and settlement of that transaction. This information is submitted to The Options Clearing Corporation at the end of the day to complete the back-office portion of the transaction. The information is available to and reviewed by both parties to the transaction. The Exchange currently has a fine schedule for violations of OFPA F-1 as follows:

FINE SCHEDULE (Implemented on a two-year running calendar basis)

1st Occurrence	\$250.00
2nd Occurrence	\$500.00
3rd Occurrence	\$1,000.00
4th Occurrence and	Sanction is discretionary with Business Conduct

Thereafter

Committee

The Exchange notes that the violations of this rule today consist of inadvertent failures to include the requisite alpha/numeric identification.<sup>3</sup> These errors are corrected post-trade, by end of day by the party in error. The Floor Brokers receive inter-day reports which allow them to review this information and determine if any errors occurred. Also, the contra-party to the transaction may alert the Floor Broker that an error occurred. The Exchange notes that where errors have been identified through surveillance, it has not witnessed any manipulative conduct, rather the error was an inadvertent data entry error, which was subsequently corrected.

By way of background, the Exchange notes that when the floor operated with more manual procedures and inter-day reports were not available, these types of error occurred with more frequency. The Exchange at that time employed a greater number of staff employees on the Exchange floor when the population on the floor was also at greater numbers. The amount of time that staff was devoted to assisting with these types of errors placed an administrative burden on the Exchange and presented an administrative cost to the Exchange to employ staff to assist with clerical errors. The fine at that time was justified to prevent a greater number of violations and also to support the amount of regulatory resources that were required to surveil for such violations and assist in the correction of errors.

Today, the automated processes and inter-day reports alleviate many of the issues that previously existed, including the burden on staff to correct errors. The Exchange does not believe that a single error necessitates the imposition of a \$250.00 fine, for example, where a data entry error occurred and was corrected by the firm.

The Exchange proposes to eliminate the current fine schedule and instead review for

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<sup>3</sup> For example in 2016, the Exchange statistically had .00004% of violations of this minor rule. In 2015, the Exchange statistically had .00003% of violations of this minor rule.

patterns and practices of manipulative conduct. The Exchange will continue to review, as it does today, for instances where a party to a trade did not enter the complete or an accurate identifier. Also, the Exchange would continue to bring violations of this rule before the Business Conduct Committee and suggest appropriate fines given the facts and circumstances surrounding current and previous violations of the minor rule. Today, the Exchange has the ability to bring any violations before the Business Conduct Committee.<sup>4</sup> The disciplinary rules provide for a process by which the Exchange will discipline members for violations of its rules and the process for hearings.<sup>5</sup> The Exchange's focus is to prevent abusive or manipulative patterns and practices of violations of OFPA F-1 and also prevent repeated abuse of this rule. The Exchange intends to continue to surveil and discipline its members for violations of this rule.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular, in that it is

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<sup>4</sup> Any member, member organization, or any partner, officer, director or person employed by or associated with any member or member organization (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities Exchange Act of 1934 (Exchange Act), the rules and regulations thereunder, the by-laws and Rules of the Exchange or any interpretation thereof, and the Rules, Regulations, resolutions and stated policies of the Board of Directors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a member or member organization, or any other fitting sanction in accordance with the provisions of these disciplinary Rules. See Phlx Rule 960.1(a). Further, whenever the staff of the Exchange has a reasonable basis to believe that a violation within the disciplinary jurisdiction of the Exchange has occurred, a written report shall be submitted to the Business Conduct Committee specifying the violations which are believed to have occurred and those facts which gave rise to these violations. See Phlx Rule 960.2(d).

<sup>5</sup> See Phlx Rules 960-970.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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 investors and the public interest, by continuing to enforce violations of rules governing the marking of orders.

Proper identification of orders protects investors and the public interest. In cases where human error occurred and a member failed to include the requisite alpha/numeric identification or submitted an incorrect alpha/numeric identification, such information may be corrected post-trade. The Exchange will continue to enforce the proper identification on each trade. Regulatory staff will monitor violations of such rule and bring cases before the Business Conduct Committee where a pattern or practice of violation of such rule exists and suggest appropriate fines given the facts and circumstances surrounding current and previous violations of the minor rule. Today, the Exchange has the ability to bring any violations before the Business Conduct Committee.<sup>8</sup>

The Exchange is concerned with the entry of accurate trading information which identifies counter-parties to each trade. The trading system requires such information for each transaction. The automated process combined with the surveillance of such information, as well as counter-party transparency to the information, ensure that the audit trail is accurate and complete. The Exchange understands that human error may occur from time to time and that members have the ability to and do correct such information prior to the end of the day. Given all of these circumstances, the proposal is consistent with the Act because it will continue to ensure that the information is maintained accurately and also discipline members that fail to consistently abide by this rule.

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<sup>8</sup> See note 4 above.

The Exchange believes it is consistent with the Act and protects investors and the general public to amend the rule to bring disciplinary actions where a pattern or practice of violating OFPA F-1 exists versus multiple fines for each individual violation. The Exchange notes that it has not observed a large number of these violations. Where a number of violations have occurred or where there has been manipulative activity in the entry of such trade information, these actions will be brought by the Regulatory group to the Business Conduct Committee for further action. The Exchange will enumerate the facts and circumstances surrounding the violations and present an appropriate sanction in light of the circumstances to the Business Conduct Committee.

This filing is non-controversial because the Exchange will continue to regulate members for violations of Rule OFPA F-1, albeit in a slightly different matter. The result may be the imposition of the same fines by the Business Conduct Committee.

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. The Exchange believes that no undue burden on competition arises with this rule change as the rule will be uniformly applied to all members. The Exchange will continue to monitor the activity of all members, and where a number of violations has occurred or where there has been manipulative activity in the entry of such trade information, these actions will be brought by the Regulatory group to the Business Conduct Committee for further action.

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>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</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:

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</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.

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2016-96 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2016-96. 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-2016-96 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>11</sup>

Brent J. Fields  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).