otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund (or its respective Master Fund) by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund (or its respective Master Fund), in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund (or its respective Master Fund)) will cause a Fund (or its respective Master Fund) to purchase a security in an Affiliated Underwriting.

7. The Board of the Fund (or its respective Master Fund), including a majority of the independent Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund (or its respective Master Fund) in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund (or its respective Master Fund); (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund (or its respective Master Fund) in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund (or its respective Master Fund) will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), a Fund of Funds will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund (or its respective Master Fund) in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund (or its respective Master Fund) will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that (i) the Fund (or its respective Master Fund) acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund (or its respective Master Fund) to acquire securities of one or more investment companies for short-term cash management purposes, (ii) the Fund acquires securities of the Master Fund pursuant to the Master-Feeder Relief, or (iii) the Fund invests in a Wholly-Owned Subsidiary that is a wholly-owned and controlled subsidiary of the Fund (or its respective Master Fund) as described in the application. Further, no Wholly-Owned Subsidiary will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act other than money market funds that comply with rule 2a–7 for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–76902; File No. SR–Phlx–2016–01]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Phlx Rules 792, 794, 797, and 798

January 14, 2016.

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 January 4, 2016, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Substance of the Proposed Rule Change**

The Exchange proposes to delete Rules 792, 794, 797, and 798 from the Phlx rules.

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 this proposed rule change is to delete Rules 792, 794, 797, and 798, which generally concern member organization governance and ownership. As discussed below, the Exchange has determined that these rules are anachronistic and no longer serve a purpose. Consequently, the Exchange is proposing to eliminate the rules from the rulebook to avoid any confusion that may be caused by retaining them.

Rule 792

Rule 792 concerns control of the voting stock of a member organization. The rule requires the officers and directors of a member organization that is a corporation to have working control of such member organization. To comply with the rule, such officers and directors must own at least fifty-five per cent (55%) of the voting stock, and shall have contributed at least thirty per cent (30%) of the total capital represented by all classes of stock. The rule allows the Exchange to waive these requirements in specific cases, when it appears that a majority of the officers and a majority of the directors are actively engaged in the conduct of the business of such member organization. As such, the rule is designed to ensure the management of a member organization has more than a simple majority vote and a significant investment in the firm.

The Exchange believes that the rule is no longer relevant. The rule was adopted at a time when the Exchange was owned by its members, and member organizations (then known as ''member corporations'') were small and privately held. Many of the Exchange's current member organizations are large firms, which are publicly held and have a significant number of issued shares. As a consequence, it is unreasonable to require the management of the member organization to hold at least 55% of the voting stock and to contribute at least 30% of the member organization's total capital. Moreover, the Exchange notes that Phlx's affiliate exchanges NASDAQ OMX BX (''BX'') and The Nasdaq Stock Market (''Nasdaq'') do not have such restrictive ownership requirements. Accordingly, the Exchange does not believe the rule serves a regulatory purpose and it is accordingly proposing to delete the rule.

Rule 794

Rule 794 concerns notice of the assignment of the voting stock of a member organization. Specifically, the rule requires that no holder of ten per cent (10%) or more of the common or voting stock in a member organization that is a corporation may sell, assign, transfer, pledge, or hypothecate their holdings of common or voting stock in such member organization, except to such member organization or to officers or directors thereof, without written notice to the Exchange. The rule allows the Exchange to keep apprised of the significant holders of the member organization's voting stock. Such holders would exercise significant control of the member organizations.

Similar to Rule 792 discussed above, the Exchange believes that the rule is no longer relevant. The rule was adopted at a time when the Exchange was owned by its members, and member organizations were small and privately held. As noted, many of the Exchange's member organizations now are large firms, which are publicly held and have a significant number of issued shares. As a consequence, it is unreasonable to require notice of the sale, assignment, transfer, pledge, or hypothecation of 10% or more of the holdings of common or voting stock of the member organization. Moreover, to the extent a member organization is publicly held, the Exchange may readily access the largest holders of member organization's stock. To the extent the member organization is privately held, the Exchange may request a list of shareholders from the member organization. The ownership of a member organization is not a regulatory issue, but rather it was an issue to the Exchange when the requirement was adopted because it was member-owned. As such, influence of a member organization translated to influence of the Exchange. The Exchange is now a wholly-owned subsidiary of a publicly-traded company; therefore, member organization influence as owners of the Exchange is no longer an issue.[3] The Exchange notes that neither BX nor Nasdaq have a similar requirement. As a consequence, the Exchange does not believe the rule serves a regulatory purpose and it is accordingly proposing to delete the rule.

Rule 797

Rule 797 concerns loans to officers and directors of member organizations. Specifically, the rule prohibits a member organization from making any loan to any officer or director of the member organization. The Exchange believes that the rule is outdated and a remnant from when the Exchange was a member-owned organization. The Exchange notes that neither BX nor Nasdaq has a similar prohibition. Moreover, the Exchange notes that corporate law is generally a function of state law, which in most cases allows loans to officers and directors.[4] Thus, the Exchange does not believe the rule serves a regulatory purpose and it is accordingly proposing to delete the rule.

Rule 798

Rule 798 discusses what is required of a corporation to be issued a permit by the Exchange. A permit provides the right to a member to trade on the Exchange and the right to vote for a Member Representative Director. Permits are established by the Board of Directors. A corporation may be issued a permit by the Exchange if the corporation is incorporated under the laws of the Commonwealth of Pennsylvania, and all of its shares are owned by the Exchange. The rule further provides that such a corporate member whose shares are owned by the Exchange is not liable for dues. This

[3] The Exchange is wholly-owned by Nasdaq, Inc.

[4] *See, e.g.,* DEL. CODE ANN. tit. 8, § 143 (2015).

rule was intended to permit Exchange membership for the Exchange's subsidiary, the Stock Clearing Corporation of Philadelphia (''SCCP'').[5] The Exchange has since wound down SCCP and made it inactive. Thus, the Exchange is deleting the rule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 Exchange believes the proposed changes are consistent with just and equitable principles of trade because they delete outdated and potentially confusing rules. Each of the rules that the Exchange proposes to delete is anachronistic and does not have application to the Exchange's current function as a for-profit exchange whereby members no longer own the Exchange,[8] but rather are granted permits to trade thereon. Thus, the governance and ownership requirements of Rules 792, 794 and 797, which generally restrict member organizations from taking corporate actions that they would otherwise be able to do, are no longer relevant. Eliminating Rule 798 is consistent with just and equitable principles of trade because the Exchange no longer operates SCCP, which was the sole reason for the rule's adoption. Thus, removing it from the rules promotes clarity and eliminates potential confusion caused by allowing it to remain.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather it is designed to promote competition among exchanges by removing archaic and overly restrictive rules in comparison to the rules of other exchanges. Thus, the Exchange is able to compete without the needless restrictions currently imposed by the deleted rules. Last, the proposed changes promote clarity in the application of the Exchange's rules by eliminating unneeded rules.

*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 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

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 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 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 email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–01 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–2016–01. 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 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–2016–01 and should be submitted on or before February 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Robert W. Errett,**

*Deputy Secretary.*

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[5] *See* Securities Exchange Act Release No. 57134 (January 11, 2008), 73 FR 3306 (January 17, 2008) (SR–Phlx–2005–68) at note 6 (establishing the purpose of the requirement).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* note 3 above.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[11] 17 CFR 200.30–3(a)(12).