

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65644; File No. SR-Phlx-2011-123)

October 27, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Relating to the Quarterly Trading Requirements Applicable to Registered Options Traders

I. Introduction

On August 24, 2011, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“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 change the quarterly trading requirements applicable to Registered Options Traders (“ROTs”). The proposed rule change was published for comment in the Federal Register on September 9, 2011.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to modify the quarterly trading requirements applicable to ROTs. ROTs can be either Streaming Quote Traders (“SQTs”), Remote SQTs (“RSQTs”) or non-SQT ROTs. The quarterly trading requirements apply to two types of ROTs: SQTs and non-SQT ROTs.

Currently, Phlx Rule 1014 contains two quarterly trading requirements – in person and in assigned. First, Commentary .01 requires that in order for an ROT (other than an RSQT or a Remote Specialist) to receive specialist margin treatment for off-floor orders in any calendar

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 65257 (September 2, 2011), 76 FR 55996 .

quarter, the ROT must execute the greater of 1,000 contracts or 80% of his total contracts that quarter in person (not through the use of orders) and 75% of his total contracts that quarter in assigned options.

Second, the “in assigned” quarterly trading requirement in current Commentary .03 requires that, except for unusual circumstances, at least 50% of the trading activity in any quarter (measured in terms of contract volume) of an ROT (other than an RSQT) shall ordinarily be in classes of options to which he is assigned. Temporarily undertaking the obligations of paragraph (c) of Phlx Rule 1014 at the request of a member of the Exchange in non-assigned classes of options shall not be deemed trading in non-assigned option contracts.

The Exchange proposes to amend Commentary .01 to adopt a new quarterly requirement such that an ROT (other than an RSQT or a Remote Specialist) would be required to trade 1,000 contracts and 300 transactions on the Exchange each quarter. Transactions executed in the trading crowd where the contra-side is an ROT would not be included. The Exchange proposes that this requirement would be a pure trading requirement, not limited to assigned options and in person trading. Accordingly, the new trading requirement could be fulfilled with trades and contracts that are not in assigned options and not executed in person.

In addition, the Exchange proposes to amend the in person trading requirement in Commentary .01 in two ways. First, the Exchange proposes to exclude transactions executed in the trading crowd where the contra-side is an ROT from the existing in person trading requirement. Second, the Exchange proposes to permit non-SQT ROTs to use orders entered in person to meet the in person trading requirement. The Exchange represents that the only other way to participate in trades other than through the use of orders is by quoting; while SQTs quote electronically by “streaming” quotations into the Exchange, non-SQT ROTs may only quote

verbally in response to floor brokers representing orders in the trading crowd. The Exchange believes that the limitation on the use of orders with respect to non-SQT ROTs is obsolete, as, over time, following the movement toward a more electronic trading platform in options, it has become difficult for such ROTs to comply with the trading requirement without using orders. The Exchange represents that non-SQT ROTs can only comply with the in person quarterly trading requirement by participating in crowd trades, which they cannot control, in terms of frequency.

The Exchange believes that the proposed new trading requirement coupled with the proposed changes to the existing “in person” trading requirement should encourage a more regular presence and thus result in more active market making. In addition, Phlx states that excluding transactions where the contra-side is another ROT should encourage more regular and active market making.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁵ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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.

⁴ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

The Commission believes that the proposed changes to the trading requirements applicable to ROTs should encourage more active market making and thereby promote the provision of liquidity to the market. In particular, by excluding in crowd ROT-to-ROT transactions from the quarterly trading requirements applicable to a ROT, the proposal should help to encourage the regular posting of liquidity. The Commission believes that these proposed changes to the quarterly trading requirements should enhance the market making function performed by ROTs and thereby serve to maintain fair and orderly markets and generally promote the protection of investors and the public interest.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-Phlx-2011-123) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Kevin M. O'Neill
Deputy Secretary

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).