

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79073; File No. SR-Phlx-2016-97)

October 7, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change to Delete Outdated or Unnecessary Rule Language

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 September 27, 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 the Substance of the Proposed Rule Change

The Exchange proposes to delete outdated or unnecessary rule language contained in Rule 1020, Registration and Functions of Options Specialists, section (b) and Commentary .01 through .06.

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

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

Exchange Rule 1020 contains provisions relating to registration and functions of options specialists.³ Rule 1020’s provisions were initially adopted in the 1970s, in the early days of exchange trading of options. As explained below, the rule reflects the trading context in which it was adopted. Various provisions of the rule are consequently very outdated.

The Exchange is therefore proposing to delete obsolete and unnecessary language from section (b) and from Commentary .01 through Commentary .06 of Rule 1020 pertaining to the obligations of specialists. The Exchange proposes to delete the language in question in order to prevent any confusion that may result from obsolete provisions, to eliminate unnecessary language,³ and to ensure that the rulebook accurately reflects specialists’ obligations in the context of the manner in which trading is conducted today.

Section (b)

Rule 1020 provides that, as a condition of being registered as a specialist in one or more options, a member has an obligation to assist in the maintenance of a fair and orderly market. The rule currently provides that this obligation exists for a specialist “in addition to the execution of orders entrusted him in such options.” The Exchange is deleting the language regarding execution of entrusted orders. Specialists no longer manually handle or execute others’ orders

³ A “specialist” is an Exchange member who is registered as an options specialist pursuant to Exchange Rule 1020(a). Specialists are subject to quoting and registration obligations set forth in Rules 1014(b), 1020, and 1080.02.

due to the Exchange's migration to a new electronic trading system ("Phlx XL II") in 2009.⁴ The Phlx XL II enhancements were designed to improve the execution quality for its Phlx users by improving a number of processes, including the opening process, the order handling process and the execution of orders process. As a consequence of this migration a manual book no longer exists and specialists no longer enter manual orders entrusted to them onto the electronic limit order book.⁵ Specialists no longer handle any agency orders whatsoever in their role as specialists. The Exchange proposes to delete the language in question in order to prevent any confusion that may result from this obsolete provision and to ensure that the rulebook accurately reflects member obligations.

Commentary .01

Commentary .01 applies to transactions of a specialist for his own account that establish or increase a position. It provides that in "effecting transactions" for his own account for the purpose of establishing or increasing a position, a specialist is to effect such transactions in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular option and the adequacy of his position to the immediate and reasonably anticipated needs of the options market. It provides that the following types of transactions to

⁴ In May 2009, the Exchange enhanced the options trading system and adopted corresponding rules referring to it as "Phlx XL II." See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). Thereafter, the Exchange submitted a number of filings updating various rules and deleting obsolete provisions. See Securities Exchange Act Release Nos. 61397 (January 22, 2010), 75 FR 4893 (January 29, 2010) (SR-Phlx-2010-07); 63036 (October 4, 2010), 75 FR 62621 (October 12, 2010) (SR-Phlx-2010-131); and 67469 (July 19, 2012), 77 FR 43633 (July 25, 2012) (SR-Phlx-2012-92).

⁵ Specifically, the Exchange has stated that no orders will be executed, and therefore handled, manually in Phlx XL II. See Securities Exchange Act Release No. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009) (SR-Phlx-2009-32) (Notice of Filing of Proposed Rule Change Relating to the Exchange's Enhanced Electronic Trading Platform for Options, Phlx XL II at 17258). Rules governing the obligations of Specialists, such as quoting and registration obligations, still exist. See, e.g., Rules 1014(b) and 1020.

establish or increase a position are not to be effected except when they are reasonably necessary to render the specialist's position adequate to such needs: (a) a purchase at a price above the last sale in the same trading session; (b) the purchase of all or substantially all the options offered on the book at a price equal to the last sale, when the option so offered represents all or substantially all the options offered in the market; and when a substantial amount of an option is offered at a price equal to the last sale price, the purchase of more than 50% of all the options offered at the last sale price; (c) the supplying of all or substantially all the options bid for on the book at a price equal to the last sale, when the option so bid for represents all or substantially all the options bid for in the market; and when a substantial amount of the options bid for at a price equal to the last sale price, the supplying of more than 50% of all the options bid for at the last sale price; (d) failing to re-offer or re-bid where necessary after effecting transactions described in (a), (b), or (c). The rule permits transactions of these types to be effected, however, with the approval of an Options Exchange Official or in relatively inactive markets where they are an essential part of a proper course of dealings and where the amount of an option involved and the price change, if any, are normal in relation to the market.

The Exchange proposes to delete the last sentence of Commentary .01, and sections (a) through (d) of Commentary .01, because a specialist is unable to comply with its requirements given the way trading is conducted today in the PHLX XL trading system. Specialists today only rarely "effect transactions" in the sense of matching bids and offers to cause an execution to occur. Rather, they submit bids and offers to be matched. Although a specialist may "effect transactions" with a market maker on the Exchange's trading floor, the vast majority of transactions are executed electronically by the trading system and the specialist may be unable to determine the price of the last sale which would be required to comply with the language being

deleted. Thus, for example, given electronic quoting and the absence of specialist control over the book, there is no way a specialist can guarantee that a purchase is at a price above the last sale in the same trading session. Because he will not know the price at which trading will occur, he cannot comply with Commentary .01 (a) – (d).

Although these tick-based rules may have been appropriate for and worked well in a market where substantially all trading was conducted manually, at a pace that enabled individuals to discern “tick” changes easily and which tolerated the time it took to call an Options Exchange Official into the crowd to approve a particular specialist’s transaction, they are inappropriate now where trading is substantially electronic and the speed and frequency of executions and quote changes preclude individuals from being able to accurately track “ticks” or stop trading to allow for Options Exchange Official involvement.⁶ The rules of the NASDAQ Options Market (“NOM”) do not contain comparable provisions with respect to market makers.

Commentary .02

Commentary .02 applies to transactions of a specialist for his own account that liquidate or decrease his position in an option in which he is registered. It provides that such transactions are to be “effected” in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular option and the adequacy of the specialist’s positions to the immediate and reasonably anticipated needs of the options market. It also provides that, in this connection, unless he has the prior approval of an Options Exchange Official, he should avoid:

(a) liquidation of all or substantially all of a position by selling options at prices below the last different price or by purchasing options at prices above the last different price unless such

⁶ See Securities Exchange Act Release No. 54860 (December 1, 2006), 71 FR 71221 (December 8, 2006) (SR-NYSE-2006-76) in which the New York Stock Exchange advanced this explanation in support of proposed changes to its specialist stabilization rules.

transactions are reasonably necessary in relation to the specialist's overall position in the options in which he is registered; (b) failing to maintain a fair and orderly market during liquidations; or (c) failing to re-enter the market where necessary, after effecting transactions described in (a) above.

The Exchange proposes to delete part of the last sentence of Commentary .02 as well as sections (a) through (c) of Commentary .02. The Exchange believes that while these rules may have made sense when they were adopted, changes in market structure and technology in the succeeding decades, such as the shift to trading in penny increments, dispersion of order flow to multiple competing market centers, consolidation and availability of market data, and enhancements in trading, communications and surveillance technology have made these rules anticompetitive anachronisms.

As discussed above, given the way trading is conducted today in the PHLX XL trading system, a specialist may be unable to determine the "last different price" as required to comply with section (a). Section (b) is being deleted as redundant of Rule 1020(b) which already contains the "fair and orderly" requirement. Section (c) is being deleted because it depends on Section (a) which is being deleted as discussed above. Finally, the NOM rules do not contain comparable provisions with respect to market makers.⁷ The language is therefore operationally obsolete, as explained above. Moreover, having clear and up-to-date rules should promote just and equitable principles of trade on the Exchange.

Commentary .03

Commentary .03 provides that a specialist's quotation, made for his own account, should be such that a transaction effected at his quoted price or within the quoted spread, whether

⁷ The Exchange believes that the fact that NOM does not have a trading floor is irrelevant.

having the effect of reducing or increasing the specialist's position, would bear a proper relation to preceding transactions and anticipated succeeding transactions. The Exchange proposes to delete Commentary .03 because given the speed of trading that occurs today on the Phlx XL trading system, a specialist may not have knowledge of the preceding transactions to which his quotation would relate, much less any anticipated succeeding transactions. Without affecting his liquidity, the specialist cannot possibly look at every single transaction, nor can he know how the transactions relate to one another. Prior to the advent of electronic trading, a specialist would announce his quote verbally, which was a very slow process. Today, a specialist would not be able to adjust quotes as needed to comply with Commentary .03 before the quotes are accessed.

The NOM rules do not contain comparable provisions with respect to market makers. The language is an unnecessary and anticompetitive burden on Phlx specialists, because market makers on NOM which fulfill a comparable role to Phlx specialists are not subject to a comparable requirement.

Commentary .04

Commentary .04 applies to opening or reopening an option. It provides that a specialist should avoid participating as a dealer in opening or reopening an option in such a manner as to reverse the balance of public supply and demand as reflected by market and limited price orders at or near the price of the previous close or halt, unless the condition of the general market or the specialist's position in light of the reasonably anticipated needs of the market make it advisable to do so, or unless the specialist has obtained the prior approval of an Options Exchange Official to do so. The rule provides that he may, however, buy or sell an option as a dealer to minimize the disparity between supply and demand at an opening or reopening. The Exchange proposes to delete Commentary .04 in its entirety because the Specialist no longer manually opens options classes. Rather, the PHLX XL trading system handles the opening and re-opening of options in

accordance with Phlx Rule 1017. While the Specialist is required to provide a quote, he or she is no more involved in resolving imbalances than any other market maker. All aspects of the opening are done automatically by the system.

Commentary .05

Commentary .05 prohibits a member acting as a specialist from effecting transactions for the purpose of adjusting a LIFO inventory in an option in which he is so acting except as a part of a course of dealings reasonably necessary to assist in the maintenance of a fair and orderly market. This rule largely tracks former NYSE rule 104.13 which was designed to prevent year-end purchases or sales for the purpose of obtaining tax advantages under the LIFO system of valuing inventory.⁸

The Exchange proposes to delete Commentary .05 in its entirety because the Exchange believes it is unnecessary. The NOM rules do not contain a comparable provision for market makers. Additionally, the Exchange was unable to locate a comparable Chicago Board Options Exchange (“CBOE”) rule. The language is an unnecessary and anticompetitive burden on Phlx specialists, because market makers on NOM which fulfill a comparable role to Phlx specialists are not subject to a comparable requirement.

Commentary .06

Commentary .06 provides that under certain circumstances a specialist may assign options in which he is registered to an investment account. Purchases creating or adding to a position in an investment account may not be made unless reasonably necessary to permit the specialist to assist in the maintenance of a fair and orderly market. The Exchange is deleting this sentence because it believes it is not necessary. Specialists have their “specialist account.” Any

⁸ See Securities Exchange Act Release No. 7432, 29 FR 13777 (October 6, 1964).

executions on their quotes are placed into their specialist accounts. While an “investment account” may have played a role in early days of trading, the Exchange is unaware today of what such an account might consist of or its purpose – consequently, the Exchange perceives no need to regulate it or fashion rules around it.

Commentary .06 states that in the maintenance of price continuity with reasonable depth, it is commonly desirable for a specialist to supply options to the market, even though he may have to sell short to do so, to the extent reasonably necessary to meet the needs of the market. This sentence is being deleted because the Exchange believes its rules should not include statements of “desirable” behavior.

Finally, Commentary .06 provides that a specialist may not effect a transfer of options in which he is registered from his dealer account to an investment account if the transfer would result in creating a short position in the dealer account. This Exchange is deleting this sentence because it is unnecessary, for the reasons specified above relating to investment accounts..

The NOM rules do not contain provisions comparable to the provisions of Commentary .06 with respect to its market makers. The language is an unnecessary and anticompetitive burden on Phlx specialists, because market makers on NOM which fulfill a comparable role to Phlx specialists are not subject to comparable requirements.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is 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

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

investors and the public interest, by deleting unnecessary and obsolete provisions and generally providing clarity to the rules.

Specifically, the deletion of a portion of the Rule 1020 Section (b) and Commentary provisions discussed above is consistent with the Act because this rule language is operationally obsolete, as explained above; moreover, having clear and up to date rules should promote just and equitable principles of trade on the Exchange. The proposal should result in a more accurate and understandable rule book, particularly for Exchange specialists who no longer operate a book or handle orders manually. The Exchange's goal with respect to the deletion of language is to ensure that the rulebook accurately reflects member obligations in the context of how trading takes place on the Exchange today, which should protect investors and the public interest. The Exchange's proposal will also delete unnecessary provisions that, because they are not present in the NOM rulebook with respect to market makers, represent an anticompetitive burden on Phlx specialists as discussed above.

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. Removing unnecessary regulatory burdens should enhance a Phlx specialist's ability to compete with market makers on Phlx and on other exchanges who are not burdened with similar requirements.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-2016-97 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-2016-97. 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-2016-97, 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.¹¹

Robert W. Errett
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).