

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66023; File No. SR-Phlx-2011-118)

December 21, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving Proposed Rule Change Relating to Transfer of Positions Off the Floor

I. Introduction

On October 20, 2011, NASDAQ OMX PHLX LLC (“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 codify current Exchange policy with respect to the transfer of option positions between accounts, individuals, or entities off the floor. The proposed rule change was published in the Federal Register on November 8, 2011.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of Proposal

The Exchange proposes to adopt new Exchange Rule 1058, Transfer of Positions. The proposed rule would govern the process when an Exchange member or member organization transfers positions off the floor in any class of options listed on its books. The proposed rule would allow transfers in one or more of the following events: (1) the dissolution of a joint account in which the remaining member or member organization assumes the positions of the joint account; (2) the dissolution of a corporation or partnership in which a former nominee of that corporation or partnership assumes the positions; (3) positions transferred as part of a member or member organization’s capital contribution to a new joint account, partnership, or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 65666 (November 2, 2011), 76 FR 69314.

corporation; (4) the donation of positions to a not-for-profit corporation; (5) the transfer of positions to a minor under the Uniform Gifts to Minors Act; (6) a merger or acquisition resulting in a continuity of ownership or management; or (7) consolidation of accounts within a member or member organization.

The proposed rule would further require members and member organizations to notify the Exchange in writing prior to effecting an off the floor transfer. This written notification must indicate the positions to be transferred and the reason for the transfer. Finally, the proposed rule would require all positions to be transferred at the same prices that appear on the books of the transferring member or member organization, so that the positions would retain the same cost basis. The transfer must indicate the original trading date, cannot net the transferred position against another position (for example, a long position that would net against an existing offsetting short position could not be transferred), and each member or member organization that is a party to the transfer must make and retain records related to the nature of the transaction, the name of the counter-party, and any other information required by the Exchange.

III. Commission Findings and Discussion

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

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.⁶

The Exchange's proposal would govern when and how an Exchange member or member organization could transfer option positions off the floor. The Commission believes that the proposal would clarify to an Exchange member or member organization the process required to transfer these positions, and the specific instances in which such a transfer is permitted. The Commission also notes that the proposed rule is substantially similar to the rules of other options exchanges.⁷ Accordingly, the Commission finds that the proposal would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market, and is consistent with the requirements of the Act.⁸

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ See, e.g., Chicago Board Options Exchange, Incorporated Rule 6.49A and NYSE Arca, Inc. Rule 6.78.

⁸ The Commission notes, however, that this order does not approve any prior transfer of option positions off the floor that may have been inconsistent with the approved rules of the Exchange then in effect.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-Phlx-2011-118) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Kevin M. O'Neill
Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).