

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67053; File No. SR-Phlx-2012-71)

May 24, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 616, Electronic Filing Requirements for Uniform Forms

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 May 18, 2012, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. 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 Rule 616, Electronic Filing Requirements for Uniform Forms.

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)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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 correct Rule 616 to correspond to amended Equity Floor Procedure Advice (“EFPA”) A-7 and Options Floor Procedure Advice (“OFPA”) F-34 (together, the “Advices”).⁵

Recently, the Exchange adopted Rule 616, Electronic Filing Requirements for Uniform Forms, to provide that forms required to be filed under the Rule 600 Series shall be filed electronically through WebCRD and initial filings and amendments of Forms U4 and U5 be submitted electronically.⁶ Furthermore, as part of the member organization's recordkeeping requirements, Rule 616 requires that it shall retain such records for a period of not less than three

⁵ The Advices are administered pursuant to the Exchange’s minor rule violation plan, which specifies those uncontested minor rule violations with sanctions not exceeding \$2,500 that would not be subject to the provisions of Rule 19d–1(c)(1) under the Act. Rule 19d–1(c) allows SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan will not be considered “final” for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies. See 17 CFR 240.19d–1(c)(1).

⁶ See Securities Exchange Act Release No. 66840 (April 20, 2012), 77 FR 25003 (April 26, 2012)(SR-Phlx-2012-23).

years, the first two years in an easily accessible place, in accordance with Rule 17a-4 under the Act,⁷ and make such records available promptly upon regulatory request. In addition, every application for registration filed with the Exchange shall be kept current at all times by supplementary amendments via electronic filing or such other process as the Exchange may prescribe. Such amendments shall be filed not later than 30 days after the applicant learns of the facts or circumstances giving rise to the need for the amendment.

The Exchange also amended OFPA F-34 and EFPA A-7, both titled Failure to Timely Submit Amendments to Form U4, Form U5 and Form BD, to add various new rule numbers, including Rule 616. Each provides that any member, and member organization that is required to file Form U4, Form U5 or Form BD pursuant to Exchange Rules 600, 611-613, 616, or 620, or the Act and the rules promulgated thereunder, is required to amend the applicable Form U4, Form U5 or Form BD to keep such forms current at all times. Members, and member organizations must amend Form U4, Form U5 or Form BD not later than thirty (30) days after the filer knew or should have known of the facts which gave rise to the need for the amendment.

When adopting Rule 616, the language “or should have known of” was omitted from the rule, although it appears in the Advices. As a result, a member who should have known of the facts which gave rise to the need for an amendment to a Form U4, Form U5 or a Form BD could be violating the Advice, but not Rule 616. Because Rule 616 was intended to codify the electronic filing requirements into a single rule, the Exchange believes it is preferable for the rule language to better match the Advice language.

⁷ 17 CFR 240.17a-4.

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 ensuring that the Exchange's rules are clear.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-2012-71 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-2012-71. 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-2012-71 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.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).