



8011-01
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81642; File No. SR-Phlx-2017-55)

September 18, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change to amend certain sections of Rules 1024, Conduct of Accounts for Options Trading, and of 1025, Supervision of Accounts, to conform them more closely to comparable rules of the Chicago Board Options Exchange (“CBOE”) and to make minor clarifications and corrections to the text

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 7, 2017 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 amend certain sections of Rules 1024, Conduct of Accounts for Options Trading, and of 1025, Supervision of Accounts, to conform them more closely to comparable rules of the Chicago Board Options Exchange (“CBOE”) and to make minor clarifications and corrections to the text.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Rules 1024 and 1025 contain a range of regulatory requirements generally applicable to Phlx members and member organizations that conduct a public customer options business. The Exchange is proposing a number of changes to certain sections of those rules to clarify the language of those rules and to correct inaccuracies. The Exchange also proposes to change certain rule language to conform the rules more closely to CBOE rules dealing with the same subject matter, in order to more easily facilitate compliance by dual members and to prevent inadvertent misunderstandings of the rules' requirements that can arise from slight wording differences. These rule changes are generally intended to promote more effective regulatory compliance by Exchange members and member organizations. The proposed changes are detailed below.

Rule 1024(a)(i)

Rule 1024(a)(i) governs registration of Options Principals.³ The rule currently provides that no member or member organization or individual associated with a member

³ See Rule 612(d).

organization shall be approved to transact options business with the public until such persons, who are designated as Options Principals, have been approved by and registered with the Exchange. Additionally, it provides that persons engaged in the supervision of options sales practice or a person to whom the designated general partner or executive officer (pursuant to Rule 1025) or another Registered Options Principal⁴ delegates the authority to supervise options sales practices shall be designated as Options Principals. Finally, the rule states that all members and member organizations must use Web CRD to submit Form U4, Uniform Application for Securities Industry Registration or Transfer filings on behalf of their Options Principals. Members and member organizations are required under the rule to amend Form U4 filings not later than thirty (30) days after the filer knew or should have known of the facts which gave rise to the amendment.

The Exchange is proposing to amend Rule 1024(a)(i) by adopting language requiring Options Principals to electronically file a Uniform Application for Securities Industry Registration or Transfer (Form U4) with Web CRD, to successfully complete an examination prescribed by the Exchange and specified in Rule 1024 for the purpose of demonstrating an adequate knowledge of the options business and of the Rules of the Exchange, and to further agree in the U4 filing to abide by the Bylaws and Rules of the Exchange and the Rules of The Options Clearing Corporation. The Exchange is proposing to remove the sentence that requires members and member organizations to amend Form U4 filings not later than thirty (30) days after the filer knew or should have known of the facts which gave rise to the amendment. However, the Exchange proposes to add language requiring members and member organizations that are required to

⁴ Id.

complete Form U4 to promptly (but in any event no later than 30 days after the filer knew or should have known of the facts which gave rise to the need for the amendment) electronically file any required amendments to Form U4 with Web CRD. Additionally, new language is proposed that would require termination of employment or affiliation of any Registered Options Principal in such capacity to be promptly, but in any event no later than 30 days following the termination, electronically reported to Web CRD together with a brief statement of the reason for such termination on Form U5. The amendment would conform Rule 1024(a) more closely to CBOE Rule 9.2. The proposal would also correct a reference in the second sentence to “options sale practice,” substituting for that term “options sales practices”.

Rule 1024(b)(ii)

Rule 1024(b)(ii) generally provides that, in approving a customer's account for options transactions, a member or member organization shall exercise due diligence to learn the essential facts as to the customer and his investment objectives and financial situation, and shall make a record of such information. It also provides for approval and for confirmation of approval of the customer's account by a Registered Options Principal qualified individual.

For purposes of clarity, the Exchange proposes to eliminate references in Rule 1024(b)(ii) to a “specific” or “specified” Registered Options Principal. It also proposes to delete the words “qualified individual” as they appear following references to Registered Options Principals to eliminate any ambiguity, as it is not clear what a Registered Options Principal qualified individual means if not a Registered Options Principal. Finally, the Exchange proposes to relocate the phrase “within a reasonable

period of time” simply to conform the rule in this respect more closely to CBOE Rule 9.7.

Rule 1024(c)(v)

Rule 1024(c)(v) is proposed to be amended by changing an inaccurate internal cross reference, from Rule 1029(c) to Rule 1029(b).

Rule 1024 Commentary .01 Section 8

The Exchange is proposing to delete the word “other” as unnecessary and to correct the placement of a closing parenthesis, moving it from after the word “transactions” to after the word “commodities”.

Rule 1024 Commentary .03

The Exchange is proposing to add the inadvertently omitted word “an” before the word “opportunity”.

Rule 1024 Commentary .06

The Exchange is proposing to reword the sentence for clarity, so that it states that individuals engaged in the supervision of options sales practices are required to be designated as Options Principals and are required to qualify as an Options Principal by passing one of the examinations referred to in the rule. The Exchange also proposes to amend the rule’s reference to the Series 9/10 examination, in order to use the same name that the Financial Industry Regulatory Authority (“FINRA”) uses for that examination.

Rule 1024 Commentary .07

The Exchange proposes to add the inadvertently dropped word “reviewing” to a sentence that requires individuals who are delegated responsibility for reviewing, among

other things, the acceptance of discretionary accounts, to be designated as Options Principals and pass the Series 4 examination.

Rule 1025(a)(iii)A

The Exchange proposes to substitute the word “responsibility” for the word “responsibilities” simply to conform the rule more closely to CBOE Rule 9.8(a)(3)(i).

Rule 1025(b)(i)

The Exchange proposes to make minor, nonsubstantive, clarifying wording changes which would conform the rule language more closely to that of CBOE Rule 9.8(b)(1), by removing the unnecessary words “above-noted”, by replacing the words “requirements applicable to” with the words “responsibility of”, by deleting the unnecessary words “however, the”, and by replacing the words “other than the principal supervisory office if such documents and information” with the words “off premises so long as the records”.

Rule 1025(b)(iii)

The Exchange proposes to capitalize the word “Rule” in a reference to SEC rule 17a-4, to conform the language more closely to CBOE Rule 9.8(b)(3).

Rule 1025(b) concluding sentence

The words “any person” are proposed to be substituted for the words “a person”, and an inaccurate reference to “this paragraph (b)(3)” is proposed to be corrected to read “this paragraph (b)(iii)”.

Rule 1025(d)

An extraneous word “the” is proposed to be deleted before the word “proximity” to conform more closely to CBOE Rule 9.8(d)(1)(i), and an inaccurate reference to Rule 1025(c) is proposed to be corrected to read Rule 1025(e).

Rule 1025(e)

The Exchange proposes to remove an extraneous comma to conform the rule more closely to CBOE Rule 9.8(e)(1) and to change an incorrect internal cross reference from paragraph (e)(1) to paragraph (e)(i).

Rule 1025(g)

Currently, Rule 1025(g) requires each member organization that conducts a non-member customer business to submit each year to the Exchange a written report on the member organization's supervision and compliance effort during the preceding year. The Exchange proposes to expand the requirement to conform it more closely to CBOE Rule 9.8(g), by specifying that the report must also detail the adequacy of the member organization's ongoing compliance processes and procedures. The proposed amendments to Rule 1025(g) would also require the Chief Executive Officer (or equivalent) to certify that the member organization has in place processes to test the effectiveness of policies and procedures on a periodic, rather than on a regular, basis. This change would conform the Exchange's requirement more closely to the comparable CBOE Rule 9.8(g)5(i)(C) requirement. The proposal would also correct the spelling of the word “preceding” in Rule 1025(g)(ii), add missing semicolons to an itemized list found in Rule 1025(g)(iii), correct inaccurate internal cross references in Rules 1025(g)(v)(C) and (D), as well as correct the placement of a closing parenthesis in Rule

1025(g)(v)(C). Finally, it would replace the awkward phrase “this requirement of this Rule” with “the requirements of this Rule”.

Rule 1025(h)

Rule 1025(h) currently provides that each member organization shall submit the report required by Rule 1024(g) to its one or more control persons or, if the member organization has no control person, to the audit committee of its board of directors or its equivalent committee or group. The Exchange proposes to replace the inaccurate reference to Rule 1024(g) with a correct reference to Rule 1025(g). The Exchange proposes to add language to the end of the rule to establish the meaning of “control person,” proposed to be defined as a person who controls the member organization. The new language would define the term “control” as meaning the power to exercise a controlling influence over the management or policies of the member organization, unless such power is solely the result of an official position with the member organization. Finally, the new language would state that any person who owns beneficially, directly or indirectly, more than 20% of the voting power in the election of directors of the member organization, or more than 25% of the voting power in the election of directors of any other corporation which directly or through one or more affiliates owns beneficially more than 25% of the voting power in the election of directors of the member organization, shall be presumed to control the member organization. The proposed new language is based on CBOE Rules 9.8(h) and 1.1(k), which is incorporated by reference into CBOE Rule 9.8(h).

Rule 1025 Commentary .02 and .03

Rule 1025 Commentary .02 is proposed to be amended by deleting the introductory phrase “In meeting their supervisory responsibilities” in order to conform the language more closely to CBOE Rule 9.8, Interpretations and Policies .01. The rule currently requires member organizations conducting a non-member customer business to enforce written procedures governing the conduct of options accounts. As revised, the written procedures would be required to detail the specific methods used to supervise all non-member customer accounts and all orders in such accounts. This amendment would also provide greater clarity regarding the required content of the procedures and also would conform the rule more closely to CBOE Rule 9.8 Interpretations and Policies .01. The last sentence of Commentary .02 would be revised by replacing the phrase “short uncovered” options positions with the phrase “uncovered short” options positions. Finally, the Exchange proposes to amend Rule 1025 Commentary .03 by adding the word “shall” to the first sentence, to conform the language more closely to CBOE Rule 9.8, Interpretations and Policies .02.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶ 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. The

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

amendments should remove impediments to and perfect the mechanism of a free and open market and a national market system, by correcting various aspects of the rules and by adding additional clarity to the rules. The minor corrections and clarifications described above should improve the accuracy of the rules and should also improve their readability, making them more understandable and thereby facilitating easier compliance.

Additionally, where certain sections of the Phlx rules are proposed to be amended to conform more closely to comparable rules of the CBOE, the proposed rule change should create greater regulatory parity among the two options exchanges regarding members' obligations in the areas of conduct of accounts for options trading and supervision of accounts. The proposed amendments should create more efficient regulatory compliance by members of both exchanges due to reduction of differences in wording and consequent potential for inadvertent regulatory noncompliance. In this regard, the Exchange believes it is in the public interest for a more consistently worded regulatory policy and standard regarding conduct of accounts for options trading and supervision of accounts to be in effect across options exchanges, for the benefit of customers.

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. As stated above the proposal is designed to correct various aspects of the rules and to add additional clarity to various sections of the rules, which are equally applicable to all similarly situated members and member organizations. Certain aspects of the proposed rule change to amend various sections of Rules 1024 and 1025 are also designed to conform to Phlx rules more closely to comparable rules of CBOE, thus

eliminating a potential source of regulatory arbitrage and facilitating compliance by dual members.

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>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2017-55 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-2017-55. 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>).

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-2017-55 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.⁷

Eduardo A. Aleman
Assistant Secretary

⁷ 17 CFR 200.30-3(a)(12).

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