

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79185; File No. SR-Phlx-2016-104)

October 28, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change to Amend Phlx Rule 748, Supervision

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 14, 2016, NASDAQ 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 a proposal [sic] to amend Phlx Rule 748, Supervision, as explained further below.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqphlx.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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange is proposing to amend several provisions of Rule 748. The proposed rule change is intended to modernize, upgrade and strengthen the Exchange's rules pertaining to supervisory obligations of its members and member organizations.

Rule 748(a)

Rule 748(a) currently provides in the first paragraph that each office, location, department, or business activity of a member or member organization (including foreign incorporated branch offices) shall be under the supervision and control of the member or member organization establishing it and of an appropriately qualified supervisor. The Exchange is amending the first paragraph of Rule 748(a) to clarify and state clearly that each trading system and internal surveillance system of a member or member organization (including foreign incorporated branch offices) shall, inasmuch as they are aspects of their business activity, be under the supervision and control of the member or member organization establishing it and of an appropriately qualified supervisor.

Rule 748(b)

Rule 748(b), Designation of Supervisor by Member Organizations, currently provides in relevant part that the general partners or directors of each member organization shall provide for appropriate supervisory control and shall designate a general partner or principal executive officer to assume overall authority and

responsibility for internal supervision and control of the organization and compliance with securities' (sic) laws and regulations, including the By-Laws and Rules of the Exchange. It provides that the designated person shall delegate to qualified principals or qualified employees responsibility and authority for supervision and control of each office, location, department, or business activity, (including foreign incorporated branch offices), and provide for appropriate written procedures of supervision and control. The Exchange proposes to amend Rule 748(b) to provide that the delegated person shall likewise delegate to qualified principals or qualified employees responsibility and authority for supervision and control of each trading system and internal surveillance system.³

Rule 748(c)

Rule 748(c) currently provides that each person with supervisory control, as described in paragraphs (a) and (b) of Rule 748, must meet the Exchange's qualification requirements for supervisors, including successful completion of the appropriate examination. The Exchange proposes to add to Rule 748(c) a new requirement that each member or member organization must make reasonable efforts to determine that each person with supervisory control, as described in paragraphs (a) and (b) of Rule 748, is qualified by virtue of experience or training to carry out his or her assigned responsibilities.

Rule 748(g)

Rule 748(g), Office Inspections, currently provides that each member or member organization for which the Exchange is the DEA shall inspect each office or location

³ The Exchange is also deleting the extraneous apostrophe following the word "securities".

(including foreign incorporated branch offices) of the member or member organization according to a cycle that shall be established in its written supervisory procedures. In establishing such inspection cycle, the member or member organization shall give consideration to the nature and complexity of the securities activities for which the office or location is responsible, the volume of business done, and the number of registered representatives, employees, and associated persons at each office or location. Rule 748(g) is proposed to be amended to provide that an inspection may not be conducted by any person within that office or location who has supervisory responsibilities or by any individual who is directly or indirectly supervised by such person. The Exchange also proposes to add language requiring the examination schedule and an explanation of the factors considered in determining the frequency of the examinations in the cycle to be set forth in the member or member organization's written supervisory procedures. It also proposes to require that the inspection be reasonably designed to assist in preventing and detecting violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable Exchange rules.

Rule 748(h)

Rule 748(h) in the first paragraph currently requires each member or member organization to establish, maintain, and enforce written supervisory procedures, and a system for applying such procedures, to supervise the types of business(es) in which the member or member organization engages and to supervise the activities of all registered representatives, employees, and associated persons. The written supervisory procedures and the system for applying such procedures shall reasonably be expected to prevent and detect, insofar as practicable, violations of the applicable securities laws and regulations,

including the By-Laws and Rules of the Exchange. The Exchange proposes to substitute the word “designed” for the word “expected.”

Rule 748(h) in the second paragraph currently requires that the written supervisory procedures set forth the supervisory system established by the member or member organization and include the name, title, registration status, and location of all supervisory personnel required by this rule, the dates for which supervisory designations were or are effective, and the responsibilities of supervisory personnel as these relate to the types of business(es) the member or member organization engages in, and securities laws and regulations, including the By-Laws and Rules of the Exchange. The Exchange proposes to add a requirement that this record be preserved for a period of not less than three years, the first two in an easily accessible place.

Rule 748(h) in the third paragraph currently requires a copy of the written supervisory procedures to be kept and maintained at each location where supervisory activities are conducted on behalf of the member or member organization. It requires each member or member organization to amend its written supervisory procedures as appropriate within a reasonable time after changes occur in supervisory personnel or supervisory procedures, and to communicate such changes throughout its organization within a reasonable time. The Exchange proposes to amend Rule 748(h) to likewise amend and communicate changes to its written supervisory procedures as appropriate within a reasonable time after changes occur in applicable securities laws and regulations and Exchange rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁵ 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 enhancing its rules relating to supervision as set forth in Rule 748. Requiring increased comprehensive supervision by members and member organizations of their activities should promote the Exchange's ability to enforce compliance by members and member organizations with the Act and the regulations thereunder.

Amending Rules 748(a) and (b) to require trading systems and internal surveillance systems to be under the supervision and control of the member or member organization establishing them and of an appropriately qualified supervisor, and requiring the general partner or principal executive officer with overall authority and responsibility for internal supervision and control of the organization and compliance with securities laws and regulations to delegate responsibility and authority for supervision and control of each trading system and internal surveillance system to qualified principals or qualified employees, should protect investors and the public interest by specifically requiring supervision and control of these aspects of the member or member organization's business by an appropriately qualified individual.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

The proposed amendment to Rule 748(c) should protect investors and the public interest by requiring that each person with supervisory control as described in Rules 748(a) and (b) to be qualified by virtue of experience or training to carry out his or her assigned responsibilities, such that the individual has the actual capacity to fulfill those responsibilities.

The proposed amendments to Rule 748(g) regarding office inspections should protect investors and the public interest by minimizing the potential for conflicts of interest in the conduct of office inspections. The amendments would prohibit the required inspections from being conducted by any person within that office or location who has supervisory responsibilities or by any individual who is directly or indirectly supervised by such a person who may be incentivized to minimize any compliance issues identified in the inspection. The proposed amendments to Rule 748(g) concerning the examination schedule and specifically requiring that the inspection be reasonably designed to assist in preventing and detecting violations of, and achieving compliance with, applicable securities laws and regulations and with applicable Exchange rules should assure that inspections take place with a predictable and adequate frequency and are reasonably designed to identify violations of applicable law and rules.

The proposed amendments to Rule 748(h) are also designed to protect investors and the public interest, by requiring the written supervisory procedures to be preserved for a period of not less than three years, the first two in an easily accessible place, in order to facilitate identification of instances where the procedures were not followed. Stating that the written supervisory procedures and the system for applying such procedures shall reasonably be “designed” rather than “expected” to prevent and detect

violations clarifies the affirmative nature of the member or member organization's obligations under the rule when creating such procedures.

Finally, the Rule 748(h) amendment requiring members or member organizations to update their written supervisory procedures following changes in applicable securities laws and regulations, and Exchange rules should promote the continued usefulness of the procedures in the context of ongoing changes in the regulatory environment in which members and member organizations conduct their business.

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. The amendments will apply to all members and member organizations subject to Rule 748.

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
[\(http://www.sec.gov/rules/sro.shtml\);](http://www.sec.gov/rules/sro.shtml) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2016-104 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2016-104. 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 Web site

[\(http://www.sec.gov/rules/sro.shtml\)](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-2016-104 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.⁶

Brent J. Fields
Secretary

⁶ 17 CFR 200.30-3(a)(12).