

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79249; File No. SR-Phlx-2016-86)

November 7, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Order Granting Approval of Proposed Rule Change to Delete or Amend Rule Language Relating to Specialists and Registered Options Traders

I. Introduction

On August 12, 2016, NASDAQ PHLX LLC (“Exchange” or “Phlx”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to delete or amend its rules relating to specialists and Registered Options Traders (“ROTs”). The proposed rule change was published for comment in the Federal Register on August 31, 2016.³ On October 12, 2016, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 78680 (August 25, 2016), 81 FR 60110 (August 31, 2016) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 79087, 81 FR 71776 (October 18, 2016). The Commission designated a longer period within which to take action on the proposed rule change and designated November 29, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

Phlx Rules 1022(b) and (c) currently require each specialist⁶ or ROT⁷ to provide to the Exchange reports of options and orders in a manner prescribed by the Exchange. Phlx Rule 1022(b) requires each specialist or ROT to report opening positions and each purchase and sale in each option in which the specialist or ROT is registered for each account reported pursuant to Phlx Rule 1022.⁸ Phlx Rule 1022(c) requires each specialist or ROT to report every order entered by the specialist or ROT for the purchase or sale of a security underlying any stock or Exchange-Traded Fund Share options contract traded on the Exchange or a security convertible into or exchangeable for such underlying security, as well as opening and closing positions in all such securities held in each account reported pursuant to Phlx Rule 1022.⁹ The Exchange proposes to delete Phlx Rules 1022(b) and (c). The Exchange represents that the submission of these reports by specialists and ROTs is no longer necessary because most of the information in the reports is available to the Exchange from other sources.¹⁰

⁶ A “specialist” is an Exchange member who is registered as an options specialist pursuant to Phlx Rule 1020(a). Specialists are subject to quoting and registration obligations set forth in Phlx Rules 1014(b), 1020 and 1080.02.

⁷ A “ROT” is defined in Phlx Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. For the purposes of Phlx Rule 1014, the term “ROT” includes Streaming Quote Traders and Remote Streaming Quote Traders.

⁸ See Notice, supra note 3, at 60110. The report is required to designate the time and type of tick at which such transaction was effected.

⁹ See id. The report pertaining to orders must include the terms of each order, identification of the brokerage firms through which the orders were entered, the times of entry or cancellation, the times reports of executions were received and, if all or part of the order was executed, the quantity and execution price.

¹⁰ See id. The Exchange represents that the information referred to in Phlx Rule 1022(b) is available from the Options Clearing Corporation and that much of the information referred to in Phlx Rule 1022(c) is available in the Intermarket Surveillance Group Equity Audit Trail.

Phlx Rule 1036(a) currently requires every limited partner, approved person, and every party who is affiliated with a specialist member organization to agree, in a stipulation approved by the Exchange, not to violate any Exchange rule or cause a specialist or a specialist member organization to violate these or any other rules relating to specialists. The Exchange proposes to delete Phlx Rule 1036(a). The Exchange represents that the violation of a stipulation would have provided the Exchange with a separate basis for proceeding against the provider of the stipulation in the event of an Exchange rule violation.¹¹ The Exchange believes that the stipulations are no longer necessary for that purpose and that the burden of collecting stipulations outweighs any benefits from the rule.¹²

Phlx Rule 1036(b) provides that no issuer, or parent or subsidiary thereof, or any officer, director or 10% stockholder thereof, may become an approved person in a specialist member organization whose members are registered in a security of that issuer. The Exchange proposes to amend Phlx Rule 1036(b) to refer to members who are registered in options overlying a security of that issuer to specify that Phlx Rule 1036(b) applies only to options trading on the Exchange.¹³

Phlx Rule 1037 provides that a specialist is liable for any loss sustained for orders entrusted to him which should have been executed, and for which he should have sent an execution report, when the specialist was made aware of the error by 9:30 on the business day following the submission of the order. The Exchange proposes to delete Phlx Rule 1037. The Exchange represents that today, specialists on the Exchange trade only for their own account and

¹¹ See id.

¹² See id.

¹³ The Exchange is also correcting the rule by changing the word “who” to “whose.”

no longer handle orders for other market participants in their capacity as specialists; therefore, specialists would no longer be in a position to miss orders as contemplated by Rule 1037.¹⁴

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.¹⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁶ which requires, among other things, that the rules of a national securities exchange be 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that the deletion of Phlx Rules 1022(b), 1022(c), and 1036(a) should eliminate burdens on Phlx members that the Exchange believes are no longer necessary to carry out its oversight of its members. In addition, the Commission notes that the Exchange's proposal to delete Phlx Rules 1022(b), 1022(c), 1036(a), and 1037 should benefit investors by helping to ensure that the Phlx rules correctly describe the current operations of the Exchange and obligations of its members. Finally, the Commission believes that amending Phlx Rule 1036(b) to specify that Phlx Rule 1036(b) applies only to options trading on the Exchange should add clarity to Phlx's rules.

¹⁴ See Notice, supra note 3, at 60111.

¹⁵ In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78f(b)(5).

Accordingly, for the reasons discussed above, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act.

V. Conclusion

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act¹⁷ that the proposed rule change (SR-PHLX-2016-86) be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Brent J. Fields
Secretary

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).