

*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-NASDAQ-2015-038. This file number should be included on the subject line if email 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>). 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 Web site 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 such filing also will be available for inspection and copying at the principal offices 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-NASDAQ-2015-038, and should be submitted on or before May 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Brent J. Fields,**  
Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-74801; File No. SR-Phlx-2015-35]

**Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Outdated Rule Language Contained in Rule 1019 and Options Floor Procedures Advices**

April 23, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 16, 2015, 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, 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 the Substance of the Proposed Rule Change**

The Exchange proposes to delete outdated rule language contained in (i) Rule 1019, Precedence Accorded To Orders Entrusted To Specialists, and (ii) Options Floor Procedures Advices ("Advices") A-2, A-13, D-1, D-2, F-3, F-7 and F-21, as explained further below.

The text of the proposed rule change is available on the Exchange's Web site 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 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 update the Exchange's rules by deleting eight obsolete rules, including Rule 1019 as well as and Advices A-2, A-13, D-1, D-2, F-3, F-7 and F-21. These rules are now obsolete for various reasons explained below.

Historically, Advices replicated the provisions of the Exchange's rule that were most pertinent for the trading floor community to keep handy, in lieu of the large, unwieldy rulebook; the Exchange adopted, for many years, both rules and Advices that contained nearly identical language where the Advice was the subject of a fine schedule under the Exchange's minor rule plan<sup>3</sup> in order for the trading floor to have easy access to these provisions (which the Exchange printed and distributed) and in order for those persons who administered fines to have easy access to consult the applicable fine schedules. Most of the Advices which the Phlx is proposing to delete contain similar information to Rule 1019, which, as stated below, is also obsolete.

Several provisions pertaining to Specialists<sup>4</sup> are obsolete, because Specialists no longer manually handle or execute others' orders due to the migration to a new electronic trading system ("Phlx XL II") in 2009.<sup>5</sup> Of

<sup>3</sup> Many of these Advices contain a fine schedule which is administered pursuant to the Phlx's minor rule violation enforcement and reporting plan ("Minor Rule Plan"), and therefore the proposal necessarily amends the Exchange's Minor Rule Plan. The Phlx's Minor Rule Plan, codified in Phlx Rule 970, "Floor Procedure Advices: Violations, Penalties, and Procedures," contains Advices with accompanying fine schedules. See Securities Exchange Act Release No. 23296 (June 4, 1986), 51 FR 21430 (June 12, 1986) (SR-Phlx-86-11). Pursuant to paragraph (c)(1) of Rule 19d-1 under the Act, a self-regulatory organization ("SRO") is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d-1, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permits the SRO to report violations on a periodic (quarterly), as opposed to immediate, basis.

<sup>4</sup> See Rule 1020.

<sup>5</sup> In May 2009, the Exchange enhanced the options trading system and adopted corresponding rules referring to it as "Phlx XL II." See Securities Exchange Act Release No. 59995 (May 28, 2009), 74

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

course, many other rules govern the obligations of Specialists, such as quoting and registration obligations,<sup>6</sup> but a manual book no longer exists. Although there was an electronic limit order book for options for a long time,<sup>7</sup> Specialists used to be able to enter manual orders entrusted to them onto the electronic limit order book; with the advent of Phlx XL II, the Specialist could no longer accept and execute orders manually.<sup>8</sup>

Phlx Rule 1019, Precedence Accorded to Orders Entrusted To Specialists, governs the precedence given to orders entrusted to the Specialist. Rule 1019 is now obsolete given that the Specialist no longer manually handles orders and therefore orders cannot be “entrusted.” This rule contains several specific obligations related to the Specialist’s handling of orders. All of the provisions in Commentaries .01–.05 refer to the Specialist’s book, leaving orders with the Specialist or entrusting orders to the Specialist. None of these provisions are operational or can be relied upon because the Specialist’s book no longer exists.<sup>9</sup> The Exchange proposes to delete this rule in order to prevent any confusion that may result from this obsolete rule and to ensure that the rulebook accurately reflects member obligations.

Similarly, Advice A–2 governs the types of orders to be accepted into the Specialist’s book. Advice A–2 is now obsolete given that the Specialist no longer manually handles orders.<sup>10</sup> Therefore, there is no longer a “Specialist’s book;” as stated above, the options electronic limit order book is operated by Exchange systems.

Advice A–13 governs the Auto Execution Engagement/Disengagement responsibility of the Specialist. Specifically, it requires Specialists to engage (meaning, turn on) Auto-X, the automatic execution functionality, within a certain period of time and

permits disengagement by the Specialist under certain circumstances. Advice A–13 is now obsolete given that the Specialist no longer manually handles orders and all orders are automatically executed.<sup>11</sup> The Specialist no longer has control over the automatic execution functionality; such functionality operates on Phlx XL II for all options, without any need for engagement or disengagement by the Specialist.

Advice D–1 governs the Exchange’s handling of errors. Specifically, this Advice governs missed orders and any corresponding remedies and protocols resulting from missed orders. Advice D–1 is now obsolete due to the automated functionality of Phlx XL II, as reflected in Rules 1017, 1080 and 1014. Missed orders cannot occur because orders are not held or guaranteed by Specialists.<sup>12</sup> Potential errors respecting automatically executed orders (and all orders) are handled pursuant to Rule 1092.

Advice D–2 governs instances of non-liability. Advice D–2 is now obsolete because the opening and close of trading are now automated pursuant to Rule 1017; there is no manual participation in the opening for which Specialists or Floor Brokers could be held liable.<sup>13</sup> As stated above, errors are handled pursuant to Rule 1092, including errors involving Floor Brokers.

Advice F–3 governs manual trading of securities by the Specialist. Specifically, this Advice governs members’ requests for sold sale designations, including the initialing of sold sales by Specialists. Sold sales are trades for which trade reporting to the “tape” was delayed. Advice F–3 is now obsolete given that the Specialist no longer manually handles orders.<sup>14</sup> Sold sales still exist but do not involve the Specialist.

Advice F–7 governs the size of the Exchange’s disseminated bid or offer, including the sum of the size associated with Specialist, Streaming Quote Trader (“SQT”) and Remote Streaming Quote Trader (“RSQT”) quotations. Advice F–7 is no longer needed for two reasons: (i) The Exchange’s Phlx XL II system determines what size is disseminated, in accordance with Commission rules;<sup>16</sup> and (ii) Rule 1082 contains specifically what the Exchange disseminates.<sup>17</sup>

The Exchange currently offers foreign currency options for trading. At one time, there was a special block trading process for foreign currency options,

which appeared in both Rule 1016 and Advice F–21. Both governed block transactions in foreign currency options, including the procedure for quoting and executing a block transaction, and the priority of execution among the contra-side participants of the block order. At the time, foreign currency options did not trade electronically. Because of the adoption of a new type of foreign currency option that became available for electronic trading, as explained below, Rule 1016 was made applicable only to physical delivery<sup>18</sup> foreign currency options in 2007,<sup>19</sup> but Advice F–21 inadvertently was not. Since March 2007, physical delivery foreign currency options are no longer listed and traded on the Exchange, and the Exchange instead offers U.S. dollar-settled foreign currency options, which are available for trading on Phlx XL II.<sup>20</sup> Accordingly, the Exchange proposes to delete Advice F–21.

In summary, the Exchange proposes to delete Options Floor Procedures Advices A–2, A–13, D–1, D–2, F–3, F–7 and F–21 as well as Rule 1019, in order to prevent the confusion that may result from having obsolete rules in the Exchange’s rulebook and in order to ensure that the rulebook accurately reflects member obligations.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>22</sup> in particular, in that it is designed to promote just and equitable principles of trade, and to protect investors and the public interest, by deleting obsolete provisions and generally providing clarity to the rules. Some of the changes reflect changed practices on the trading floor. Specifically, the deletion of Advices F–3, F–7 and F–21 is consistent with the Act because they are operationally obsolete, as explained above; moreover, having clear and up-to-date rules should promote just and equitable principles of trade on the Exchange.

The proposal should result in a more accurate and understandable rule book, particularly for Exchange Specialists. It

FR 26750 (June 3, 2009) (SR–Phlx–2009–32). Thereafter, the Exchange submitted a number of filings updating various rules and deleting obsolete provisions. See Securities Exchange Act Release Nos. 61397 (January 22, 2010), 75 FR 4893 (January 29, 2010) (SR–Phlx–2010–07); 63036 (October 4, 2010), 75 FR 62621 (October 12, 2010) (SR–Phlx–2010–131); and 67469 (July 19, 2012), 77 FR 43633 (July 25, 2012) (SR–Phlx–2012–92).

<sup>6</sup> See e.g., Rules 1014(b) and 1020.

<sup>7</sup> See Rule 1080.02.

<sup>8</sup> Specifically, the Exchange stated that no orders will be executed, and therefore handled, manually in Phlx XL II. See Securities Exchange Act Release No. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009) (SR–Phlx–2009–32) (Notice of Filing of Proposed Rule Change Relating to the Exchange’s Enhanced Electronic Trading Platform for Options, Phlx XL II at 17258).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> The opening process became fully automated in Phlx XL II. See *supra* note 5.

<sup>14</sup> See *supra* note 8.

<sup>15</sup> See Phlx Rule 1014(b).

<sup>16</sup> See Rule 602 pursuant to Regulation NMS.

<sup>17</sup> See e.g., Phlx Rule 1082(a)(ii)(C).

<sup>18</sup> Physical delivery options, so named because settlement could involve delivery of the underlying currency (as opposed to cash for U.S. dollar-settled foreign currency options), traded on the Exchange 1982–2007.

<sup>19</sup> See Securities Exchange Act Release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR–Phlx–2006–34).

<sup>20</sup> See Securities Exchange Act Release No. 60169 (June 24, 2009), 74 FR 31782 (July 2, 2009) (SR–Phlx–2009–40).

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

should make clearer that Specialists no longer operate a book or handle orders manually. The deletion of Advices and one rule pertaining to Specialists' functions and obligations are consistent with the Act for the same reason stated above pertaining to the importance of having up-to-date rules, which should, in turn, promote just and equitable principles of trade. In addition, the deletion of Advice A-2, Advice D-1 and Rule 1019 should promote just and equitable principles of trade, because there is no longer a Specialist's limit order book.

The deletion of Advice D-1 regarding to liability for missed orders on the Specialist's book also promotes just and equitable principles of trade by making clear that a Floor Broker can no longer leave an order with the specialist. The deletion of Advice D-2 should promote just and equitable principles of trade by making it clear that openings occur automatically and do not involve Specialists or Floor Brokers. Specialists' functions are principally governed by Rules 1014 and 1020.

#### *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 proposal raises neither intra-market nor inter-market competition issues because it merely deletes obsolete provisions and therefore does not impact how the market operates today.

#### *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)(ii) [sic] of the Act<sup>23</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>24</sup> Specifically, it does not

significantly affect the protection of investors or the public interest because it deletes obsolete rules, as explained in detail above, due to increased automation, which resulted in the concomitant reduction in Specialist responsibilities. Furthermore, this increased automation also affected the dissemination of quotes, which, in turn, affected the need for provisions requiring Specialist, SQTs and RSQTs to be involved in quote dissemination. In addition, the deletion of Advice F-21 relating to foreign currency option trading does not significantly affect the protection of investors or the public interest, because investors would not have expected that block trading be available due to the prior deletion of Rule 1016 and change in the foreign currency option product offering, as described above. Nor does the proposal impose any significant burden on competition, as explained above.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2015-35 on the subject line.

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.

#### *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-2015-35. This file number should be included on the subject line if email 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>). 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 Web site 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 such 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-2015-35, and should be submitted on or before May 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Brent J. Fields,**

*Secretary.*

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<sup>23</sup> 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

<sup>24</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

<sup>25</sup> 17 CFR 200.30-3(a)(12).