

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65745; File No. SR-Phlx-2011-149)

November 14, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to the Exchange Rule 795, Member Officer or Director

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on November 3, 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 proposes to eliminate Exchange Rule 795 entitled "Member Officer or Director."

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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

The purpose of the proposed rule change is to eliminate Exchange Rule 795 entitled Member Officer or Director. The Exchange does not believe it is necessary for a member, who is an officer or director of a corporation engaged in a securities business or a member who owns or controls, directly or indirectly, a corporation engaged in a securities business, to obtain the written permission of the Exchange. The Exchange believes that this Rule is unnecessary and is not pertinent to the Exchange's business or regulatory obligations. In addition, the Exchange is able to ascertain other business relationships of an officer or director from disclosures made by members on a Uniform Application for Securities Industry Registration or Transfer ("Form U4").

Exchange Rule 795 was adopted prior to demutualization<sup>3</sup> at a time in the Exchange's history when it operated as a member-owned organization. The Exchange believes that there may have been an interest at that time to be notified of and for the Exchange to approve a member's role in another entity. The Exchange has not utilized this Rule in a long time<sup>4</sup> and does not believe that it should be in a position to control a member's role in another entity. In addition, the Exchange is unable to locate such a rule at other options exchanges.

The Exchange does require prospective members to complete applications as prescribed in Exchange Rule 900.2 entitled "Membership Applications." The Exchange also requires

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<sup>3</sup> The Exchange demutualized in 2004. See Securities Exchange Act 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73).

<sup>4</sup> The Exchange has not utilized this Rule in over ten years.

disclosure regarding the business of its members.<sup>5</sup> In addition, the Exchange also has rules regarding disclosure of other ownership and financial information.<sup>6</sup> The Exchange therefore proposes to eliminate Exchange Rule 795.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> 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 requiring its members to comply with By-Laws and Rules which further a specific business or regulatory purpose for the Exchange.

Exchange Rule 795 requires members to provide information to the Exchange which is available on the Form U4 and also requires a member to obtain the Exchange's permission to even indirectly own a substantial interest in a securities business. The Exchange believes it is unnecessary to require a member who is an officer or director of a corporation engaged in a securities business or a member who owns or controls, directly or indirectly, a corporation engaged in a securities business to obtain the written permission of the Exchange or to report ownership information which is already available to the Exchange. In addition, the Exchange

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<sup>5</sup> See Exchange Rules 602 (status), 610 (Change in Business), 704 (Assignment of Partnerships), 792 (Control of Voting Stock), 794 (Assignment of Holdings), 902 (Admission to Partnership – Partnership Arrangements) and 906 (Notice of Change in Partnership), 907 (Partners and Officers).

<sup>6</sup> See Exchange Rules 750 (Speculative Transactions for Employees of Certain Employers), 751 (Accounts of Employees of Member Organizations), 756 (Accounts of General Partners), 771 (Excessive Trading of Members), 772 (Trading for Joint Account), 773 (Participation in Joint Accounts), 783 (Report of Financial Arrangements) and 784 (Report of Options).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

believes that the requirement to obtain permission is unnecessary for the Exchange to carry out its regulatory functions.

As previously stated herein, the Exchange has not utilized this Rule in a long time and is unable to locate such a rule at other exchanges. Additionally, the Exchange is able to ascertain other business relationships of a member from disclosures made by members on their Form U4. Finally, the Exchange does not believe it is necessary to require a member who is an officer or director of a corporation engaged in a securities business or a member who owns or controls, directly or indirectly, a substantial interest in a corporation engaged in a securities business to obtain the written permission of the Exchange or to report ownership information in order to protect investors or the public interest.

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-149 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-2011-149. 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-2011-149 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.<sup>9</sup>

Elizabeth M. Murphy  
Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).