



8011-01p
SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-73286; File No. SR-PHLX-2014-63]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 60
October 2, 2014

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 September 19, 2014, 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 and II, 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 [sic] to correct an inconsistency in the Exchange’s Rulebook related to Rule 60 entitled “Sanctions for Breach of Regulations.”

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 [sic]. The text of the proposed rule change is set forth below. Proposed new language is italicized; deleted text is in brackets.

* * * * *

NASDAQ OMX PHLX Rules

* * * * *

Rule 60. Sanctions for Breach of Regulations

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(a)(i) An Options Exchange Official may impose on members, member organizations, participants, participant organizations and their associated persons, fines for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange or an Options Exchange Official may refer the matter to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1—960.12.

(ii) Exchange Staff may impose on members, member organizations, participants, participant organizations and their associated persons, fines for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange or Exchange Staff may refer the matter to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1-960.12.

(b)(i) An Options Exchange Official and an officer of the Exchange may exclude a member, participant, and any associated person of member organizations and participant organizations ("member") from the trading floor for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange that occurred on the trading floor or on the premises immediately adjacent to the trading floor. Specifically, members shall be excluded if they pose an immediate threat to the safety of persons or property, are seriously disrupting Exchange operations, or are in possession of a firearm. Members so excluded [are excluded for the remainder of the trading day.] may be excluded for a period of up to five business days.

(c) If a member shall be excluded for a period exceeding forty-eight hours, an expedited hearing ("Expedited Hearing") will be held before the Chair of the Business Conduct Committee or a member of the Committee designated by the Chair ("Expedited Hearing Officer") within forty-eight business hours after the members' exclusion from the trading floor. Written notice

will be provided to the member of the date, time and place of the hearing. The member may be represented by counsel. The Expedited Hearing Officer or his or her designee shall conduct an Expedited Hearing. The Expedited Hearing Officer shall allow both the member or his or her representative and Exchange staff to present arguments. The Expedited Hearing Officer shall make a determination of whether to continue the member's exclusion from the trading floor for a period of up to five business days. The determination shall be based on the severity of the threat posed to persons on the trading floor, the disruptiveness caused by the actor and the safety and welfare of persons on the trading floor. The Expedited Hearing Officer shall make a ruling at the time of the hearing and a written decision will be provided to the member following the hearing. Members shall not be excluded from electronic trading, but will be not be permitted to be physically present on the trading floor for the duration of any exclusion.

(ii) For purposes of this Rule, an "officer of the Exchange" shall refer to an officer who is a vice president or higher.

(iii) For purposes of this Rule and the Regulations promulgated thereunder, the "premises immediately adjacent to the trading floor" shall include the following: (1) all premises other than the trading floor that are under Exchange control, and (2) premises in the building where the Exchange maintains its principal office and place of business, namely 1900 Market Street, Philadelphia, Pennsylvania.

(iv) Exclusion from the floor may not be the exclusive sanction for breaches of this Rule and the regulations thereunder. In addition to exclusion, a member may also be subject to a fine or the matter may be referred to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1-960.12.

• • • **Commentary (a)** -----

The procedure to be followed in cases where a pre-set fine of up to \$[5]10,000.00 is summarily assessed is as follows:

.01 Notice of Fine. Notice of fine for breach of such regulations shall be given by the issuance of a written citation. Exchange Staff shall serve the written citations that are issued by the Options Exchange Official. The cited party may accept or contest the written citation.

.02 Time and Place of Hearing. If the written citation is contested, the Exchange shall fix a mutually convenient time and place of hearing, notice of which must be given in advance and may be given orally.

.03 Record. An appropriate record shall be kept. The costs of the making of such a transcript, including, but not limited to, the costs for the court reporter, reproduction of the transcript and producing copies thereof, shall be equally borne by the Exchange and by the cited party.

.04 Procedure. The hearing shall be conducted by a Hearing Director appointed by the Chair of the Business Conduct Committee, and will be conducted in whatever manner will permit full presentation of the evidence.

.05 Finding. The finding of the Hearing Director shall be rendered at the close of the hearing. The Hearing Director may decide that: (i) the citation should be overturned; (ii) the citation is valid as issued; or (iii) the citation as issued should be modified to specify either a higher or lower fine than the one on the notice as issued.

.06 Forum Fee. If a person contests a citation imposed under Rule 60 and the citation is upheld by the reviewing body, the reviewing body will impose a forum fee against the person in the amount of \$100.

.0[6]7 No Right of Appeal. The finding of the Hearing Director shall be final. There shall be no appeal from such finding.

.0[7]8 Report to Securities and Exchange Commission (SEC). A report in appropriate form shall be made to the SEC. However, no report shall be made in the case of citations for breaches of regulations relating to order, decorum, health, safety and welfare or administration of the Exchange if a citation is not contested and the fine is \$1,000 or less, or if the Hearing Director finds in favor of the appellant.

• • • **Commentary (b)** -----

The procedure to be followed when a member is to be excluded from the trading floor is as follows:

[.01 Ruling. After an Options Exchange Official and an officer of the Exchange determine that a member shall be excluded, a member of the Exchange's security staff shall escort the member off the trading floor. The member shall remain off the trading floor for the remainder of the trading day. Exchange staff shall thereafter memorialize the exclusion in the form of a written citation.]

.0[2]1 No Further Right of Appeal. The determination that a member shall be excluded is final. There shall be no appeal from such determination.

.0[3]2 Report to the SEC. A report in appropriate form shall be made to the SEC. However, no report shall be made in a case where a clerical employee is excluded for a breach of regulations relating to order, decorum, health, safety and welfare or administration of the Exchange.

RULE 60—REGULATION AND FINE SCHEDULE

(ORDER AND DECORUM CODE)

In most cases, the PHLX will enforce compliance with Order and Decorum Code pursuant to Rule 60. While ordinarily a finding of a violation will result in the appropriate pre-set fine and/or sanction, an Options Exchange Official or Exchange Staff may refer the matter to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1-960.12. In the case of repeat violations of a regulation by the same individual, the amount of the fine is determined by the number of such violations which have occurred within the year immediately preceding the current violation.

* * * * *

OPTION FLOOR PROCEDURE ADVICES AND ORDER & DECORUM REGULATIONS

* * * * *

H. REGULATIONS Pursuant to Rule 60

[Rule 60. Sanctions for Breach of Regulations]

(a)(i) An Options Exchange Official may impose on members, member organizations and their associated persons, fines for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange or an Options Exchange Official may refer

the matter to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1—960.12.

(ii) Exchange Staff may impose on members, member organizations and their associated persons, fines for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange, or Exchange Staff may refer the matter to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1-960.12.

(b)(i) An Options Exchange Official and an officer of the Exchange may exclude a member, and any associated person of member organizations ("member") from the trading floor for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange that occurred on the trading floor or on the premises immediately adjacent to the trading floor. Specifically, members shall be excluded if they pose an immediate threat to the safety of persons or property, are seriously disrupting Exchange operations, or are in possession of a firearm. Members so excluded may be excluded for a period of up to five (5) business days.

(c) If a member shall be excluded for a period exceeding forty-eight hours, an expedited hearing ("Expedited Hearing") will be held before the Chair of the Business Conduct Committee or a member of the Committee designated by the Chair ("Expedited Hearing Officer") within forty-eight (48) business hours after the members' exclusion from the trading floor. Written notice will be provided to the member of the date, time and place of the hearing. The member may be represented by counsel. The Expedited Hearing Officer or his or her designee shall conduct an Expedited Hearing. The Expedited Hearing Officer shall allow both the member or his or her representative and Exchange staff to present arguments. The Expedited Hearing Officer shall make a determination of whether to continue the member's exclusion from the

trading floor for a period of up to five (5) business days. The determination shall be based on the severity of the threat posed to persons on the trading floor, the disruptiveness caused by the actor and the safety and welfare of persons on the trading floor. The Expedited Hearing Officer shall make a ruling at the time of the hearing and a written decision will be provided to the member following the hearing. Members shall not be excluded from electronic trading, but will not be permitted to be physically present on the trading floor for the duration of any exclusion

(ii) For purposes of this Rule, an "officer of the Exchange" shall refer to an officer who is a vice president or higher.

(iii) For purposes of this Rule and the Regulations promulgated thereunder, the "premises immediately adjacent to the trading floor" shall include the following: (1) all premises other than the trading floor that are under Exchange control, and (2) premises in the building where the Exchange maintains its principal office and place of business, namely 1900 Market Street, Philadelphia, Pennsylvania.

(iv) Exclusion from the floor may not be the exclusive sanction for breaches of this Rule and the regulations thereunder. In addition to exclusion, a member may also be subject to a fine or the matter may be referred to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1-960.12.

• • • **Commentary (a)** -----

The procedure to be followed in cases where a pre-set fine of up to \$10,000.00 is summarily assessed is as follows:

.01 Notice of Fine. Notice of fine for breach of such regulations shall be given by the issuance of a written citation. Exchange Staff shall serve

the written citations that are issued by the Options Exchange Official.

The cited party may accept or contest the written citation.

.02 Time and Place of Hearing. If the written citation is contested, the Exchange shall fix a mutually convenient time and place of hearing, notice of which must be given in advance and may be given orally.

.03 Record. An appropriate record shall be kept. The costs of the making of such a transcript, including, but not limited to, the costs for the court reporter, reproduction of the transcript and producing copies thereof, shall be equally borne by the Exchange and by the cited party.

.04 Procedure. The hearing shall be conducted by a Hearing Director appointed by the Chair of the Business Conduct Committee, and will be conducted in whatever manner will permit full presentation of the evidence.

.05 Finding. The finding of the Hearing Director shall be rendered at the close of the hearing. The Hearing Director may decide that: (i) the citation should be overturned; (ii) the citation is valid as issued; or (iii) the citation as issued should be modified to specify either a higher or lower fine than the one on the notice as issued.

.06 Forum Fee. If a person contests a citation imposed under Rule 60 and the citation is upheld by the reviewing body, the reviewing body will impose a forum fee against the person in the amount of \$100.

.07 No Right of Appeal. The finding of the Hearing Director shall be final. There shall be no appeal from such finding.

.08 Report to Securities and Exchange Commission (SEC). A report in appropriate form shall be made to the SEC. However, no report shall be made in the case of citations for breaches of regulations relating to order, decorum, health, safety and welfare or administration of the Exchange if a citation is not contested and the fine is \$1,000 or less, or if the Hearing Director finds in favor of the appellant.

• • • **Commentary (b)** -----

The procedure to be followed when a member is to be excluded from the trading floor is as follows:

.01 No Further Right of Appeal. The determination that a member shall be excluded is final. There shall be no appeal from such determination.

.02 Report to the SEC. A report in appropriate form shall be made to the SEC. However, no report shall be made in a case where a clerical employee is excluded for a breach of regulations relating to order, decorum, health, safety and welfare or administration of the Exchange.

RULE 60—REGULATION AND FINE SCHEDULE

(ORDER AND DECORUM CODE)

In most cases, the Exchange will enforce compliance with Order and Decorum Code pursuant to Rule 60. While ordinarily a finding of a violation will result in the appropriate pre-set fine and/or sanction, an Options Exchange Official or Exchange Staff may refer the matter to the

Business Conduct Committee where it shall proceed in accordance with Rules 960.1-960.12.

In the case of repeat violations of a regulation by the same individual, the amount of the fine is determined by the number of such violations which have occurred within the year immediately preceding the current violation.]

* * * * *

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 Exchange's Rulebook contains Rule 60, Sanctions for Breach of Regulations, in the Rules of the Exchange. This rule is also repeated in the section of the Rulebook entitled "Regulations" which appears prior to the listing of the various regulations. The Exchange repeated the rule in this section for ease of reference as the regulations were adopted pursuant to Rule 60. In 2009, the Exchange filed a rule proposal which, among other things, amended Rule

60.³ The rule text specifically amended Rule 60 in the section of the Rulebook entitled Regulations, as evidenced from the text in Exhibit 5 of that filing. At that time, the Exchange did not also amend the rule text of Rule 60 in the main rules. The rule text was updated in both places in the Rulebook in 2009 because the error in not amending both rules was not realized at the time the filing was approved. The rule text is currently identical in both Rule 60 versions at this time. There is no inconsistency as between the two versions of Rule 60 as displayed in the Rulebook.

The Exchange is seeking to properly amend Rule 60 in the main Rules at this time by restating the amendments that were requested in 2009 in this filing. The Exchange also proposes to delete the duplicate version of Rule 60 in the Regulations section to avoid further confusion in the future. In order that members and member organizations may understand that the Regulations are adopted pursuant to Rule 60, the Exchange proposes to amend the title of the Regulations section to state, “Regulations Pursuant to Rule 60.”

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act⁵ 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, in that the proposal will correct an error in the Exchange’s Rulebook with respect to the text of Rule 60. The Exchange is seeking to correct the error so

³ See Securities Exchange Act Release No. 61207 (December 18, 2009), 74 FR 69185 (December 30, 2009) (SR-Phlx-2009-84).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

that Rule 60, as reflected in the main rules, is properly amended. An accurate and up-to-date Rulebook will avoid confusion for market participants. The proposals are not substantive, rather, the proposals seek to update the rules to reflect the current operation of the Exchange.

Also, to avoid future confusion among its market participants, the Exchange proposes to eliminate the Rule 60 version of the rule text which appears in the Regulations section. The Regulations govern conduct on the Exchange's trading floor. The Exchange believes that noting that the Regulations are pursuant to Rule 60 will avoid confusion to members and member organizations subject to these rules because the cross-reference to Rule 60 will be apparent without the need to restate the rule within the Regulations. The Exchange believes this rule change will bring accuracy and clarity to the Rulebook.

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 Exchange is merely seeking to correct an inadvertent error in the Rule text and proposes other changes to avoid confusion in the future and prevent the possibility of this error occurring again.

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) of the Act⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁷

A proposed rule change filed under Rule 19b-4(f)(6)⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change amends Rule 60 in the Exchange's Rulebook so that the Rule properly reflects changes made in SR-Phlx-2009-84, and removes duplicate language from another section of the Exchange's Rulebook. The proposed rule change ensures that Rule 60 is accurate, and is intended to eliminate confusion that was caused by having a duplicate version of Rule 60 in another section of the Rulebook. The Commission believes it is in the interest of investors to implement these amendments immediately. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁰

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)¹¹ of the Act to determine whether the proposed rule change 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-2014-63 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-2014-63. 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

¹¹ 15 U.S.C. 78s(b)(2)(B).

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 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-PHLX-2014-63, 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.

[FR Doc. 2014-23979 Filed 10/07/2014 at 8:45 am; Publication Date: 10/08/2014]

¹² 17 CFR 200.30-3(a)(12).