

Required fields are shown with yellow backgrounds and asterisks.

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|---|--|--|--|---|--|--|--|
| Page 1 of * 30  |  | SECURITIES AND EXCHANGE COMMISSION<br>WASHINGTON, D.C. 20549<br>Form 19b-4   |  | File No.* SR - 2016 - * 48  |  | Amendment No. (req. for Amendments *)  |  |
| Filing by NASDAQ PHLX LLC<br>Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934   |  |  |  |   |  |  |  |
| Initial * <input checked="" type="checkbox"/>   |  | Amendment * <input type="checkbox"/>   |  | Withdrawal <input type="checkbox"/>   |  | Section 19(b)(2) * <input type="checkbox"/>  |  |
|   |  |  |  |   |  | Section 19(b)(3)(A) * <input checked="" type="checkbox"/>                            |  |
|   |  |  |  |   |  | Section 19(b)(3)(B) * <input type="checkbox"/>                                       |  |
|   |  |  |  |   |  | Rule   |  |
| Pilot <input type="checkbox"/>  |  | Extension of Time Period<br>for Commission Action * <input type="checkbox"/> |  | Date Expires * <input type="text"/>   |  | <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4)            |  |
|   |  |  |  |   |  | <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5)            |  |
|   |  |  |  |   |  | <input type="checkbox"/> 19b-4(f)(3) <input checked="" type="checkbox"/> 19b-4(f)(6) |  |
| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010   |  |  |  | Security-Based Swap Submission pursuant<br>to the Securities Exchange Act of 1934 |  |  |  |
| Section 806(e)(1) * <input type="checkbox"/>  |  | Section 806(e)(2) * <input type="checkbox"/>                                 |  | Section 3C(b)(2) * <input type="checkbox"/>                                       |  |  |  |
| Exhibit 2 Sent As Paper Document <input type="checkbox"/>   |  | Exhibit 3 Sent As Paper Document <input type="checkbox"/>                    |  |   |  |  |  |
| <b>Description</b>  |  |  |  |   |  |  |  |
| Provide a brief description of the action (limit 250 characters, required when Initial is checked *).   |  |  |  |   |  |  |  |
| <input type="text" value="A proposal to amend Rule 606 (Communications and Equipment)."/>   |  |  |  |   |  |  |  |
| <b>Contact Information</b>  |  |  |  |   |  |  |  |
| Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.          |  |  |  |   |  |  |  |
| First Name * <input type="text" value="Jurij"/>   |  | Last Name * <input type="text" value="Trypupenko"/>                          |  |   |  |  |  |
| Title * <input type="text" value="Associate General Counsel"/>  |  |  |  |   |  |  |  |
| E-mail * <input type="text" value="jurij.trypupenko@nasdaq.com"/>   |  |  |  |   |  |  |  |
| Telephone * <input type="text" value="(301) 978-8132"/>   |  | Fax <input type="text" value="(301) 978-8472"/>                              |  |   |  |  |  |
| <b>Signature</b>  |  |  |  |   |  |  |  |
| Pursuant to the requirements of the Securities Exchange Act of 1934,  |  |  |  |   |  |  |  |
| has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.  |  |  |  |   |  |  |  |
| (Title *)   |  |  |  |   |  |  |  |
| Date <input type="text" value="04/07/2016"/>  |  | <input type="text" value="Executive Vice President and General Counsel"/>    |  |   |  |  |  |
| By <input type="text" value="Edward S. Knight"/>  |  | <input type="text" value="edward.knight@nasdaq.com"/>                        |  |   |  |  |  |
| (Name *)  |  |  |  |   |  |  |  |
| NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed. |  |  |  |   |  |  |  |

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> NASDAQ PHLX LLC (“Phlx” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposal to amend Rule 606 (Communications and Equipment). The proposed amendment is described further below.<sup>3</sup>

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of applicable portion of the Exchange’s rules is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (“Board”) on July 1, 2015. No other action by the Exchange is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to

Jurij Trypupenko  
Associate General Counsel  
Nasdaq, Inc.  
(301) 978-8132.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> References to rules are, unless otherwise stated, to the rules of the Exchange.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The Exchange proposes to amend Rule 606 to: (1) Add language that would allow the Exchange to limit the use of a communication device under certain circumstances; (2) Clarify the process for changing registration of user, and delete obsolete language regarding wattage and add language regarding web-based and open microphone (“open mic”)<sup>4</sup> communication applications; (3) Clarify language regarding call forwarding and open mic; (4) Delete obsolete language regarding stock execution clerks and in-house phone use; and (5) Add language regarding records.

Rule 606, which applies to the use of electronic communication devices on the options floor of the Exchange (“Options Floor”), has been around for more than fifty years,<sup>5</sup> at which time Exchange options trading was strictly on-floor open outcry through specialists. Exchange options trading has, since that time, developed into a robust hybrid

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<sup>4</sup> Open mic allows listeners other than the intended party on the other end of a line (e.g., telephone) to listen to the conversation.

<sup>5</sup> Since the inception of Rule 606 in 1964, the rule was amended about ten times, with the last substantive amendment in 2002. See Securities Exchange Act Release No. 49098 (February 13, 2002), 67 FR 8053 (February 21, 2002) (SR-Phlx-2001-109) (notice of filing and immediate effectiveness regarding tethered communication devices). See also Securities Exchange Act Release Nos. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73) (approval order); 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR-Phlx-2006-43) (approval order); 59924 (May 14, 2009), 74 FR 23759 (May 20, 2009) (Phlx-2009-23) (approval order); and 64338 (April 25, 2011), 76 FR 24069 (April 29, 2011) (SR-Phlx-2011-13) (approval order) (these last four proposals made non-substantive technical or conforming changes to Rule 606).

system that is currently largely electronic and off-floor<sup>6</sup> but continues to have an on-floor specialist<sup>7</sup> and an open outcry trading floor. The Exchange is now updating and modernizing Rule 606 as discussed below.<sup>8</sup>

First, currently Rule 606 states in section (d) that the Exchange may remove any telephonic, electronic, or wireless equipment that violates subsection (b)(2) from any Exchange facility.<sup>9</sup> The Exchange proposes language in section (d) of Rule 606 to indicate when the Exchange may deny, limit, or revoke the use of any communication device under certain circumstances.

Specifically, the Exchange proposes language in section (d) to state that the Exchange may deny, limit, or revoke the use of any communication device: whenever it determines that use of such communication device: (1) interferes with normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties; (2) is inconsistent with the public interest, the protection of investors or just and equitable principles of trade; or (3) interferes with the obligations of a member or member

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<sup>6</sup> Electronic traders include market makers that are SQTs, RSQTs, and off-floor specialists ("Remote Specialists"). See Rules 1014(b)(ii)(A), 1014(b)(ii)(B), and 1020.

<sup>7</sup> Unlike specialists, Remote Specialists do not have a physical presence on the floor of the Exchange. Rule 1020.

<sup>8</sup> While the vast majority of options-related rules are found in Rule 1000 and higher (with option index rules found in Rule 1000A and higher), some of the older options-related rules are, as discussed, numbered below 1000.

<sup>9</sup> Section (b)(2) of Rule 606 states: (2) No member, member organization or person associated with a member organization shall: (i) establish or maintain any telephonic, electronic or wireless transmitting system or device, including related antennas, on the Options Floor or (ii) operate any other equipment on the Options Floor that creates radio frequency (RF) or other interference with the systems of the Exchange or other members.

organization to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules. This gives the Exchange the opportunity to limit the use of a communication device that interferes or is inconsistent with three specified crucial areas as proposed in the rule. The proposed section (d) provision is similar in relevant part to a provision in the communication rule of another options Exchange, Chicago Board Options Exchange (“CBOE”),<sup>10</sup> and is similar to certain provisions of other Exchange rules.<sup>11</sup>

Second, Rule 606 currently states in Section (e)(1) regarding registration that members and member organizations must register, prior to use, any new telephone to be used on the Options Floor. Each phone registered with the Exchange must be registered by category of user; and if there is a change in the category of any user, the phone must

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<sup>10</sup> Proposed Rule 606(d)(1) states: The Exchange may deny, limit or revoke the use of any communication device whenever it determines that use of such communication device: (1) interferes with normal operation of the Exchange’s own systems or facilities or with the Exchange’s regulatory duties, (2) is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or (3) interferes with the obligations of a member or member organization to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules. CBOE Rule 6.23(b) states: The Exchange may deny, limit or revoke the use of any communication device whenever it determines that use of such communication device: (1) interferes with the normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties, (2) is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or (3) interferes with the obligations of a Trading Permit Holder to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules.

<sup>11</sup> See, e.g., Rule 1005 and Rule 1006 (provisions regarding advisable in the public interest or for the protection of investors).

be re-registered with the Exchange.<sup>12</sup> The Exchange now proposes to update the process for changing registration of user. Specifically, the Exchange proposes to change the requirement in Section (e)(1) that the phone must be re-registered with the requirement that the member or member organization must immediately inform the Exchange in writing on the same day as when the change occurs.

The Exchange believes that the proposed updated procedure is better because while the rule currently does not indicate a timeline when a phone must be re-registered, the proposed rule change requires written notification to the Exchange on the same day as when the change occurs.

Rule 606 currently states in Section (e)(2) regarding capacity and functionality that no wireless telephone used on the Options Floor may have an output greater than one watt. No person on the Options Floor may use any device for the purpose of maintaining an open line of continuous communication whereby a person not located in the trading crowd may continuously monitor the activities in the trading crowd. This prohibition covers intercoms, walkie-talkies, and any similar devices. Speed-dialing features are permitted on any member telephone.

The Exchange is now proposing to delete obsolete language regarding wattage and to add new language regarding web-based and open mic communication applications.<sup>13</sup> Specifically, the Exchange is proposing to delete language in in Section (e)(2) that no wireless telephone used on the Options Floor may have an output greater

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<sup>12</sup> Such users can be, for example, floor broker, specialist, or registered options trader. The users that have originally registered and still remain on the Exchange floor have not changed their category of user.

<sup>13</sup> These can be, for example, instant messaging, chat, or Skype.

than one watt. While the power limitation may have made sense when wireless was just initiated as a new technology on the Options Floor,<sup>14</sup> this wattage limitation provision is obsolete and no longer needed. In light of the current development of technology, the one watt power limitation provision is no longer needed to minimize the possibility of radio frequency or other interference with the systems of the Exchange of those of other members.

Rule 606 currently states in Section (e)(2) no person on the Options Floor may use any device for the purpose of maintaining an open line of continuous communication whereby a person not located in the trading crowd may continuously monitor the activities in the trading crowd; and that this prohibition covers intercoms, walkie-talkies, and any similar devices.<sup>15</sup> Because of the advancement of technology and proliferation of the web, the Exchange is proposing in Section (e)(2) to also add web-based, as well as open mic, communication applications.

Third, Rule 606 currently states in Section (e)(4) regarding brokers that work on the Options Floor (“Floor Brokers”)<sup>16</sup> may use cellular and cordless telephones, but only to communicate with persons located on the Options Floor. These telephones may not

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<sup>14</sup> See Securities Exchange Act Release No. 43972 (February 15, 2001), 66 FR 12579 (February 27, 2001) (SR-Phlx-00-48) (approval order). The order notes that the purpose of the one watt power limitation was to minimize the possibility of radio frequency or other interference with the systems of the Exchange of those of other members.

<sup>15</sup> For clarity, the Exchange is proposing to state that the prohibition in Section (e)(2) covers, “but is not limited to,” the noted devices.

<sup>16</sup> A “Floor Broker” is defined in Rule 1060 as “[a]n individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders.”

include a call forwarding feature.<sup>17</sup> Because of the availability of call forwarding and open mic on virtually all wireless phones, the Exchange is proposing to update this provision. Specifically, the Exchange is proposing in Section (e)(4) to state that telephones used by Floor Brokers may not use a call forwarding or open mic feature on the Options Floor; and that if a call forwarding or open mic feature is available on the phone then such feature must be disengaged at all times when the phone is on the Options Floor.

Fourth, Rule 606 currently discusses in Section (e)(5) phone use by stock execution clerks; and in Section (e)(6) the use of general access in-house phones. Stock execution clerks and general access in-house phones no longer exist and these terms are obsolete. Therefore, the Exchange specifically proposes to delete reference to these obsolete terms from Sections (e)(5) and (e)(6).

Fifth, Rule 606 currently discusses in Section (e)(7) that members must maintain their cellular or cordless telephone records, including logs of calls placed, for a period of not less than one year. The Exchange reserves the right to inspect and/or examine such telephone records. The Exchange proposes to modernize this requirement.

Specifically, the Exchange proposes in Section (e)(7) to state that members must maintain their logs of calls and chats, including cellular or cordless telephone records and logs of calls placed, for a period of not less than three years, the first two years in an easily accessible place. The Exchange believes that this proposed change will help with the Exchange's surveillance function. The proposed section (e)(7) provision is similar in

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<sup>17</sup> Headsets are permitted for Floor Brokers, but if the Exchange determines that a Floor Broker is maintaining a continuous open line through the use of a headset, the Floor Broker will be prohibited from future use of any headset for a length of time to be determined by the Exchange. Rule 606(e)(4)(a).

relevant part to a provision in the communication rule of another options exchange, CBOE,<sup>18</sup> and to other Exchange record-keeping rules.<sup>19</sup>

Finally, in terms of housekeeping changes in Rule 606(e)(4)(b) the Exchange is proposing to substitute the word “orders” for “others” so that the section reads properly.

The Exchange believes that the proposed changes to Rules 606 will make it clearer and better.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>20</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>21</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by proposing to make several changes in Rule 606.

The Exchange believes that the rule change will promote just and equitable principles of trade by making the rules clearer and easier to use. The Exchange is proposing in Rule 606(d) to add language that would allow the Exchange to limit the use

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<sup>18</sup> Proposed Rule 606(e)(7) states: Members must maintain logs of calls and chats, including their cellular or cordless telephone records and logs of calls placed, for a period of not less than three years, the first two years in an easily accessible place. The Exchange reserves the right to inspect and/or examine such telephone records. CBOE Rule 6.23(g) states: Trading Permit Holders must maintain records of the use of communication devices, including, but not limited to, logs of calls placed; emails; and chats, for a period of not less than three years, the first two years in an easily accessible place. The Exchange reserves the right to inspect such records pursuant to CBOE Rule 17.2.

<sup>19</sup> See Rule 616 (electronic filing requirements for uniform forms) and Rule 605 (advertisements, market letters, research reports and sales literature). See also Rule 1049 (communications to customers).

<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

of a communication device when such device interferes with normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties, is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or interferes with the obligations of a member or member organization to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules. The proposed section (d) provision is, as discussed, practically verbatim like a provision in the communication rule of another options Exchange, CBOE.

The Exchange is proposing in Rule 606(e)(2) to delete language regarding wattage that is obsolete and no longer needed.

The Exchange is also proposing in Rule 606(e)(5) to delete obsolete language regarding stock execution clerks and in-house phone use, as these are not present on the Options Floor. The Exchange believes that the rule change will serve to protect investors and the public by making the rule tighter and better for surveillance regarding communication devices.

The Exchange is proposing language in Rule 606(e)(1) to clarify the process for changing registration of user so that, instead of having to re-register when user status changes, the member or member organization must immediately inform the Exchange in writing on the same day as when the change occurs.

The Exchange is proposing in Rule 606(e)(2) to add language regarding web-based and open mic communication applications because of the considerable advancement of technology and proliferation of the web and the absence of such language in the rule.

The Exchange is proposing in Rule 606(e)(4) to state, instead of telephones may not include a call forwarding feature, that Floor Brokers may not use a call forwarding or open mic feature on the Options Floor and that the call forwarding or open mic feature must be disengaged at all times when the phone is on the Options Floor.

The Exchange is also proposing in Rule 606(e)(7) to modernize the records retention requirement for telephone records so that, similar in relevant part to the requirement of another exchange, CBOE, and to other Exchange rules, and also to help with the Exchange's surveillance function, members must maintain logs of calls and chats for a period of not less than three years, the first two years in an easily accessible place.

The Exchange believes that the proposed changes to Rules 606 will make it clearer and better and therefore beneficial to market participants. The Exchange believes also that the changes proposed to Rule 606 will protect investors and the public interest. As the Exchange has noted, the changes remove references to obsolete and unused concepts that are no longer needed, strengthen features and add features of the rule to make it more current, and strengthen the record retention requirements. Such proposed changes are in the public interest, and continue to serve to protect investors.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. While the Exchange does not believe that the proposed non-controversial change is a burden on competition, or is competitive in nature, the Exchange believes that clearer, updated rules that do not refer to obsolete language and are in line with other rule concepts are always beneficial to market participants.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>22</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>23</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange believes the rule change qualifies for immediate effectiveness as a “non-controversial” rule change under Rule 19b-4(f)(6) of the Act.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If

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<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 C.F.R. 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Exchange has satisfied this requirement.

the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

The Exchange believes that the proposed non-controversial change does not significantly impact the protection of investors or the public interest. Rather, the proposed change includes getting rid of references to obsolete and unused concepts that are no longer needed and modifications to tighten up and modernize the rule to make it better and easier to use with current technology.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests the Commission to waive the noted operative delay so that the Exchange may, as soon as possible, make changes to Rule 606 and thereby make it clearer and easier to use, which is beneficial to market participants. The Exchange believes that good reason exists for the Commission to waive the operative effectiveness delay, and that such waiver would be consistent with the protection of investors and in the public interest.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Certain proposed Rule 606(d) and (e) provisions are, as discussed, similar in relevant part to the provisions of CBOE Rule 6.23(b) and (g).

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2016-48)

April \_\_, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Rule 606

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 7, 2016, NASDAQ PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“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 is filing with the Commission a proposal to amend Rule 606 (Communications and Equipment). The proposed amendment is described further below.<sup>3</sup>

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqomxphlx.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 C.F.R. 240.19b-4.

<sup>3</sup> References to rules are, unless otherwise stated, to the rules of the Exchange.

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 proposes to amend Rule 606 to: (1) Add language that would allow the Exchange to limit the use of a communication device under certain circumstances; (2) Clarify the process for changing registration of user, and delete obsolete language regarding wattage and add language regarding web-based and open microphone (“open mic”)<sup>4</sup> communication applications; (3) Clarify language regarding call forwarding and open mic; (4) Delete obsolete language regarding stock execution clerks and in-house phone use; and (5) Add language regarding records.

Rule 606, which applies to the use of electronic communication devices on the options floor of the Exchange (“Options Floor”), has been around for more than fifty years,<sup>5</sup> at which time Exchange options trading was strictly on-floor open outcry through

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<sup>4</sup> Open mic allows listeners other than the intended party on the other end of a line (e.g., telephone) to listen to the conversation.

<sup>5</sup> Since the inception of Rule 606 in 1964, the rule was amended about ten times, with the last substantive amendment in 2002. See Securities Exchange Act Release No. 49098 (February 13, 2002), 67 FR 8053 (February 21, 2002) (SR-Phlx-2001-109) (notice of filing and immediate effectiveness regarding tethered communication devices). See also Securities Exchange Act Release Nos. 49098

specialists. Exchange options trading has, since that time, developed into a robust hybrid system that is currently largely electronic and off-floor<sup>6</sup> but continues to have an on-floor specialist<sup>7</sup> and an open outcry trading floor. The Exchange is now updating and modernizing Rule 606 as discussed below.<sup>8</sup>

First, currently Rule 606 states in section (d) that the Exchange may remove any telephonic, electronic, or wireless equipment that violates subsection (b)(2) from any Exchange facility.<sup>9</sup> The Exchange proposes language in section (d) of Rule 606 to indicate when the Exchange may deny, limit, or revoke the use of any communication device under certain circumstances.

Specifically, the Exchange proposes language in section (d) to state that the Exchange may deny, limit, or revoke the use of any communication device: whenever it

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(January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73) (approval order); 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR-Phlx-2006-43) (approval order); 59924 (May 14, 2009), 74 FR 23759 (May 20, 2009) (Phlx-2009-23) (approval order); and 64338 (April 25, 2011), 76 FR 24069 (April 29, 2011) (SR-Phlx-2011-13) (approval order) (these last four proposals made non-substantive technical or conforming changes to Rule 606).

<sup>6</sup> Electronic traders include market makers that are SQTs, RSQTs, and off-floor specialists (“Remote Specialists”). See Rules 1014(b)(ii)(A), 1014(b)(ii)(B), and 1020.

<sup>7</sup> Unlike specialists, Remote Specialists do not have a physical presence on the floor of the Exchange. Rule 1020.

<sup>8</sup> While the vast majority of options-related rules are found in Rule 1000 and higher (with option index rules found in Rule 1000A and higher), some of the older options-related rules are, as discussed, numbered below 1000.

<sup>9</sup> Section (b)(2) of Rule 606 states: (2) No member, member organization or person associated with a member organization shall: (i) establish or maintain any telephonic, electronic or wireless transmitting system or device, including related antennas, on the Options Floor or (ii) operate any other equipment on the Options Floor that creates radio frequency (RF) or other interference with the systems of the Exchange or other members.

determines that use of such communication device: (1) interferes with normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties; (2) is inconsistent with the public interest, the protection of investors or just and equitable principles of trade; or (3) interferes with the obligations of a member or member organization to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules. This gives the Exchange the opportunity to limit the use of a communication device that interferes or is inconsistent with three specified crucial areas as proposed in the rule. The proposed section (d) provision is similar in relevant part to a provision in the communication rule of another options Exchange, Chicago Board Options Exchange ("CBOE"),<sup>10</sup> and is similar to certain provisions of other Exchange rules.<sup>11</sup>

Second, Rule 606 currently states in Section (e)(1) regarding registration that members and member organizations must register, prior to use, any new telephone to be

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<sup>10</sup> Proposed Rule 606(d)(1) states: The Exchange may deny, limit or revoke the use of any communication device whenever it determines that use of such communication device: (1) interferes with normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties, (2) is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or (3) interferes with the obligations of a member or member organization to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules. CBOE Rule 6.23(b) states: The Exchange may deny, limit or revoke the use of any communication device whenever it determines that use of such communication device: (1) interferes with the normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties, (2) is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or (3) interferes with the obligations of a Trading Permit Holder to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules.

<sup>11</sup> See, e.g., Rule 1005 and Rule 1006 (provisions regarding advisable in the public interest or for the protection of investors).

used on the Options Floor. Each phone registered with the Exchange must be registered by category of user; and if there is a change in the category of any user, the phone must be re-registered with the Exchange.<sup>12</sup> The Exchange now proposes to update the process for changing registration of user. Specifically, the Exchange proposes to change the requirement in Section (e)(1) that the phone must be re-registered with the requirement that the member or member organization must immediately inform the Exchange in writing on the same day as when the change occurs.

The Exchange believes that the proposed updated procedure is better because while the rule currently does not indicate a timeline when a phone must be re-registered, the proposed rule change requires written notification to the Exchange on the same day as when the change occurs.

Rule 606 currently states in Section (e)(2) regarding capacity and functionality that no wireless telephone used on the Options Floor may have an output greater than one watt. No person on the Options Floor may use any device for the purpose of maintaining an open line of continuous communication whereby a person not located in the trading crowd may continuously monitor the activities in the trading crowd. This prohibition covers intercoms, walkie-talkies, and any similar devices. Speed-dialing features are permitted on any member telephone.

The Exchange is now proposing to delete obsolete language regarding wattage and to add new language regarding web-based and open mic communication

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<sup>12</sup> Such users can be, for example, floor broker, specialist, or registered options trader. The users that have originally registered and still remain on the Exchange floor have not changed their category of user.

applications.<sup>13</sup> Specifically, the Exchange is proposing to delete language in in Section (e)(2) that no wireless telephone used on the Options Floor may have an output greater than one watt. While the power limitation may have made sense when wireless was just initiated as a new technology on the Options Floor,<sup>14</sup> this wattage limitation provision is obsolete and no longer needed. In light of the current development of technology, the one watt power limitation provision is no longer needed to minimize the possibility of radio frequency or other interference with the systems of the Exchange of those of other members.

Rule 606 currently states in Section (e)(2) no person on the Options Floor may use any device for the purpose of maintaining an open line of continuous communication whereby a person not located in the trading crowd may continuously monitor the activities in the trading crowd; and that this prohibition covers intercoms, walkie-talkies, and any similar devices.<sup>15</sup> Because of the advancement of technology and proliferation of the web, the Exchange is proposing in Section (e)(2) to also add web-based, as well as open mic, communication applications.

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<sup>13</sup> These can be, for example, instant messaging, chat, or Skype.

<sup>14</sup> See Securities Exchange Act Release No. 43972 (February 15, 2001), 66 FR 12579 (February 27, 2001) (SR-Phlx-00-48) (approval order). The order notes that the purpose of the one watt power limitation was to minimize the possibility of radio frequency or other interference with the systems of the Exchange of those of other members.

<sup>15</sup> For clarity, the Exchange is proposing to state that the prohibition in Section (e)(2) covers, “but is not limited to,” the noted devices.

Third, Rule 606 currently states in Section (e)(4) regarding brokers that work on the Options Floor (“Floor Brokers”)<sup>16</sup> may use cellular and cordless telephones, but only to communicate with persons located on the Options Floor. These telephones may not include a call forwarding feature.<sup>17</sup> Because of the availability of call forwarding and open mic on virtually all wireless phones, the Exchange is proposing to update this provision. Specifically, the Exchange is proposing in Section (e)(4) to state that telephones used by Floor Brokers may not use a call forwarding or open mic feature on the Options Floor; and that if a call forwarding or open mic feature is available on the phone then such feature must be disengaged at all times when the phone is on the Options Floor.

Fourth, Rule 606 currently discusses in Section (e)(5) phone use by stock execution clerks; and in Section (e)(6) the use of general access in-house phones. Stock execution clerks and general access in-house phones no longer exist and these terms are obsolete. Therefore, the Exchange specifically proposes to delete reference to these obsolete terms from Sections (e)(5) and (e)(6).

Fifth, Rule 606 currently discusses in Section (e)(7) that members must maintain their cellular or cordless telephone records, including logs of calls placed, for a period of not less than one year. The Exchange reserves the right to inspect and/or examine such telephone records. The Exchange proposes to modernize this requirement.

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<sup>16</sup> A “Floor Broker” is defined in Rule 1060 as “[a]n individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders.”

<sup>17</sup> Headsets are permitted for Floor Brokers, but if the Exchange determines that a Floor Broker is maintaining a continuous open line through the use of a headset, the Floor Broker will be prohibited from future use of any headset for a length of time to be determined by the Exchange. Rule 606(e)(4)(a).

Specifically, the Exchange proposes in Section (e)(7) to state that members must maintain their logs of calls and chats, including cellular or cordless telephone records and logs of calls placed, for a period of not less than three years, the first two years in an easily accessible place. The Exchange believes that this proposed change will help with the Exchange's surveillance function. The proposed section (e)(7) provision is similar in relevant part to a provision in the communication rule of another options exchange, CBOE,<sup>18</sup> and to other Exchange record-keeping rules.<sup>19</sup>

Finally, in terms of housekeeping changes in Rule 606(e)(4)(b) the Exchange is proposing to substitute the word "orders" for "others" so that the section reads properly.

The Exchange believes that the proposed changes to Rules 606 will make it clearer and better.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>20</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>21</sup> in particular,

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<sup>18</sup> Proposed Rule 606(e)(7) states: Members must maintain logs of calls and chats, including their cellular or cordless telephone records and logs of calls placed, for a period of not less than three years, the first two years in an easily accessible place. The Exchange reserves the right to inspect and/or examine such telephone records. CBOE Rule 6.23(g) states: Trading Permit Holders must maintain records of the use of communication devices, including, but not limited to, logs of calls placed; emails; and chats, for a period of not less than three years, the first two years in an easily accessible place. The Exchange reserves the right to inspect such records pursuant to CBOE Rule 17.2.

<sup>19</sup> See Rule 616 (electronic filing requirements for uniform forms) and Rule 605 (advertisements, market letters, research reports and sales literature). See also Rule 1049 (communications to customers).

<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by proposing to make several changes in Rule 606.

The Exchange believes that the rule change will promote just and equitable principles of trade by making the rules clearer and easier to use. The Exchange is proposing in Rule 606(d) to add language that would allow the Exchange to limit the use of a communication device when such device interferes with normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties, is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or interferes with the obligations of a member or member organization to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules. The proposed section (d) provision is, as discussed, practically verbatim like a provision in the communication rule of another options Exchange, CBOE.

The Exchange is proposing in Rule 606(e)(2) to delete language regarding wattage that is obsolete and no longer needed.

The Exchange is also proposing in Rule 606(e)(5) to delete obsolete language regarding stock execution clerks and in-house phone use, as these are not present on the Options Floor. The Exchange believes that the rule change will serve to protect investors and the public by making the rule tighter and better for surveillance regarding communication devices.

The Exchange is proposing language in Rule 606(e)(1) to clarify the process for changing registration of user so that, instead of having to re-register when user status

changes, the member or member organization must immediately inform the Exchange in writing on the same day as when the change occurs.

The Exchange is proposing in Rule 606(e)(2) to add language regarding web-based and open mic communication applications because of the considerable advancement of technology and proliferation of the web and the absence of such language in the rule.

The Exchange is proposing in Rule 606(e)(4) to state, instead of telephones may not include a call forwarding feature, that Floor Brokers may not use a call forwarding or open mic feature on the Options Floor and that the call forwarding or open mic feature must be disengaged at all times when the phone is on the Options Floor.

The Exchange is also proposing in Rule 606(e)(7) to modernize the records retention requirement for telephone records so that, similar in relevant part to the requirement of another exchange, CBOE, and to other Exchange rules, and also to help with the Exchange's surveillance function, members must maintain logs of calls and chats for a period of not less than three years, the first two years in an easily accessible place.

The Exchange believes that the proposed changes to Rules 606 will make it clearer and better and therefore beneficial to market participants. The Exchange believes also that the changes proposed to Rule 606 will protect investors and the public interest. As the Exchange has noted, the changes remove references to obsolete and unused concepts that are no longer needed, strengthen features and add features of the rule to make it more current, and strengthen the record retention requirements. Such proposed changes are in the public interest, and continue to serve to protect investors.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. While the Exchange does not believe that the proposed non-controversial change is a burden on competition, or is competitive in nature, the Exchange believes that clearer, updated rules that do not refer to obsolete language and are in line with other rule concepts are always beneficial to market participants.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>22</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>23</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

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

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<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 C.F.R. 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Exchange has satisfied this requirement.

Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2016-48 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2016-48. 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 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-2016-48 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.<sup>24</sup>

Robert W. Errett  
Deputy Secretary

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<sup>24</sup> 17 C.F.R. 200.30-3(a)(12).

**EXHIBIT 5**

Proposed new language is underlined. Deletions are [bracketed].

**Rules of the Exchange**

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**Rule 606. Communications and Equipment**

(a) - (c) No Change.

(d) The Exchange may remove any telephonic, electronic or wireless equipment that violates subsection (b)(2) from any Exchange facility.

(1) The Exchange may deny, limit or revoke the use of any communication device whenever it determines that use of such communication device: (1) interferes with normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties, (2) is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or (3) interferes with the obligations of a member or member organization to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules.

(e)(1) *Registration*. Members and member organizations must register, prior to use, any new telephone to be used on the Options Floor. Each phone registered with the Exchange must be registered by category of user. If there is a change in the category of any user, [the phone must be re-registered with the Exchange]the member or member organization must immediately inform the Exchange in writing on the same day as when the change occurs. At the time of registration, members and member organization representatives must sign a statement that they are aware of and understand the rules and procedures governing the use of telephones on the Options Floor.

(2) *Capacity and Functionality*. [No wireless telephone used on the Options Floor may have an output greater than one watt.] No person on the Options Floor may use any device for the purpose of maintaining an open line of continuous communication whereby a person not located in the trading crowd may continuously monitor the activities in the trading crowd. This prohibition covers, but is not limited to, intercoms, walkie-talkies and any similar devices, and open mic and web-based communication applications. Speed-dialing features are permitted on any member telephone.

(3) No Change.

(4) *Floor Brokers*.

(a) Floor Brokers may use cellular and cordless telephones, but only to communicate with persons located on the Options Floor. These telephones may not ~~[include]use a call forwarding or open mic feature on the Options Floor; if a call forwarding or open mic feature is available on the phone then such feature must be disengaged at all times when the phone is on the Options Floor.~~ Headsets are permitted for Floor Brokers, but if the Exchange determines that a Floor Broker is maintaining a continuous open line through the use of a headset, the Floor Broker will be prohibited from future use of any headset for a length of time to be determined by the Exchange.

(b) All ~~[others]orders~~ phoned to Floor Brokers must be received initially at the Floor Broker's booth. Floor Brokers may not receive telephonic orders while in the trading crowd except from their booth. Any telephonic order entered from off the Options Floor must be placed with a person located in a member organization booth.

(5) *Clerks.*

(a) No Change.

(b) ~~[Stock Execution clerks are subject to the same terms and conditions on telephone use as Floor Brokers]~~Reserved.

(c) The Exchange reserves the right to prohibit clerks from using cellular or cordless phones on the floor at any time that it is necessary due to electronic interference problems or capacity problems resulting from the number of such phones then in use on the Options Floor. [ In such circumstances, the Exchange will first consider restricting the use of such phones by Stock Execution Clerks, and then by Floor Broker Clerks.]

(6) ~~[General Access In-House Phones. The general access in-house telephones located outside of the trading post areas may be used by any member, clerk or floor broker to communicate with persons located on the Options Floor or within the Exchange complex]~~Reserved.

(7) *Telephone Records.* Members must maintain logs of calls and chats, including their cellular or cordless telephone records[, including]and logs of calls placed, for a period of not less than [one]three years, the first two years in an easily accessible place. The Exchange reserves the right to inspect and/or examine such telephone records.

(8) No Change.

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