

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63318; File No. SR-Phlx-2010-148)

November 16, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to Certain Membership Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on November 5, 2010, 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 and II 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, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ proposes to delete Exchange Rule 793, Affiliations –Dual and [sic] Multiple and amend Rule 908, Rights and Privileges of A-1 Permits, and Option Floor Procedure Advices ("OFPAs") F-9, Dual Affiliations, and F-11, Splitting Order [sic], and Regulation 3, Identification Badges/Access Cards to provide that a Series A-1 permit holder may affiliate with two member organizations under common ownership.

The Exchange is also proposing to make a clarifying amendment to Rule 908(h) regarding permit transfer. Finally, the Exchange desires to amend Exchange Rule 900.2 to add a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

provision for lapsed applications.

The text of the proposed rule change is available on the Exchange's Website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 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 eliminate and reserve Exchange Rule 793 titled Affiliations-Dual or Multiple and adopt a simple standard for multiple affiliations. Currently, Exchange Rule 793 provides that no person shall at the same time be a partner, officer, director, stockholder, or associated person of more than one member or participant organization, nor shall he be affiliated in any manner with a non-member or non-participant organization which is engaged in the securities business, unless such affiliation has been disclosed to and approved in writing by the member and/or participant organization and such approval has been filed with the Office of the Secretary.

Currently, a permit holder may affiliate with more than one member or participant organization so long as the Exchange is notified, in writing, of the affiliation. The affiliation

involves an agreement between the member organizations and the permit holder. The Exchange is not a party to that arrangement. The Exchange requires: (i) an explanation of the business purpose for the arrangement; and (ii) identification of the individuals who shall supervise the business conduct of the permit holder that is multiply affiliated for compliance with the By-Laws and Rules. The Exchange may disapprove multiple affiliations which are inconsistent with Exchange standards of financial responsibility, operational capability, or compliance responsibility.

Currently, an affiliation pursuant to Rule 793 allows a person to be associated with multiple member organizations for different purposes. Specifically, if a broker dealer sought membership on the Exchange for the purpose of electronic access to the Exchange's trading system, that broker dealer could seek an affiliation pursuant to Rule 793. In this example, the affiliation would serve to provide membership status to a broker dealer without the need for the broker dealer to secure a permit. If a member organization is solely gaining electronic access to the Exchange, that member organization only requires one permit to qualify as a member organization.

Another purpose for the dual affiliation could involve access to the Exchange's trading floor and the ability for permit holders to affiliate with multiple member organizations for greater flexibility. In this example floor traders could become affiliated with various related member organizations in order to satisfy certain trading and/or staffing requirements. If a member organization is conducting business on the Exchange's trading floor, each person associated with that member organization on the trading floor who functions in a trading capacity is required to have a permit. Every trader on the Exchange's trading floor is required to obtain a Series A-1 permit.

The Exchange is proposing to eliminate this Rule⁵ and instead amend Exchange Rule 908 to allow a Series A-1 permit holder on the Exchange's trading floor to affiliate with up to two member organizations (a primary and a secondary member organization) that are under common ownership, a primary and a secondary member organization.⁶ The common ownership would be at least 75% common ownership between the member organizations. Both the primary and secondary member organizations would be required to notify the Membership Department of such an affiliation. Notification of such affiliation pursuant to 908(b)(i) would include: (i) an attestation of common ownership; (ii) the names of the individuals responsible for supervision of the permit holder; and (iii) the Exchange account numbers for billing purposes.⁷ A Series A-1 permit holder would also be required to comply with all current membership By-Laws and Rules. Specifically, By-Laws 13-2, 13-4 and 13-6, among others, would still condition membership.

While a Series A-1 permit holder who is already affiliated with a member organization (primary affiliation) may affiliate with a member organization under common ownership (a secondary affiliation) as proposed herein, the permit holder must comply with all applicable registration, qualification and examination requirements. The proposed amendment to Rule 908(b)(i) allows the Series A-1 permit holder the ability to engage in trading activity on behalf of either the primary or secondary member organization that the permit holder is affiliated with as per Rule 908(b)(i). The Exchange's By-Laws and Rules would continue to apply to affiliated

⁵ The Commission notes the Exchange is proposing to reserve Rule 793.

⁶ Notwithstanding applicable By-Laws and Rules conditioning membership, a Series A-1 permit holder on the Exchange's trading floor may be affiliated with up to two (2) member organizations that are under common ownership.

⁷ Both the primary and secondary member organizations would be required to execute a form which the Membership Department shall make available once the Membership Department is notified of the proposed affiliation.

permit holders (permit holders with a primary and a secondary affiliation) and the affiliated member organizations (primary and secondary affiliations) with respect to trading, registration, qualifications, examinations and other membership requirements. Further, the Exchange would have access to information on the affiliate in order to allow it to carry out its regulatory responsibility with respect to the member organization and its affiliated persons.

For example, an affiliated Series A-1 permit holder (a permit holder with a primary and a secondary affiliation) is required to display a badge on the Exchange's trading floor identifying on behalf of which member organization the permit holder is trading for on a particular day. For example whether the Series A-1 permit holder is trading for the primary or secondary member organization.⁸ The badge is used to identify the member organization with which the Series A-1 permit holder is affiliated. The Series A-1 permit holder is required to maintain all the requisite qualifications, registrations and comply with all applicable trading rules at all times. The Series A-1 permit holder is required to specifically obtain and maintain all necessary registrations to trade for an affiliated member organization, as well as the necessary qualifications.

In particular, the Exchange requires certain information from the Series A-1 permit holder seeking affiliation in order to assure compliance with Rule 908 and other membership requirements as well as other Rules. Specifically, the affiliated permit holder (permit holder with a primary and a secondary affiliation) would be required to disclose the individuals at each member organization (primary and secondary) responsible for supervising the Series A-1 permit

⁸ The Exchange requires a Series A-1 permit holder on the Exchange's trading floor to wear a badge which is provided by the Exchange and contains identifying information. The affiliated Series A-1 permit holder cannot simultaneously trade for both the primary and secondary member organization on the same day.

holder.⁹ This information is utilized by the Regulatory staff in its examination of persons trading on the Exchange for appropriate compliance with the Rules of the Exchange.

If a Series A-1 permit holder who is currently affiliated pursuant to Rule 793 is not affiliated with entities under common ownership, the organization that they qualify as a member would be required to obtain its own permit in order to maintain its membership status. A Series A-1 permit holder who currently affiliates with an unrelated party (not under common ownership) to qualify a member organization for electronic access or access to the trading floor would not be permitted to continue to qualify that member organization under this proposal. Similarly, if a permit holder had more than two affiliations with a member organization they would only be permitted to maintain an affiliation with up to two member organizations. The amended text of Rule 908 requires that a Series A-1 permit holder can only affiliate with up to two member organizations that are under common ownership.

In addition, the Exchange proposes to make conforming amendments to certain OFPAs¹⁰ and Regulations,¹¹ specifically, OFPA F-9, Dual Affiliations, OFPA F-11, Splitting Order [sic], and Regulation 3, Identification Badges/Access Cards.

The Exchange proposes to amend OFPA F-9 by removing references to “dual” so that the filing [sic] simply refers to affiliations. The Exchange is changing the requirement to report to

⁹ The Commission notes that the Exchange has proposed that both member organizations, not the affiliated permit holder, will be responsible for notifying the Exchange of the identity of the individuals supervising the affiliated permit holder. See proposed Rule 908(b)(i).

¹⁰ The Exchange’s minor rule plan consists of options floor procedure advices (“OFPAs” or “Advices”) with preset fines, pursuant to Rule 19d-1(c) under the Act. 17 CFR 240.19d-1(c). Most OFPAs have corresponding options rules.

¹¹ Regulation 3 are part of the Exchange’s Order and Decorum Regulations administered pursuant to Exchange Rule 60.

the Office of the Secretary to the Membership Department to conform with the proposed amendment to Rule 908. The Exchange proposes to amend the reference to Rule 793, which is being deleted, and instead refer to Rule 908.

The Exchange is also proposing to amend the language in OFPA F-9 to remove the requirements to explain compensation since the only affiliations that will be acceptable are those under common ownership. The Exchange is deleting the requirement to file an explanation of all agreed upon forms of compensation between affiliated firms because the Exchange believes that the information is not necessary since the firms would be required to be under common ownership pursuant to this proposal. The Exchange is also adding a sentence indicating that floor members must adhere to the requirements in renamed (a) and (b). The Exchange is proposing to reference Exchange Rule 1020 for the newly named F-9(ii)(a). The Exchange added this reference to Rule 1020 in paragraph F-9(ii)(a) in order to cross-reference the Rule concerning information barriers. This is not a substantive amendment; the purpose of this amendment is to be more specific with respect to the information in that paragraph. The Exchange simply renamed (b) for ease of reference.

The Exchange is proposing to amend OFPA F-11 by similarly removing references to “dual” and replacing references to Rule 793 with Rule 908. The Exchange is proposing to amend Regulation 3 by removing the reference to the word “dual.”

The Exchange also proposes to amend Exchange Rule 908(h) to add an “or” to the text of the Exchange Rule 908(h) to make clear that a permit may be transferred either intra-firm or to an inactive nominee registered with the Exchange. This proposal is solely to clarify an existing practice.

The Exchange proposes to amend Exchange Rule 900.2, Membership and Foreign

Currency Options Applications, to address lapsed applications. Pursuant to Exchange Rule 900.2, applicants desiring membership in the Exchange are required to submit information in a form prescribed by the Membership Department.¹² The Exchange expends resources in processing applications for members. The determination to admit a person for membership in the Exchange is contingent on the information provided in the application. After a 90 day calendar period has elapsed, the information provided by the applicant is stale and no longer a reasonable basis for the Exchange to make a determination on admitting a person for membership. The Membership Department expends a considerable amount of resources requesting updates from members and researching information to make a reasonable determination when an application is outdated.

This proposal seeks to amend Exchange Rule 900.2¹³ to require persons seeking membership to the Exchange to provide all information and subsequent requests from the Membership Department for information within a 90 calendar day period or the application lapses. The Exchange may extend the timeframe for extraordinary purposes or in the instance that the Exchange makes a request relatively close to the 90-day timeframe. If an application lapses, the person would be required to submit a new application.¹⁴ The Exchange intends that all applicants be provided an equal opportunity to seek membership to the Exchange.

¹² The Membership Department posts the requisite forms on the Exchange's website at http://www.nasdaqomxtrader.com/Trader.aspx?id=membership_phlx. The Membership Department updates the forms from time to time and makes them available on this website.

¹³ The Commission notes that the Exchange proposes to renumber Rule 900.2(e) as 900.2(f) due to the new proposed Rule 900.2(e).

¹⁴ The purpose of the new application would be to update all information to provide the Membership Department current information on which to basis [sic] a decision to accept

Additionally, the Exchange would not refund the fee associated with submitting an application and the applicant would be required to pay a new fee to resubmit the application.¹⁵

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁷ 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, by continuing to allow a Series A-1 permit holder to affiliate a permit in certain circumstances.

Exchange Rule 793 was initially proposed¹⁸ prior to demutualization when the Exchange had a seat market and at that time it was more costly to obtain the right to trade on the Exchange.¹⁹ Since demutualization, a Series A-1 permit has expanded a member's ability to gain access to the Exchange at a significantly lower cost.²⁰ Today, there are no restrictions on the

the applicant for membership. The Exchange intends to file a proposal with the Commission to amend its Fee Schedule to reflect the lapsed application fee.

¹⁵ The Exchange's Application Fee can be found on the Fee Schedule located on the Exchange's website at <http://www.nasdaqomxtrader.com/content/marketregulation/membership/phlx/feesched.pdf>.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ See Securities Exchange Act Release No. 21777 (January 9, 1985) [sic], 50 FR 8030, February 21, 1985) [sic] (SR-Phlx-84-14).

¹⁹ Prior to demutualization, the Exchange had a limited number of seats and the dual affiliation allowed for additional access. There is no fixed number of Series A-1 permits today.

²⁰ The Exchange also allows members on the Exchange's trading floor to appoint inactive nominees pursuant to By-Law Article XII, Section 12-10. The inactive nominee allows a Member to have additional flexibility in obtaining coverage on the trading floor.

number of permits the Exchange may issue and, assuming the qualifications are met, a member organization may hold any number of permits, which does not prevent access to the Exchange.

The Exchange believes that this proposal simplifies the affiliation process and applies it equally to all members. The Exchange believes that allowing for affiliation where there is a common ownership and up to two affiliations is a simple, straightforward process for allowing access to the Exchange for the purpose of allowing floor traders to meet Exchange rules and for assistance with staffing issues.

The Exchange believes that amending the language in Rule 908(h) will provide members with clarity as to permit transfers. Finally, requiring applicants to submit their information within a 90 calendar day period, absent a showing of good cause, provides the Membership Department with information that can be utilized to make reasonable decisions concerning membership at the Exchange.

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.

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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the 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 No. SR-Phlx-2010-148 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-Phlx-2010-148. 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 No. SR-Phlx-2010-148 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.²¹

Florence E. Harmon
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).