

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78091; File No. SR-Phlx-2016-41)

June 16, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Clarifying Amendments To and Remove Obsolete Language From Rules 1053 and 1056

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 8, 2016, NASDAQ 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 proposes to make clarifying amendments to and remove obsolete language from Exchange Rules 1053, Filing of Trade Information, and 1056, Maintaining Office and Filing Signatures, relating to clearing of Exchange options transactions.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqomxphlx.cchwallstreet.com/>, 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

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

<sup>2</sup> 17 CFR 240.19b-4.

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 Exchange proposes to make minor amendments to Rules 1053 and Rule 1056 relating to options clearing responsibilities of members. The changes are intended to update and improve readability of the rules by deleting archaic and internally inconsistent provisions.

Phlx Rule 1053 currently provides that member organizations which are clearing members are responsible for supplying, “at the time of execution” certain trade information to the Exchange covering each Exchange options transactions “effected during said business day” for which such clearing member is responsible.<sup>3</sup> The Exchange is deleting the phrase “effected during said business day” because the word “said” has no antecedent in the rule and is therefore

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<sup>3</sup> Rule 1053 provides that “[a]t the time of execution, each member organization which is a clearing member of the Options Clearing Corporation shall be responsible for supplying to the Exchange trade information in a form prescribed by the Exchange, covering each Exchange options transaction effected during said business day for which such clearing member is responsible. The trade information shall show for each transaction (i) the identity of the purchasing clearing member and the writing clearing member given up at the time of execution, (ii) the underlying stock, Exchange-Traded Fund Share or foreign currency, as the case may be, (iii) the exercise price, (iv) the expiration month, (v) the number of option contracts, (vi) the premium per share of the underlying stock or the premium per unit of the underlying foreign currency, (vii) whether a purchase or a writing transaction, (viii) except for a transaction in a specialist's account, whether an opening or closing, (ix) the identity of the account of the clearing member in which the transaction was effected, (x) if a closing writing transaction, whether a certificate will be surrendered, (xi) whether a put or call, and (xii) such other information as may be required by the Exchange. Each member or member organization which is a clearing member of the Options Clearing Corporation shall be responsible to the Exchange in respect of all trade information filed with the Exchange on such form prescribed by the Exchange.”

meaningless. As written the sentence is therefore awkward and illogical. The phrase being deleted adds nothing to the rule and stands in the way of comprehension of the rule's meaning.

The Exchange is also deleting obsolete language following clause (x) in Rule 1053 which requires the clearing member to supply to the Exchange information as to whether a certificate will be surrendered if the transaction is a closing writing transaction. The deleted text is replaced with the word "Reserved". At one time, the By-Laws and the Rules of The Options Clearing Corporation ("OCC") provided for the issuance of physical certificates in respect of options contracts at the request of OCC participants. Certificates could be issued in respect of any option contract included in a long position in a customer's account to evidence a clearing member's position as the holder of one or more options of a specified type (put or call) in a specified options series. The certificate was nonnegotiable and conferred no separate legal rights on the holder. Certificated options contracts could only be exercised or closed out upon the surrender of the physical certificate. Until the certificate was surrendered, any attempt by a clearing member to write a closing options transaction with respect to a corresponding long certificated options position was considered by OCC to be an opening transaction subject to OCC's margin requirements on short positions. In 1982, OCC eliminated all provisions in its By-Laws and Rules providing for, or referring to certificates, after concluding that certificates were unnecessary and imposed administrative burdens and costs on OCC and on clearing members.<sup>4</sup> Because OCC no longer issues these certificates, Phlx Rule 1053(x) is obsolete.

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<sup>4</sup> See Securities Exchange Act Release No. 19064 (September 20, 1982), 47 FR 42483 (September 27, 1982) (order approving SR-OCC-82-15). The Exchange notes that the Chicago Board Options Exchange ("CBOE") Rule 6.51(d) once contained the same language as Exchange Rule 1053(x). See Securities Exchange Act Release No. 16618 (March 3, 1980), 45 FR 15352 (March 10, 1980). That language no longer appears in the CBOE rulebook.

Phlx Rule 1056 currently requires clearing members to maintain an office at a location approved by the Exchange for the purpose of comparing Exchange options transactions.<sup>5</sup> The Exchange is deleting the Exchange approval requirement because it has determined that the location of the clearing member's office is of no importance to the Exchange. The Exchange is also deleting the last sentence of the rule which requires that each member organization shall file with the Exchange a certified list of signatures of its representatives who are authorized to sign instruments and transact all business necessary for conducting comparison of Exchange options transactions. Although certain Exchange forms and procedures continue to require manual signatures, the Exchange does not believe the burdens of constantly updating the list of certified signatures is justified by any marginal benefit such a list may provide to Exchange staff who are not in any case handwriting experts trained to ascertain the validity of signatures.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular, in that it is

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<sup>5</sup> Rule 1056 provides that “[e]very member organization which is a clearing member of the Options Clearing Corporation shall maintain an office at a location approved by the Exchange for the purpose of comparing Exchange options transactions. Any such member organization may use for the purpose of these Rules the office of another member organization which is a clearing member of the Options Clearing Corporation provided such use is pursuant to a written agreement approved by the Exchange. There shall be present at such office, between such hours as the Exchange shall from time to time fix, on every business day a representative of the member organization authorized to sign in the name of the member organization all instruments and transact all business requisite in connection with the comparison of Exchange options transactions. Each such member organization shall file with the Exchange, in such form as the Exchange shall prescribe, a certified list of signatures of its representatives who are authorized to sign instruments and transact all business necessary for conducting comparison of Exchange options transactions.”

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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 improving the accuracy and readability of the amended rules.

With respect to Rules 1053, deleting the illogical reference to “effected during said business day” makes the rule understandable. Deleting an obsolete reference to a certificate which no longer has any meaning also eliminates a barrier to comprehension of that rule. With respect to Rule 1056, deleting the Exchange approval requirement eliminates a rule imposing an unnecessary administrative burden on the Exchange, given that the Exchange is indifferent in any event as to a clearing member’s office location, thereby perfecting the mechanism of a free and open market and a national market system. Additionally, deleting the requirement that the Exchange be provided with a certified list of signatures eliminates another rule imposing an unnecessary administrative burden from the rulebook, streamlining the rulebook by removing a requirement whose marginal benefit, if any, is not justified by its cost. The Exchange notes that at least two other options exchanges, NASDAQ BX and NASDAQ Options Market, do not impose a similar “certified list of signatures” requirement.

**B. Self-Regulatory Organization’s Statement on Burden on Competition**

The Exchange does not believe that clarifying amendments proposed herein will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act inasmuch as they simply improve the accuracy and readability of the rules and delete unnecessary administrative burdens. As noted above with respect to the certified list of signatures requirement, at least two other options exchanges, NASDAQ BX and NASDAQ Options Market, do not impose a similar requirement. Eliminating the requirement on Phlx should therefore reduce a burden on competition.

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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup>

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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:

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(a)(iii).

<sup>9</sup> 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.

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-2016-41 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2016-41. 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-2016-41 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>10</sup>

Robert W. Errett  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).