

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66767; File No. SR-Phlx-2012-40)

April 6, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to 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 March 26, 2012, 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 proposes to amend Exchange Rules 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders, and 1093, Phlx XL Risk Monitor Mechanism, and Options Floor Procedure Advice B-3, Trading Requirements, to change trading requirements applicable to certain Registered Options Traders trading electronically, as described below.

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, and on the Commission’s website at <http://www.sec.gov>.

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 parts 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The purpose of the proposed rule change is to eliminate unnecessary and outdated potential burdens on certain Exchange market makers arising from their use of electronic orders to trade on the Exchange. The general term "market makers" on the Exchange includes specialists and registered options traders ("ROT").³ ROTs can be either Streaming Quote Traders ("SQTs")⁴, Remote Streaming Quote Traders ("RSQTs")⁵ or non-Streaming Quote Trader ROTs ("non-SQT ROTs") which by definition are neither SQTs nor RSQTs. The Exchange is proposing to amend Rule 1014, Commentary .13 to permit non-SQT ROTs to meet an in-person trading requirement set forth in that section using electronic orders. The Exchange

³ An ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

⁴ An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

⁵ An RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

also proposes to amend Rule 1014(b)(ii)(E) to eliminate a trading requirement applicable to a non-SQT ROT who transacts more than 20% of his/her contract volume in an option electronically versus in open outcry during any calendar quarter. A conforming change is proposed to Section (a) of Rule 1093, Phlx XL Risk Monitor Mechanism. Finally, changes are proposed to Options Floor Procedure Advice B-3 and to Rule 1014(b)(ii)(E)(1) to conform to a recent amendment by the Exchange of Rule 1014, Commentary .01, as explained below.

Recent Rule 1014, Commentary .01 Amendment

The Exchange has recently amended Commentary .01 of Rule 1014.⁶ Prior to the amendment Commentary .01 required 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 was required among other things to execute the greater of 1,000 contracts or 80% of his total contracts that quarter in person and not through the use of orders (the “80% in-person test”).

The only way to participate in trades other than through the use of orders is by quoting. As the Exchange explained in the proposed rule change, 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. 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 Exchange explained in the filing that the limitation on the use of orders to satisfy the 80% in-person test with respect to non-SQT ROTs was obsolete as, over time, following the movement toward a more electronic trading platform in options, it had become difficult for such ROTs to comply with the trading requirement without using orders. The Exchange explained

⁶ See Securities Exchange Act Release No. 65644 (October 27, 2011), 76 FR 67786 (November 2, 2011) (approving SR- Phlx-2011-123).

that in order to comply with their quarterly trading requirements, non-SQT ROTs have to proactively enter orders that provide or take liquidity. While some time ago, ROTs were able to place their liquidity on the book by verbally informing the specialist the proposed rule change explained that this is no longer the case. The Exchange observed that non-SQT ROTs could only meet the 80% in person test by participating in crowd trades which they cannot control in terms of frequency. The 80% in-person test was therefore amended to permit non-SQT ROTs to count orders entered in person to meet the test.

The 50% in-person test.

Exchange Rule 1014 Commentary .13 contains a separate in-person requirement. It 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. Pursuant to Commentary .13, Options Floor Procedure Advice B-3 currently requires an ROT (other than an RSQT or a Remote Specialist) to trade in person, and not through the use of orders, the greater of 1000 contracts or 50% of his contract volume on the Exchange each quarter (the “50% in person test”).⁷

For the same reasons discussed above in connection with the recent modification of the 80% in-person test, the Exchange proposes to amend Rule 1013 Commentary .13 and the 50% in-person test of Options Floor Procedure Advice B-3 to permit non-SQT ROTs to use orders entered in person to meet the test.

The “20%” Test

Currently, Rule 1014(b)(ii)(E)(2) provides that if a non-SQT ROT transacts more than 20% of his/her contract volume in an option electronically (i.e., by way of placing limit orders on

⁷ The 50% in-person test is separate and distinct from the 80% in-person test and applies whether or not the ROT seeks to receive specialist margin treatment for off-floor orders.

the limit order book that are executed electronically and allocated automatically in accordance with Rule 1014(g)(vii) versus in open outcry during any calendar quarter (the “20% test”), commencing the next calendar quarter such non-SQT ROT will be subject to certain quoting obligations for as long as the non-SQT ROT trades the option. Among other things, the non-SQT ROT would be required to submit two-sided electronic quotations, or stream quotes, in a designated percentage of series within options in which he is assigned, in accordance with a schedule set forth in Rule 1014(b)(ii)(E)(2)(b).

Streaming quotes would be burdensome to non-SQT ROTs who are generally not equipped to undertake this new form of trading. Requiring a non-SQT ROT to begin streaming would result in a significant increase of fixed costs to the non-SQT ROT. The Exchange believes this will likely result in these ROTs leaving the trading floor. While meeting the 20% test has become more difficult due to the erosion of open outcry trading, the Exchange still believes price improvement, quality of execution, and especially price discovery will suffer if these non-SQT ROT's are forced out of open outcry market making.

The Exchange therefore proposes to eliminate the 20% test and its associated requirements as a vestige of the early days of electronic trading.⁸ The Exchange believes the provision no longer makes sense in the current environment where electronic trading predominates. For the same reasons the Exchange deleted the restriction on non SQT ROTs' use of orders from the 80% in-person test and the 50% in-person test, it is proposing to eliminate the requirements of Rule 1014(b)(ii)(E)(2) that currently apply if a non-SQT ROT transacts more

⁸ In addition to deleting Rule 1014(b)(ii)(E)(2), the Exchange proposes to delete introductory language from the beginning of Rule 1014(b)(ii)(E) that would no longer be necessary. The substantive provisions of Rule 1014(e)(1) governing non-SQT ROT obligations, as proposed to be renumbered and amended, would continue to apply.

than 20% of his/her contract volume in an option electronically during any calendar quarter.⁹ The proposed amendment is particularly critical given the recent adoption by the Exchange in Rule 1014, Commentary .01, of a general trading requirement 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, not including transactions executed in the trading crowd where the contra-side is an ROT.¹⁰ The non-SQT ROT cannot control the size and frequency of crowd trades, even less so crowd trades where the contra-side is not an ROT. As a practical matter, the non-SQT ROT may have no other option but to use electronic orders to meet the new general trading requirement, thus triggering the 20% test which will prohibit any further trading of the option unless he begins streaming quotes in the option in accordance with Rule 1014(b)(ii)(E)(2).

Finally, a reference to non-SQT ROTs is proposed to be deleted from Section (a) of Rule 1093, Phlx XL Risk Monitor Mechanism, which currently refers to non-SQT ROTs who are required to submit continuous two-sided electronic quotations pursuant to Rule 1014(b)(ii)(E) which is proposed to be deleted as discussed above. This is simply a conforming change to the proposed deletion of Rule 1014(b)(ii)(E).

Conforming Change - Deletion of Rule 1014(b)(ii)(E)(1)(c)

The Exchange also proposes to delete Rule 1014(b)(ii)(E)(1)(c) which provides that any volume transacted electronically will not count towards a non-SQT ROT's 80% in-person test

⁹ In addition to removing the electronic quoting obligation of Rule 1014(b)(ii)(E)(2)(b), the amendment would also remove a reference to the quote spread requirements of Rule 1014(c)(i) found in Rule 1014(b)(ii)(E)(2)(a). The removal of Rule 1014(b)(ii)(E)(2)(a) does not change non-SQT ROTs' quote spread parameter requirements, as Rule 1014(c)(i) will continue to apply to them. See also Rule 1014(b)(ii)(E)(1)(b), which is proposed to be renumbered as Rule 1014(b)(ii)(E)(2), which will continue to require non-SQT ROTs to comply with the quote spread parameter requirements of Rule 1014(c)(i).

¹⁰ See Securities Exchange Act Release No. 65644 (October 27, 2011), 76 FR 67786 (November 2, 2011) (approving SR- Phlx-2011-123).

contained in Commentary .01 to Rule 1014. As discussed above, the Exchange recently amended Commentary .01 to eliminate this restriction. The Exchange is deleting Rule 1014(b)(ii)(E)(1)(c) simply as a conforming change.

Conforming Change – Options Floor Procedures Advice B-3

Options Floor Procedure Advice B-3, Section (b), also requires an ROT (other than an RSQT or a Remote Specialist) in order to receive Specialist margin treatment for off-floor orders to meet the 80% in-person test (not through the use of orders). The Exchange proposes to amend Options Floor Procedure Advice B-3 to conform it to the recently revised language of Rule 1014 Commentary .01 such that non-streaming ROTs can use orders entered in person to meet the 80% in-person test. This change is simply a conforming change to the earlier amendment.

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, by eliminating a restriction on non-SQT ROTs' use of orders to meet an in-person trading requirement, by eliminating burdensome requirements triggered by non-SQT ROTs' use of orders to transact more than 20% of their contract volume in an option, and by making clarifying and conforming changes to previously amended text.

It would be unjust and inequitable to continue to impose in-person trading requirements on non-SQT ROTs without counting orders entered electronically given that their ability to trade

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

other than by the use of orders has substantially diminished over the years. Making the changes proposed herein will remove impediments to and perfect the mechanism of a free and open market and a national market system by eliminating an in-person trading requirement that non-SQT ROTs will have difficulty meeting given the current electronic trading environment, thus enabling them to continue making markets by open outcry, to the extent they are able, to the benefit of investors. Investors and the public interest are protected by including as market makers those individuals who, while unable or unwilling to invest resources necessary for streaming, are able to provide liquidity in the open outcry trading that does remain on the floor of the Exchange. The changes that conform rule text to an earlier Exchange amendment benefit investors and the public interest by providing clarity and eliminating potential confusion.

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 Number SR-Phlx-2012-40 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-2012-40. 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 will also be available for inspection and copying at the Exchange's principal

office. 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 publicly available. All submissions should refer to File Number SR-Phlx-2012-40 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.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).