

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81401; File No. SR-Phlx-2017-68)

August 15, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 925 to Create a Limited Exception to the Exchange's Procedures to Designate an Inactive Nominee as an Effective Permit Holder Intra-Day and Make a Non-Substantive Change to the Pricing Schedule

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 August 7, 2017 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 (i) amend Rule 925 to create a limited exception to the Exchange's existing procedures to designate an Inactive Nominee as an effective permit holder and (ii) make a non-substantive change to its Pricing Schedule related to the fees assessed to Inactive Nominees.

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.

¹ 15 U.S.C. 78s(b)(1).

² 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 proposed rule change is to (i) amend Rule 925 to create a limited exception to the Exchange's existing procedures to designate an Inactive Nominee³ as an effective permit holder and (ii) make a non-substantive change to its Pricing Schedule related to the fees assessed to Inactive Nominees.

Rule 925

Today, the Exchange allows members on the Exchange's trading floor to designate an "Inactive Nominee" pursuant to Rule 925. Rule 925(i) requires, among other criteria, that an individual must be approved as eligible to hold a permit in accordance with the Exchange's By-Laws and Rules in order to be eligible for Inactive Nominee status. Additionally, the member organization with whom an Inactive Nominee is affiliated must pay an Inactive Nominee Fee for

³ The term "inactive nominee" shall mean a natural person associated with and designated as such by a member organization and who has been approved for such status and is registered as such with the Membership Department. An inactive nominee shall have no rights or privileges under a permit unless and until said inactive nominee becomes admitted as a member of the Exchange pursuant to the By-Laws and Rules of the Exchange. An inactive nominee merely stands ready to exercise rights under a permit upon notice by the member organization to the Membership Department on an expedited basis. See Rule 1(l).

the privilege of maintaining the Inactive Nominee status.⁴ Furthermore, the Rule stipulates that an Inactive Nominee does not have any rights or privileges of a permit holder unless and until the Inactive Nominee becomes an effective permit holder and all applicable Exchange fees are paid.

When a member organization desires to designate an Inactive Nominee as an effective permit holder, Rule 925(ii)(a) states that the member organization is required to notify the Exchange's Membership Department, in writing, prior to the opening of trading on any business day the name of such Inactive Nominee. Further, the notice must identify the name of the permit holder that the Inactive Nominee will be acting on behalf of as well as the expected duration that such Inactive Nominee will remain activated.⁵

The Exchange now proposes to create a limited exception to the Exchange's existing procedures to designate an Inactive Nominee as an effective permit holder. In particular, the Exchange proposes to adopt a new provision at Rule 925(ii)(b) to permit member organizations

⁴ The Exchange currently charges an Inactive Nominee Fee of \$600 for a six month period, which will be assessed to the member organization at a rate of \$100 per month for the applicable six month period unless the member organization provides proper notice of its intent to terminate an inactive nominee prior to the first day of the next billing month. An inactive nominee's status expires after six months unless it has been reaffirmed in writing by the member organization or is sooner terminated. A member organization will be assessed the Inactive Nominee Fee every time the status is reaffirmed. See the Exchange's Pricing Schedule at: http://nasdaqphlx.cchwallstreet.com/NASDAQPHLXTools/PlatformViewer.asp?selectednode=chp_1_4_10&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx-rulesbrd%2F.

⁵ Inactive Nominees are essentially a pool of eligible individuals who can substitute for traders on the Exchange trading floor. The Inactive Nominee allows a member to have flexibility in obtaining coverage on the trading floor. An Inactive Nominee stands ready to assume a membership upon notice by the member requesting that a specific permit be transferred intra-firm on an expedited and temporary basis. This transfer allows an Inactive Nominee to become an effective member of the Exchange. For example, an Inactive Nominee might serve on behalf of a trader who needs to take leave for surgery, or could serve when a trader takes vacation leave. This allows a member organization to have full staff available to conduct business on the Exchange trading floor.

to designate an Inactive Nominee intra-day in the event of an unforeseen emergency,⁶ provided that such intra-day designations must be approved by the Exchange's Chief Regulatory Officer ("CRO") or his/her designee prior to such Inactive Nominee becoming an effective permit holder. Other than to reduce the time period and to require prior approval of the CRO or his/her designee in the manner described above, the Exchange is not proposing any other changes to its existing procedures to designate an Inactive Nominee as an effective permit holder. Therefore, if a member organization seeks to obtain coverage on the trading floor intra-day due to unforeseen circumstances such as sudden illness, the proposed rule would still require the member organization to notify the Membership Department, in writing, of its desire to designate an Inactive Nominee as an effective permit holder intra-day. The notice must contain all of the information required under paragraph (ii)(a) (i.e., the name of such Inactive Nominee, the name of the permit holder that the Inactive Nominee will be acting on behalf of, and the expected duration that such Inactive Nominee will remain activated). Finally, the CRO or his/her designee must approve the member organization's intra-day designation in order for the Inactive Nominee to become an effective permit holder.

The Exchange believes that the proposed rule change is reasonable and would serve to enhance the application of Rule 925 by allowing members to quickly obtain coverage on the trading floor in limited cases where an unforeseen emergency arises intra-day, therefore making it impossible for a member to notify the Membership Department within the required time period under the current Rule. While these extraordinary circumstances rarely arise, the proposed rule change would give the CRO (or his/her designee in the CRO's absence) the flexibility to approve the intra-day designation so that members are not adversely affected by unforeseen factors that

⁶ Such circumstances include sudden illness, family emergencies or other unavoidable factors.

prevented them from notifying the Exchange within the allotted time period. Because each individual on the floor is required to have a permit in order to trade, such emergencies could especially affect members who have small propriety businesses on the Exchange trading floor and therefore rely on these Inactive Nominees as their only substitutes. Similarly, since the time the Exchange adopted rules establishing the Inactive Nominee,⁷ the number of permit holders associated with a member organization on the Exchange trading floor has decreased. For the foregoing reasons, the Exchange seeks to address these extraordinary circumstances and allow its members to obtain coverage in such cases so that they may continue to conduct their businesses efficiently. The Exchange further believes that requiring the CRO's approval of the intra-day designation would serve as a check to ensure that such designations would be made on a limited case-by-case basis.

Pricing Schedule

The Exchange is also proposing a non-substantive amendment to its Pricing Schedule at Section VI.A relating to the fees assessed to Inactive Nominees. In particular, Section VI.A of the Exchange's Pricing Schedule states that an Inactive Nominee is also assessed the Trading Floor Personnel Registration Fee.⁸ As part of a previous filing, the Exchange renamed this fee as a "Clerk Fee" but inadvertently retained the reference to "Trading Floor Personnel Registration Fee" in Section VI.A.⁹ The Exchange now proposes to replace the term "Trading Floor

⁷ See Securities Exchange Act Release No. 39851 (April 10, 1998), 63 FR 19282 (April 17, 1998) (SR-PHLX-97-35) (order approving rule changes to establish the Inactive Nominee).

⁸ This fee is in addition to the Inactive Nominee Fee. See note 4 above.

⁹ See Securities Exchange Release No. 66004 (December 19, 2011), 76 FR 80442 (December 23, 2011) (SR-Phlx-2011-155).

Personnel Registration Fee” with “Clerk Fee” in this section. The Exchange will continue to assess Inactive Nominees the Clerk Fee as it is being assessed today.¹⁰

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² 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 investors and the public interest.

As discussed above, the Exchange believes that the proposed changes will allow members additional flexibility in obtaining coverage on the trading floor. Inactive Nominees are essentially a pool of eligible individuals who can substitute for traders on the Exchange’s floor. By allowing members flexibility in obtaining coverage intra-day in limited circumstances as described above, the Exchange believes that the proposal would assist in facilitating the smooth functioning of its market operations, consistent with Section 6(b)(5) of the Act. The Exchange further believes that the proposed changes would allow members to have a prepared roster of substitute traders who are available even in unforeseen emergencies, which should help to facilitate transactions in securities and remove impediments to, and perfect the mechanism of, a free and open market, also consistent with Section 6(b)(5) of the Act.

¹⁰ Today, an Inactive Nominee is assessed a Clerk Fee of \$100 per month. See Section VI.A of the Pricing Schedule at: http://nasdaqphlx.cchwallstreet.com/NASDAQPHLXTools/PlatformViewer.asp?selectednode=chp_1_4_10&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx-rulesbrd%2F.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

Finally, the Exchange believes it is appropriate to make the non-substantive change in its Pricing Schedule to replace the obsolete reference to “Trading Floor Personnel Registration Fee” with “Clerk Fee” so that members and investors have a clear and accurate understanding of the Exchange’s rules.

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

Because the purpose of the proposal is to provide members with additional flexibility to obtain coverage intra-day in limited circumstances and to make a non-substantive change as discussed above, 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.

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 Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴

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

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 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.

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-2017-68 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-2017-68. 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-2017-68 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.¹⁵

Eduardo A. Aleman
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).