

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65257; File No. SR-Phlx-2011-123)

September 2, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to the Quarterly Trading Requirements Applicable to Registered Options Traders

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 August 24, 2011, 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, 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 Commentary .01 of Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders, to change the quarterly trading requirements applicable to Registered Options Traders, as described below.

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.

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 strengthen the Exchange's quarterly trading requirement to encourage liquidity-providing activity by market makers on the Exchange. The general term "market makers" on the Exchange includes specialists and ROTs. ROTs can be either Streaming Quote Traders ("SQTs"), Remote SQTs ("RSQTs") or non-SQT ROTs. The quarterly trading requirements apply to two types of ROTs: SQTs and non-SQT ROTs. Specialists and RSQTs are subject to different requirements. By definition, non-SQT ROTs do not "stream" quotes, meaning send quotes electronically to the Exchange; instead, pursuant to Commentary .18 of Rule 1014, they submit limit orders electronically and respond to Floor Brokers verbally.

Currently, Rule 1014 contains two quarterly trading requirements – in person and in assigned. First, Commentary .01 requires that in order for an ROT (other than an RSQT or

a Remote Specialist) to receive specialist margin treatment for off-floor orders in any calendar quarter, the ROT must execute the greater of 1,000 contracts or 80% of his total contracts that quarter in person (not through the use of orders) and 75% of his total contracts that quarter in assigned options.

Second, the “in assigned” quarterly trading requirement in Commentary .03 requires that, except for unusual circumstances, at least 50% of the trading activity in any quarter (measured in terms of contract volume) of an ROT (other than an RSQT) shall ordinarily be in classes of options to which he is assigned. Temporarily undertaking the obligations of paragraph (c) at the request of a member of the Exchange in non assigned classes of options shall not be deemed trading in non assigned option contracts.

Furthermore, Commentary .13 further provides that, within each quarter, an ROT must execute in person, and not through the use of orders, a specified number of contracts, such number to be determined from time to time by the Exchange. Options Floor Procedure Advice (“Advice”) B-3, Trading Requirements, establishes a quarterly requirement to trade the greater of 1,000 contracts or 50% of contract volume in person; pursuant to the Exchange’s minor rule violation and enforcement plan, it establishes a fine schedule for violations thereof, as well as for violations of the quarterly trading requirement in assigned options contained in Commentary .03. These are not changing.

The Exchange proposes to amend Commentary .01 to adopt a new quarterly requirement such that an ROT (other than an RSQT or a Remote Specialist) is required to trade 1,000 contracts and 300 transactions on the Exchange each quarter. Transactions executed in the trading crowd where the contra-side is an ROT are not included. This requirement is a pure trading requirement, not limited, like the existing trading

requirements, to assigned options⁵ and in person trading.⁶ Accordingly, the new trading requirement can be fulfilled with trades and contracts that are not in assigned options and not executed in person, although, of course, the existing trading requirements respecting “in assigned” options and in person trading must still be met. The new trading requirement is comprised of both a 1,000 contract requirement similar to the existing trading requirement in Commentary .01, as well as a 300 transaction requirement. Both requirements must be met each quarter. The Exchange believes that a requirement to execute 300 transactions per quarter is more likely to result in regular market-making activity, rather than just fulfilling a contract-based requirement, which can be achieved in one or two trades. For instance, during the course of 62 trading days in the first quarter of 2011, an ROT would have been required to, if the proposed new trading requirement were in effect, execute around five transactions per day in order to comply with the proposed 300 transaction requirement in that quarter. Accordingly, the Exchange believes that this new trading requirement should increase the likelihood that an ROT is actively providing liquidity in a given quarter.

The Exchange proposes to exclude from the contracts and transactions required by the new trading requirement, in each quarter, any transactions executed in the trading crowd where the contra-side is an ROT in order to focus market making efforts on providing the sort of liquidity that will attract customers (including broker-dealers and professionals) to the Exchange. Specifically, the Exchange believes that this new requirement will encourage the regular posting of liquidity. Of course, ROTs will

⁵ See Rule 1014.03.

⁶ See Rule 1014.01.

continue to be able to participate in crowd trades as well, and those crowd trades will count towards the new trading requirement, unless the contra-side is another ROT. ROT-to-ROT trades in the crowd are certainly permissible on the Exchange, but the Exchange seeks to better target liquidity and attract order flow by casting the new trading requirement in these terms. For example, ROTs participating in “strategy” trades⁷ could continue to participate in these, of course, but they would not, if involving an ROT as the contra-side and occurring on the trading floor, count toward the new trading requirement. The new trading requirement would include electronic transactions where the contra-side is another ROT, because ROTs cannot predict whether their electronic orders will trade against other ROTs, such that they would be unable to determine in advance whether the quarterly requirement would be met.

The Exchange is also proposing to amend the in person trading requirement in Commentary .01 in two ways. First, the Exchange proposes to exclude transactions executed in the trading crowd where the contra-side is an ROT from the existing in person trading requirement for the same reasons as discussed above. The Exchange believes that having another trading requirement (this “in person” requirement, in addition to the new trading requirement discussed above) that focuses on activity other than in crowd ROT-to-ROT transactions should encourage the providing of liquidity. By excluding ROT-to-ROT crowd trades, including those involving dividend, merger and

⁷ For example, these include transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed immediately prior to the date on which the underlying stock goes ex-dividend. See Securities Exchange Act Release No. 63957 (February 24, 2011, 76 FR 11551 (March 2, 2011) (SR-Phlx-2011-20).

short interest strategies, the Exchange believes that ROTs will be encouraged to better focus their market making, similar to the new trading requirement.

Secondly, the current in person trading requirement in Commentary .01 uses the term “not through the use of orders” when describing the in person trading requirement. At this time, the Exchange proposes to permit non-SQT ROTs to use orders entered in person to meet the in person trading requirement. The only other way to participate in trades other than through the use of orders is by quoting; while SQTs quote electronically by “streaming” quotations into the Exchange, non-SQT ROTs quote verbally in response to floor brokers representing orders in the trading crowd verbally. The limitation on the use of orders with respect to non-SQT ROTs is obsolete, as, over time, following the movement toward a more electronic trading platform in options, it has become difficult for such ROTs to comply with the trading requirement without using orders. In order to comply with their quarterly trading requirements, non-SQT ROTs have to proactively enter orders that provide or take liquidity. Some time ago, ROTs were able to place their liquidity on the book by verbally informing the specialist; this is no longer the case, so non-SQT ROTs can only meet the in person requirement by participating in crowd trades, which they cannot control, in terms of frequency.

Under this proposal, SQTs would continue to be subject to an in person trading requirement that cannot be met using orders. The Exchange believes that this is reasonable and appropriate because SQTs, by definition, stream (or electronically submit) quotations to the Exchange to provide liquidity and comply with their market making obligations. The Exchange does not believe that loosening the “in person” trading requirement to permit the use of orders by SQTs is necessary.

The Exchange believes that the proposed new trading requirement coupled with the proposed changes to the existing “in person” trading requirement should encourage a more regular presence and thus result in more active market making. Similarly, excluding transactions where the contra-side is another ROT should encourage more regular and active market making. For example, a non-SQT ROT would not be able to include transactions involving dividend, merger and short interest strategies where the contra-side is another ROT, which is often the case; accordingly, these large transactions would not alleviate the ROT’s in person quarterly trading requirement and would encourage active market making to reach that number.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ 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 (i) adopting a new trading requirement, which should, in turn, strengthen the quarterly trading requirements for ROTs, and (ii) updating the in person trading requirement to permit non-SQT ROTs to use in person orders due to changes in electronic trading over time.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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 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-2011-123 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-2011-123. 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-2011-123 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.¹⁰

Elizabeth M. Murphy
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).