

SECURITIES AND EXCHANGE COMMISSION
(Release No. 64845; File No. SR-Phlx-2011-90)

July 8, 2011

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX
PHLX LLC Relating to Board of Director Qualifications

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 June 30, 2011, NASDAQ OMX 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, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ proposes to amend Exchange By-Law Article III, Section 3-2 regarding Board of Director qualifications.

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.

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.

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 amend Exchange By-Law Article III, Section 3-2 to expand the qualifications for a director position so that the Exchange's Board of Directors is comprised of representatives of various interests. Specifically, the Exchange proposes to amend the current provision of Section 3-2, regarding issuer representative(s), to require at least one Director representative of issuers and investors, along with the requisite Public Directors,⁵ Industry Directors⁶ and Member Representative Directors.⁷

Currently, Article III, Section 3-2 provides: "[T]he number of Non-Industry Directors, including at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives), shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors to be elected

⁵ See Exchange By-Law Article I(gg).

⁶ See Exchange By-Law Article I(p).

⁷ See Exchange By-Law Article I(w).

under the terms of the LLC Agreement.” The Exchange recently adopted this provision to its By-Laws.⁸

The Exchange is now seeking to expand the requirement to have a Director representative of issuers and investors instead of the requirement to have at least one issuer representative (or if the Board consists of ten or more Directors at least two issuer representatives.⁹ The Director representative of issuers and investors would be nominated by the Nominating Committee and elected by the sole shareholder, The NASDAQ OMX Group, Inc.¹⁰

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² 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, because the composition of the Exchange’s Board of Directors fosters the protection of investors by insuring [sic] that they are represented on the Board.

⁸ See Securities Exchange Act Release No. 64338 (April 25, 2011), 76 FR 24069 (April 29, 2011) (SR-Phlx-2011-13) (A rule change, among other things, to conform the Exchange By-Laws to the By-Laws of the NASDAQ Stock Market LLC).

⁹ The Exchange believes that this qualification is more appropriate for the Exchange which does not have the expansive listings of the NASDAQ Stock Market LLC.

¹⁰ See By-Law Article V, Section 5-3 and Article II, Section 2-1.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed Board composition satisfies Section 6(b)(3) of the Act,¹³ in that one Director representative represents issuers and investors. The Board composition continues to provide for fair representation on the Exchange's board as required by Section 6(b)(3) of the Act¹⁴ in that twenty percent of the Directors represent members and there is a process for selecting Member Representative Directors to the Board.¹⁵ Finally, the Public Directors continue to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the Exchange's governance process and also bring a unique, unbiased prospective to the Board. The Exchange believes that this amendment continues to maintain the necessary board requirements which serve to protect the public interest and provide for fair representation of members.

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 (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

¹³ 15 U.S.C. 78f(b)(3).

¹⁴ 15 U.S.C. 78f(b)(3).

¹⁵ See By-Law Article II.

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-2011-90 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 Number SR-Phlx-2011-90. 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-2011-90 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.¹⁶

Cathy H. Ahn
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).