

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ OMX PHLX LLC.  
 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"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period 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 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"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

A proposal to delete sections e through h of Exchange Rule 1020 Registration and Functions of Options Specialists.

**Contact Information**

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 \* Carla      Last Name \* Behnfeldt  
 Title \* Associate General Counsel  
 E-mail \* carla.behnfeldt@nasdaq.com  
 Telephone \* (215) 496-5208      Fax

**Signature**

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 \*)  
 Executive Vice President and General Counsel

Date 12/16/2015  
 By Edward S. Knight  
 (Name \*)

edward.knight@nasdaq.com

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) NASDAQ OMX PHLX LLC (“Exchange” or “Phlx”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“Commission”) a proposal to delete sections (e) through (h) of Exchange Rule 1020, Registration and Functions of Options Specialists, as well as the associated “Guidelines for Exemptive Relief Under Rule 1020 for Approved Persons or Member Organizations Associated with a Specialist Member Organization” and Rule 1023, Specialist’s Transactions with Listed Company.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. The text of the proposed rule change is attached 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 (the “Board”) on July 1, 2015. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to Carla Behnfeldt, Associate General Counsel, Nasdaq, Inc., at (215) 496-5208.

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

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

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

a. Purpose

The Exchange is proposing to adopt a principles-based approach to prohibit the misuse of material nonpublic information by specialists by deleting Sections (e) through (h) of Exchange Rule 1020, Registration and Functions of Options Specialists, as well as the associated “Guidelines for Exemptive Relief Under Rule 1020 for Approved Persons or Member Organizations Associated with a Specialist Member Organization,” and Rule 1023, Specialist’s Transactions with Listed Company (collectively, the “Specialist Restrictions”). In doing so, the Exchange would harmonize its rules governing Phlx members<sup>3</sup> and member organizations<sup>4</sup> generally, and Phlx specialists in particular, relating to protecting against the misuse of material, non-public information. The Exchange believes that the Specialist Restrictions are no longer necessary because all specialists are subject to the Exchange’s general principles-based requirements governing the protection against the misuse of material, non-public information, pursuant to Phlx Rule 761, Supervisory Procedures Relating to ITSFEA and to Prevention of Misuse of Material Nonpublic Information, which obviates the need for separately-prescribed requirements for a subset of market participants on the Exchange. Additionally, there is

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<sup>3</sup> Phlx Rule 1(n) defines “Member” as a permit holder which has not been terminated in accordance with the By-Laws and Rules of the Exchange.

<sup>4</sup> Phlx Rule 1(o) defines “Member Organization” as a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of Rules 900.1 or 900.2 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws.

no separate regulatory purpose served by having separate rules for specialists. The Exchange notes that this proposed rule change will not decrease the protections against the misuse of material, non-public information; instead, it is designed to provide more flexibility to market participants. This is a competitive filing that is based on a proposal recently submitted by NYSE MKT LLC (“NYSE MKT”) and approved by the Commission.<sup>5</sup>

A “specialist” is an Exchange member who is registered as an options specialist pursuant to Exchange Rule 1020(a). Specialists are subject to quoting and registration obligations set forth in Rules 1014(b), 1020 and 1080.02. Quoting obligations of other market makers known as Registered Options Traders (“ROT”) are also set forth in Rule 1014.<sup>6</sup> That rule sets forth the main difference between specialists and ROTs, namely that specialists have a heightened quoting obligation as compared to ROTs. In addition

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<sup>5</sup> See Securities Exchange Act Release No. 75432 (July 13, 2015), 80 FR 42597 (July 17, 2015) (Order Approving SR-NYSEMKT-2015-23). See also Securities Exchange Act Release No. 75792 (August 31, 2015), 80 FR 53606 (September 4, 2015) (SR-ISE-2015-26).

<sup>6</sup> A Registered Option Trader (“ROT”) is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. ROTs include Streaming Quote Traders (“SQTs”) and Remote Streaming Quote Traders (“RSQTs”), as well as on and off-floor ROTs. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member affiliated with an Remote Streaming Quote Trader Organization (“RSQTO”) with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQTO, which may also be referred to as a Remote Market Making Organization (“RMO”), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a).

to a heightened quoting obligation pursuant to Rule 1014, specialists are eligible to receive a greater allocation of participation rights under certain circumstances.

Importantly, all ROTs and specialists have access to the same information in the Exchange's order book. Moreover, neither ROTs nor specialists have agency obligations on the Exchange's order book. As such, the distinctions between specialists and ROTs are their quoting requirements set forth in Rule 1014.

Notwithstanding that specialists have access to the same Exchange trading information as all other market participants on the Exchange, the Exchange has specific rules governing how specialists may operate. Currently, Phlx Rule 1023 restricts specialists and various affiliates from effecting certain transactions with a company in options of which the specialist is registered.<sup>7</sup> Rule 1020(e) limits the ability of specialists' affiliates to purchase or sell options in which the specialist is registered for any account in which the affiliate is interested.<sup>8</sup> Rule 1020(f) provides an exemption

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<sup>7</sup> Specifically, Rule 1023 provides that no specialist or his member organization, or any member, limited partner, officer, employee, approved person or party approved shall directly or indirectly, effect any business transaction with a company or any officer, director or 10% stockholder of a company in which options of such company the specialist is registered, except for business transactions in goods and services on terms generally available to the public. It further provides that no specialist, his member organization or corporate subsidiary of such organization shall accept an order for the purchase or sale of any option in which he is registered as a specialist directly (i) from the company issuing such stock or (ii) from any officer, director or 10% stockholder of that company.

<sup>8</sup> Specifically, Rule 1020(e) provides that no member (other than a specialist acting pursuant to paragraphs 1020(c) or (d)), limited partner, officer, employee, approved person or party approved, who is affiliated with a specialist or specialist member organization, shall, during the period of such affiliation, purchase or sell any option in which such specialist is registered for any account in which such person or party has a direct or indirect interest. Any such person or party may, however, reduce or liquidate an existing position in an option in which such specialist is registered provided that such orders are (i) identified as being for an

from the restrictions imposed by Rules 1023 and 1020(e), but only if the Exchange has approved procedures restricting the flow of material non-public corporate or market information between the specialist's affiliate and the specialist member organization and any member, officer or employee associated therewith. The procedures are required to comply with the "Guidelines for Exemptive Relief under Rule 1020 for Approved Persons or Member Organizations Affiliated with a Specialist Member Organization" (the "Guidelines"), which are referred to in, and set forth following, Rule 1020(f).

#### Proposed Rule Change

The Exchange believes that the Specialist Restrictions, including the Guidelines and the Exchange approval requirement, are no longer necessary and proposes to delete them. The Exchange believes that Rule 761, Supervisory Procedures Relating to ITSFEA and to Prevention of the Misuse of Material Nonpublic Information, Commentary .02 governing the misuse of material, non-public information, provides for an appropriate, principles-based approach to prevent the market abuses the Specialist Restrictions are designed to address. Specifically, Rule 761, Commentary .02 requires every member or member organization to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the member's business, to prevent the misuse of material nonpublic information by such member or persons associated with such member in violation of the Securities Exchange Act of 1934 and the

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account in which such person or party has a direct or indirect interest; (ii) approved for execution for an Options Exchange Official; and (iii) executed by the specialist in a manner reasonably calculated to contribute to the maintenance of price continuity with reasonable depth. No order entered pursuant to Rule 1020(e) shall be given priority over, or parity with, any order represented in the market at the same price.

rules thereunder and the Exchange's own rules. For purposes of Rule 761, Commentary .02, misuse of material nonpublic information means:

- (a) trading in any securities issued by a corporation, partnership, Portfolio Depository Receipts, Index Fund Shares, trust issued receipts, currency trust shares or a trust or similar entities, or in any related securities or related options or other derivative securities, or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, while in possession of material nonpublic information concerning that corporation, Portfolio Depository Receipt, Index Fund Share, trust issued receipts, currency trust shares, trust or similar entity;
- (b) trading in an underlying security or related options or other derivative securities, or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, while in possession of material nonpublic information concerning imminent transactions in the above; and
- (c) disclosing to another person any material nonpublic information involving a corporation, partnership, Portfolio Depository Receipts, Index Fund Shares, trust issued receipts, currency trust shares or a trust or similar entities whose shares are publicly traded or an imminent transaction in an underlying security or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, for the purpose of facilitating the possible misuse of such material nonpublic information.

Because members and member organizations are already subject to the requirements of Rule 761, Commentary .02, the Exchange does not believe it necessary to separately require specific limitations on specialists. Deleting the Specialist Restrictions including the Guidelines and its requirements for specific procedures would provide specialists flexibility to adapt their policies and procedures as appropriate to reflect changes to their business model, business activities, or the securities market in a manner similar to how members and member organizations on the Exchange currently operate and consistent with Exchange Rule 761, Commentary .02.

As noted above, specialists are distinguished under Exchange rules from ROTs in that specialists have heightened quoting obligations and differing participation



entitlements. However, none of these heightened obligations or different entitlements provide different or greater access to nonpublic information than any other member or member organization on the Exchange. Accordingly, because specialists do not have any trading advantages at the Exchange due to their market role, the Exchange believes they should be subject to the same rules as other members and member organizations regarding the protection against the misuse of material non-public information, which in this case is existing Exchange Rule 761, Commentary .02.<sup>9</sup>

The Exchange is not proposing to change what is considered to be material, nonpublic information that an affiliated brokerage business of a specialist could share with such specialist. In that regard, the proposed rule change will not permit affiliates of a specialist to have access to any non-public order or quote information of the specialist, including hidden or undisplayed size or price information of such orders or quotes. Affiliates of specialists would only have access to orders and quotes that are publicly available to all market participants. Members do not expect to receive any additional order or quote information as a result of this proposed rule change. The Exchange does not believe that there will be any material change to member information barriers as a result of the removal of the Exchange pre-approval requirement. The Exchange has rules prohibiting members from disadvantaging their customers or other market participants by

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<sup>9</sup> The Exchange notes that by deleting the Specialist Restrictions, the Exchange would no longer require specific information barriers for specialists or require pre-approval of any information barriers that a specialist would erect for purposes of protecting against the misuse of material non-public information. However, the policies and procedures of specialists, including those relating to information barriers, would be subject to review by FINRA, on behalf of the Exchange, pursuant to a Regulatory Services Agreement.

improperly capitalizing on the member's access to or receipt of material, non-public information.<sup>10</sup>

Further, the Exchange does not believe there will be any material change to specialist information barriers as a result of removal of the Exchange's pre-approval requirements. In fact, the Exchange anticipates that eliminating the pre-approval requirement should facilitate implementation of changes to specialist information barriers as necessary to protect against the misuse of material, non-public information. The Exchange also suggests that the pre-approval requirement is unnecessary because specialists do not have agency responsibilities to orders in the book, or time and place information advantages because of their market role.

The Exchange notes that its proposed principles-based approach to protecting against the misuse of material non-public information for all its members and member organizations is consistent with recently filed and approved rule changes for NYSE

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<sup>10</sup> For example, Rule 748 requires each member or member organization to establish, maintain, and enforce written supervisory procedures, and a system for applying such procedures, to supervise the types of business(es) in which the member or member organization engages in and to supervise the activities of all registered representatives, employees, and associated persons. The written supervisory procedures and the system for applying such procedures must reasonably be expected to prevent and detect, insofar as practicable, violations of the applicable securities laws and regulations, including the By-Laws and Rules of the Exchange. Additionally, Rule 1064 provides that no member organization or person associated with a member or member organization who has knowledge of the material terms and conditions of a solicited order, an order being facilitated, or orders being crossed, the execution of which are imminent, shall enter, based on such knowledge, an order to buy or sell an option for the same underlying security; an order to buy or sell the security underlying such class; or an order to buy or sell any related instrument until (i) the terms and conditions of the order and any changes in the terms of the order of which the member, member organization or person associated with a member or member organization has knowledge are disclosed to the trading crowd, or (ii) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received.

MKT, NYSE Arca Equities, Inc. (“NYSE Arca”), BATS Exchange, Inc. (“BATS”), and New York Stock Exchange LLC (“NYSE”) governing cash equity market makers on those respective exchanges.<sup>11</sup> Except for prescribed rules relating to floor-based designated market makers on the NYSE, who have access to specified non-public trading information, each of these exchanges have moved to a principles-based approach to protecting against the misuse of material non-public information. In connection with approving those rule changes, the Commission found that, with adequate oversight by the exchanges of their members, eliminating prescriptive information barrier requirements should not reduce the effectiveness of exchange rules requiring members to establish and maintain systems to supervise the activities of members, including written procedures reasonably designed to ensure compliance with applicable federal securities law and regulations, and with the rules of the applicable exchange.

The Exchange believes that a principles based rule applicable to members of options markets would be equally effective in protecting against the misuse of material

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<sup>11</sup> See Securities Exchange Act Release No. 75432 (July 13, 2015), 80 FR 42597 (July 17, 2015) (Order Approving Adopting a Principles-Based Approach to Prohibit the Misuse of Material Nonpublic Information by Specialists and e-Specialists by Deleting Rule 927.3NY and Section (f) of Rule 927.5NY). See also Securities Exchange Act Release Nos. 60604 (Sept. 2, 2009), 76 FR 46272 (Sept. 8, 2009) (SR-NYSEArca-2009-78) (Order approving elimination of NYSE Arca rule that required market makers to establish and maintain specifically prescribed information barriers, including discussion of NYSE Arca and Nasdaq rules) (“Arca Approval Order”); 61574 (Feb. 23, 2010), 75 FR 9455 (Mar. 2, 2010) (SR-BATS-2010-003) (Order approving amendments to BATS Rule 5.5 to move to a principles-based approach to protecting against the misuse of material, nonpublic information, and noting that the proposed change is consistent with the approaches of NYSE Arca and Nasdaq) (“BATS Approval Order”); and 72534 (July 3, 2014), 79 FR 39440 (July 10, 2014), SR-NYSE-2014-12) (Order approving amendments to NYSE Rule 98 governing designated market makers to move to a principles-based approach to prohibit the misuse of material non-public information) (“NYSE Approval Order”).

non-public information.<sup>12</sup> Indeed, Exchange Rule 761, Commentary .02 is currently applicable to specialists and already requires policies and procedures reasonably designed to protect against the misuse of material nonpublic information, which is similar to the respective NYSE MKT, NYSE Arca Equities, BATS and NYSE rules governing cash equity market makers. The Exchange believes Exchange Rule 761, Commentary .02 provides appropriate protection against the misuse of material nonpublic information by specialists such that there is no further need for prescriptive information barrier requirements as set forth in the Specialist Restrictions.

The Exchange notes that even with this proposed rule change, pursuant to Exchange Rule 761, Commentary .02 a specialist would still be obligated to ensure that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, including Section 15(g) of the Act<sup>13</sup>, and with applicable Exchange rules, including being reasonably designed to protect against the misuse of material, non-public information. While information barriers would not specifically be required under the proposal, Rule 761, Commentary .02 already requires that a member or member organization consider its business model or business activities in structuring its policies

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<sup>12</sup> International Securities Exchange, Inc. (“ISE”) and BOX Options Exchange LLC (“BOX”) have recently taken a similar approach. See Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting a Principles-Based Approach to Prohibit the Misuse of Material, Non-public Information by Market Makers by Deleting Rule 810, Securities Exchange Act Release No. 75792 (August 31, 2015), 80 FR 53606 (September 4, 2015) (SR-ISE-2015-26). See also Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Principles-based Approach to Prohibit the Misuse of Material Nonpublic Information by Market Makers, Securities Exchange Act Release No. 75916 (September 14, 2015), 80 FR 56503 (September 18, 2015) (SR-BOX-2015-31).

<sup>13</sup> 15 U.S.C. 78o(g).

and procedures, which may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.

The Exchange believes that the proposed reliance on principles-based Rule 761, Commentary .02 would ensure that a specialist would be required to protect against the misuse of any material non-public information. As noted above, Rule 761, Commentary .02 already requires that firms refrain from trading while in possession of material non-public information concerning imminent transactions in the security or related product. The Exchange believes that moving to a principles-based approach rather than prescribing how and when to wall off a specialist from the rest of the firm would provide specialists with flexibility when managing risk across a firm, including integrating options positions with other positions of the firm or, as applicable, by the respective independent trading unit.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>15</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that the proposed rule change would remove impediments to and perfect the

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<sup>14</sup> 15 U.S.C. 78f(b).

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

mechanism of a free and open market by adopting a principles based approach to permit a member or member organization to maintain and enforce policies and procedures to, among other things, prohibit the misuse of material non-public information and provide flexibility on how a specialist structures its operations.

The Exchange notes that the proposed rule change is based on an approved rule of the Exchange to which members and member organizations are subject – Rule 761, Commentary .02 – and harmonizes the rules governing members and member organizations. Moreover, specialists would continue to be subject to federal and Exchange requirements for protecting material non-public order information.<sup>16</sup> The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market because it would harmonize the Exchange’s approach to protecting against the misuse of material non-public information and no longer subject specialists to prescriptive requirements. The Exchange does not believe that the existing prescriptive requirements applicable to specialists are narrowly tailored to their roles because specialists do not have access to Exchange trading information in a manner different from any other market participant on the Exchange.

The Exchange further believes the proposal is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because existing rules make clear to members and member organizations the type of conduct that is prohibited by the Exchange. While the proposal eliminates prescriptive requirements relating to the misuse of material non-public information, specialists would remain subject to existing Exchange rules requiring them to establish and maintain

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<sup>16</sup> See 15 U.S.C. 78o(g) and Exchange Rule 761, Commentary .02.

systems to supervise their activities, and to create, implement, and maintain written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on the misuse of material, non-public information. Additionally, the policies and procedures of specialists, including those relating to information barriers, would be subject to review by FINRA, on behalf of the Exchange.

The Exchange notes that the proposed rule change would still require that specialists maintain and enforce policies and procedures reasonably designed to ensure compliance with applicable federal securities laws and regulations and with Exchange rules. Even though there would no longer be pre-approval of specialist information barriers, any specialist written policies and procedures would continue to be subject to oversight by the Exchange and therefore the elimination of prescribed restrictions should not reduce the effectiveness of the Exchange rules to protect against the misuse of material non-public information. Rather, members and member organizations will be able to utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. Moreover, while specified information barriers may no longer be required, a member or member organization's business model or business activities may dictate that an information barrier or functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules. The Exchange therefore believes that the proposed rule change will maintain the existing protection of investors and the public interest that is currently applicable to specialists,

while at the same time removing impediments to and perfecting a free and open market by moving to a principles-based approach to protect against the misuse of material non-public information.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As indicated above, the rule change is being proposed as a competitive response to a filing submitted by NYSE MKT that was recently approved by the Commission. The Exchange believes that the proposal will enhance competition by allowing specialists to comply with applicable Exchange rules in a manner best suited to their business models, business activities, and the securities markets, thus reducing regulatory burdens while still ensuring compliance with applicable securities laws and regulations and Exchange rules. The Exchange believes that the proposal will foster a fair and orderly marketplace without being overly burdensome upon specialists.

Moreover, the Exchange believes that the proposed rule change would eliminate a burden on competition for members and member organizations which currently exists as a result of disparate rule treatment between options and equities markets regarding how to protect against the misuse of material non-public information. For those members and member organizations that are also members of equity exchanges, their respective equity market maker operations are now subject to a principles-based approach to protecting against the misuse of material non-public information. The Exchange believes it would remove a burden on competition to enable members and member organizations to similarly apply a principles-based approach to protecting against the misuse of material nonpublic information in the options space as ISE has recently done. To this end, the



Exchange notes that Exchange Rule 761, Commentary .02 still requires a specialist to evaluate its business to assure that its policies and procedures are reasonably designed to protect against the misuse of material nonpublic information. However, with this proposed rule change, a member or member organization that trades equities and options could look at its firm more holistically to structure its operations in a manner that provides it with better tools to manage its risks across multiple security classes, while at the same time protecting against the misuse of material non-public information.

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>17</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>18</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 notes that the proposed rule change merely deletes prescriptive information barrier requirements in favor of a principles-based approach to prohibiting the misuse of

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

material, non-public information by specialists in the same manner that proposed rule changes of other options exchanges have recently done.<sup>19</sup>

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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

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

The proposed rule change is based upon the NYSE MKT, NYSE Arca, BATS, NYSE and ISE proposed rule changes discussed above.

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

Not applicable.

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<sup>19</sup> See the BOX and ISE proposed rule changes cited above at footnote 12. Similar to those filings, the proposed rule change would still require that specialists maintain and enforce policies and procedures reasonably designed to ensure compliance with applicable federal securities laws and regulations and with Exchange rules. This proposed rule change is also like the BOX and ISE proposals in that it does not affect the continuing obligations of specialists under federal requirements regarding protection of material non-public information.

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-2015-85)

December \_\_, 2015

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delete Sections (e) through (h) of Exchange Rule 1020, Registration and Functions of Options Specialists

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 16, 2015, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete sections (e) through (h) of Exchange Rule 1020, Registration and Functions of Options Specialists, as well as the associated “Guidelines for Exemptive Relief Under Rule 1020 for Approved Persons or Member Organizations Associated with a Specialist Member Organization” and Rule 1023, Specialist’s Transactions with Listed Company.

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

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

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.

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 is proposing to adopt a principles-based approach to prohibit the misuse of material non-public information by specialists by deleting Sections (e) through (h) of Exchange Rule 1020, Registration and Functions of Options Specialists, as well as the associated "Guidelines for Exemptive Relief Under Rule 1020 for Approved Persons or Member Organizations Associated with a Specialist Member Organization," and Rule 1023, Specialist's Transactions with Listed Company (collectively, the "Specialist Restrictions"). In doing so, the Exchange would harmonize its rules governing Phlx members<sup>3</sup> and member organizations<sup>4</sup> generally, and Phlx specialists in particular,

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<sup>3</sup> Phlx Rule 1(n) defines "Member" as a permit holder which has not been terminated in accordance with the By-Laws and Rules of the Exchange.

<sup>4</sup> Phlx Rule 1(o) defines "Member Organization" as a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer

relating to protecting against the misuse of material, non-public information. The Exchange believes that the Specialist Restrictions are no longer necessary because all specialists are subject to the Exchange's general principles-based requirements governing the protection against the misuse of material, non-public information, pursuant to Phlx Rule 761, Supervisory Procedures Relating to ITSFEA and to Prevention of Misuse of Material Nonpublic Information, which obviates the need for separately-prescribed requirements for a subset of market participants on the Exchange. Additionally, there is no separate regulatory purpose served by having separate rules for specialists. The Exchange notes that this proposed rule change will not decrease the protections against the misuse of material, non-public information; instead, it is designed to provide more flexibility to market participants. This is a competitive filing that is based on a proposal recently submitted by NYSE MKT LLC ("NYSE MKT") and approved by the Commission.<sup>5</sup>

A "specialist" is an Exchange member who is registered as an options specialist pursuant to Exchange Rule 1020(a). Specialists are subject to quoting and registration obligations set forth in Rules 1014(b), 1020 and 1080.02. Quoting obligations of other market makers known as Registered Options Traders ("ROTs") are also set forth in Rule

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in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of Rules 900.1 or 900.2 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws.

<sup>5</sup> See Securities Exchange Act Release No. 75432 (July 13, 2015), 80 FR 42597 (July 17, 2015) (Order Approving SR-NYSEMKT-2015-23). See also Securities Exchange Act Release No. 75792 (August 31, 2015), 80 FR 53606 (September 4, 2015) (SR-ISE-2015-26).

1014.<sup>6</sup> That rule sets forth the main difference between specialists and ROTs, namely that specialists have a heightened quoting obligation as compared to ROTs. In addition to a heightened quoting obligation pursuant to Rule 1014, specialists are eligible to receive a greater allocation of participation rights under certain circumstances.

Importantly, all ROTs and specialists have access to the same information in the Exchange's order book. Moreover, neither ROTs nor specialists have agency obligations on the Exchange's order book. As such, the distinctions between specialists and ROTs are their quoting requirements set forth in Rule 1014.

Notwithstanding that specialists have access to the same Exchange trading information as all other market participants on the Exchange, the Exchange has specific rules governing how specialists may operate. Currently, Phlx Rule 1023 restricts specialists and various affiliates from effecting certain transactions with a company in options of which the specialist is registered.<sup>7</sup> Rule 1020(e) limits the ability of

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<sup>6</sup> A Registered Option Trader ("ROT") is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. ROTs include Streaming Quote Traders ("SQTs") and Remote Streaming Quote Traders ("RSQTs"), as well as on and off-floor ROTs. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member affiliated with an Remote Streaming Quote Trader Organization ("RSQTO") with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQTO, which may also be referred to as a Remote Market Making Organization ("RMO"), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a).

<sup>7</sup> Specifically, Rule 1023 provides that no specialist or his member organization, or any member, limited partner, officer, employee, approved person or party approved shall directly or indirectly, effect any business transaction with a company or any officer, director or 10% stockholder of a company in which

specialists' affiliates to purchase or sell options in which the specialist is registered for any account in which the affiliate is interested.<sup>8</sup> Rule 1020(f) provides an exemption from the restrictions imposed by Rules 1023 and 1020(e), but only if the Exchange has approved procedures restricting the flow of material non-public corporate or market information between the specialist's affiliate and the specialist member organization and any member, officer or employee associated therewith. The procedures are required to comply with the "Guidelines for Exemptive Relief under Rule 1020 for Approved Persons or Member Organizations Affiliated with a Specialist Member Organization" (the "Guidelines"), which are referred to in, and set forth following, Rule 1020(f).

#### Proposed Rule Change

The Exchange believes that the Specialist Restrictions, including the Guidelines and the Exchange approval requirement, are no longer necessary and proposes to delete

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options of such company the specialist is registered, except for business transactions in goods and services on terms generally available to the public. It further provides that no specialist, his member organization or corporate subsidiary of such organization shall accept an order for the purchase or sale of any option in which he is registered as a specialist directly (i) from the company issuing such stock or (ii) from any officer, director or 10% stockholder of that company.

<sup>8</sup> Specifically, Rule 1020(e) provides that no member (other than a specialist acting pursuant to paragraphs 1020(c) or (d)), limited partner, officer, employee, approved person or party approved, who is affiliated with a specialist or specialist member organization, shall, during the period of such affiliation, purchase or sell any option in which such specialist is registered for any account in which such person or party has a direct or indirect interest. Any such person or party may, however, reduce or liquidate an existing position in an option in which such specialist is registered provided that such orders are (i) identified as being for an account in which such person or party has a direct or indirect interest; (ii) approved for execution for an Options Exchange Official; and (iii) executed by the specialist in a manner reasonably calculated to contribute to the maintenance of price continuity with reasonable depth. No order entered pursuant to Rule 1020(e) shall be given priority over, or parity with, any order represented in the market at the same price.



them. The Exchange believes that Rule 761, Supervisory Procedures Relating to ITSFEA and to Prevention of the Misuse of Material Nonpublic Information, Commentary .02 governing the misuse of material, non-public information, provides for an appropriate, principles-based approach to prevent the market abuses the Specialist Restrictions are designed to address. Specifically, Rule 761, Commentary .02 requires every member or member organization to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the member's business, to prevent the misuse of material non-public information by such member or persons associated with such member in violation of the Securities Exchange Act of 1934 and the rules thereunder and the Exchange's own rules. For purposes of Rule 761, Commentary .02, misuse of material non-public information means:

- (a) trading in any securities issued by a corporation, partnership, Portfolio Depository Receipts, Index Fund Shares, trust issued receipts, currency trust shares or a trust or similar entities, or in any related securities or related options or other derivative securities, or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, while in possession of material nonpublic information concerning that corporation, Portfolio Depository Receipt, Index Fund Share, trust issued receipts, currency trust shares, trust or similar entity;
- (b) trading in an underlying security or related options or other derivative securities, or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, while in possession of material nonpublic information concerning imminent transactions in the above; and
- (c) disclosing to another person any material nonpublic information involving a corporation, partnership, Portfolio Depository Receipts, Index Fund Shares, trust issued receipts, currency trust shares or a trust or similar entities whose shares are publicly traded or an imminent transaction in an underlying security or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, for the purpose of facilitating the possible misuse of such material nonpublic information.

Because members and member organizations are already subject to the requirements of Rule 761, Commentary .02, the Exchange does not believe it necessary to separately require specific limitations on specialists. Deleting the Specialist Restrictions including the Guidelines and its requirements for specific procedures would provide specialists flexibility to adapt their policies and procedures as appropriate to reflect changes to their business model, business activities, or the securities market in a manner similar to how members and member organizations on the Exchange currently operate and consistent with Exchange Rule 761, Commentary .02.

As noted above, specialists are distinguished under Exchange rules from ROTs in that specialists have heightened quoting obligations and differing participation entitlements. However, none of these heightened obligations or different entitlements provides different or greater access to non-public information than any other member or member organization on the Exchange. Accordingly, because specialists do not have any trading advantages at the Exchange due to their market role, the Exchange believes they should be subject to the same rules as other members and member organizations regarding the protection against the misuse of material non-public information, which in this case is existing Exchange Rule 761, Commentary .02.<sup>9</sup>

The Exchange is not proposing to change what is considered to be material, non-public information that an affiliated brokerage business of a specialist could share with

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<sup>9</sup> The Exchange notes that by deleting the Specialist Restrictions, the Exchange would no longer require specific information barriers for specialists or require pre-approval of any information barriers that a specialist would erect for purposes of protecting against the misuse of material non-public information. However, the policies and procedures of specialists, including those relating to information barriers, would be subject to review by FINRA, on behalf of the Exchange, pursuant to a Regulatory Services Agreement.

such specialist. In that regard, the proposed rule change will not permit affiliates of a specialist to have access to any non-public order or quote information of the specialist, including hidden or undisplayed size or price information of such orders or quotes. Affiliates of specialists would only have access to orders and quotes that are publicly available to all market participants. Members do not expect to receive any additional order or quote information as a result of this proposed rule change. The Exchange does not believe that there will be any material change to member information barriers as a result of the removal of the Exchange pre-approval requirement. The Exchange has rules prohibiting members from disadvantaging their customers or other market participants by improperly capitalizing on the member's access to or receipt of material, non-public information.<sup>10</sup>

Further, the Exchange does not believe there will be any material change to specialist information barriers as a result of removal of the Exchange's pre-approval

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<sup>10</sup> For example, Rule 748 requires each member or member organization to establish, maintain, and enforce written supervisory procedures, and a system for applying such procedures, to supervise the types of business(es) in which the member or member organization engages in and to supervise the activities of all registered representatives, employees, and associated persons. The written supervisory procedures and the system for applying such procedures must reasonably be expected to prevent and detect, insofar as practicable, violations of the applicable securities laws and regulations, including the By-Laws and Rules of the Exchange. Additionally, Rule 1064 provides that no member organization or person associated with a member or member organization who has knowledge of the material terms and conditions of a solicited order, an order being facilitated, or orders being crossed, the execution of which are imminent, shall enter, based on such knowledge, an order to buy or sell an option for the same underlying security; an order to buy or sell the security underlying such class; or an order to buy or sell any related instrument until (i) the terms and conditions of the order and any changes in the terms of the order of which the member, member organization or person associated with a member or member organization has knowledge are disclosed to the trading crowd, or (ii) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received.

requirements. In fact, the Exchange anticipates that eliminating the pre-approval requirement should facilitate implementation of changes to specialist information barriers as necessary to protect against the misuse of material, non-public information. The Exchange also suggests that the pre-approval requirement is unnecessary because specialists do not have agency responsibilities to orders in the book, or time and place information advantages because of their market role.

The Exchange notes that its proposed principles-based approach to protecting against the misuse of material non-public information for all its members and member organizations is consistent with recently filed and approved rule changes for NYSE MKT, NYSE Arca Equities, Inc. (“NYSE Arca”), BATS Exchange, Inc. (“BATS”), and New York Stock Exchange LLC (“NYSE”) governing cash equity market makers on those respective exchanges.<sup>11</sup> Except for prescribed rules relating to floor-based designated market makers on the NYSE, who have access to specified non-public trading information, each of these exchanges have moved to a principles-based approach to

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<sup>11</sup> See Securities Exchange Act Release No. 75432 (July 13, 2015), 80 FR 42597 (July 17, 2015) (Order Approving Adopting a Principles-Based Approach to Prohibit the Misuse of Material Nonpublic Information by Specialists and e-Specialists by Deleting Rule 927.3NY and Section (f) of Rule 927.5NY). See also Securities Exchange Act Release Nos. 60604 (Sept. 2, 2009), 76 FR 46272 (Sept. 8, 2009) (SR-NYSEArca-2009-78) (Order approving elimination of NYSE Arca rule that required market makers to establish and maintain specifically prescribed information barriers, including discussion of NYSE Arca and Nasdaq rules) (“Arca Approval Order”); 61574 (Feb. 23, 2010), 75 FR 9455 (Mar. 2, 2010) (SR-BATS-2010-003) (Order approving amendments to BATS Rule 5.5 to move to a principles-based approach to protecting against the misuse of material, nonpublic information, and noting that the proposed change is consistent with the approaches of NYSE Arca and Nasdaq) (“BATS Approval Order”); and 72534 (July 3, 2014), 79 FR 39440 (July 10, 2014), SR-NYSE-2014-12) (Order approving amendments to NYSE Rule 98 governing designated market makers to move to a principles-based approach to prohibit the misuse of material non-public information) (“NYSE Approval Order”).

protecting against the misuse of material non-public information. In connection with approving those rule changes, the Commission found that, with adequate oversight by the exchanges of their members, eliminating prescriptive information barrier requirements should not reduce the effectiveness of exchange rules requiring members to establish and maintain systems to supervise the activities of members, including written procedures reasonably designed to ensure compliance with applicable federal securities law and regulations, and with the rules of the applicable exchange.

The Exchange believes that a principles-based rule applicable to members of options markets would be equally effective in protecting against the misuse of material non-public information.<sup>12</sup> Indeed, Exchange Rule 761, Commentary .02 is currently applicable to specialists and already requires policies and procedures reasonably designed to protect against the misuse of material non-public information, which is similar to the respective NYSE MKT, NYSE Arca Equities, BATS and NYSE rules governing cash equity market makers. The Exchange believes Exchange Rule 761, Commentary .02 provides appropriate protection against the misuse of material non-public information by specialists such that there is no further need for prescriptive information barrier requirements as set forth in the Specialist Restrictions.

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<sup>12</sup> International Securities Exchange, Inc. (“ISE”) and BOX Options Exchange LLC (“BOX”) have recently taken a similar approach. See Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting a Principles-Based Approach to Prohibit the Misuse of Material, Non-public Information by Market Makers by Deleting Rule 810, Securities Exchange Act Release No. 75792 (August 31, 2015), 80 FR 53606 (September 4, 2015) (SR-ISE-2015-26). See also Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Principles-based Approach to Prohibit the Misuse of Material Nonpublic Information by Market Makers, Securities Exchange Act Release No. 75916 (September 14, 2015), 80 FR 56503 (September 18, 2015) (SR-BOX-2015-31).

The Exchange notes that even with this proposed rule change, pursuant to Exchange Rule 761, Commentary .02 a specialist would still be obligated to ensure that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, including Section 15(g) of the Act<sup>13</sup>, and with applicable Exchange rules, including being reasonably designed to protect against the misuse of material, non-public information. While information barriers would not specifically be required under the proposal, Rule 761, Commentary .02 already requires that a member or member organization consider its business model or business activities in structuring its policies and procedures, which may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.

The Exchange believes that the proposed reliance on principles-based Rule 761, Commentary .02 would ensure that a specialist would be required to protect against the misuse of any material non-public information. As noted above, Rule 761, Commentary .02 already requires that firms refrain from trading while in possession of material non-public information concerning imminent transactions in the security or related product. The Exchange believes that moving to a principles-based approach rather than prescribing how and when to wall off a specialist from the rest of the firm would provide specialists with flexibility when managing risk across a firm, including integrating

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<sup>13</sup> 15 U.S.C. 78o(g).

options positions with other positions of the firm or, as applicable, by the respective independent trading unit.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>15</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by adopting a principles based approach to permit a member or member organization to maintain and enforce policies and procedures to, among other things, prohibit the misuse of material non-public information and provide flexibility on how a specialist structures its operations.

The Exchange notes that the proposed rule change is based on an approved rule of the Exchange to which members and member organizations are subject – Rule 761, Commentary .02 – and harmonizes the rules governing members and member organizations. Moreover, specialists would continue to be subject to federal and Exchange requirements for protecting material non-public order information.<sup>16</sup> The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market because it would harmonize the

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<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> See 15 U.S.C. 78o(g) and Exchange Rule 761, Commentary .02.

Exchange's approach to protecting against the misuse of material non-public information and no longer subject specialists to prescriptive requirements. The Exchange does not believe that the existing prescriptive requirements applicable to specialists are narrowly tailored to their roles because specialists do not have access to Exchange trading information in a manner different from any other market participant on the Exchange.

The Exchange further believes the proposal is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because existing rules make clear to members and member organizations the type of conduct that is prohibited by the Exchange. While the proposal eliminates prescriptive requirements relating to the misuse of material non-public information, specialists would remain subject to existing Exchange rules requiring them to establish and maintain systems to supervise their activities, and to create, implement, and maintain written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on the misuse of material, non-public information. Additionally, the policies and procedures of specialists, including those relating to information barriers, would be subject to review by FINRA, on behalf of the Exchange.

The Exchange notes that the proposed rule change would still require that specialists maintain and enforce policies and procedures reasonably designed to ensure compliance with applicable federal securities laws and regulations and with Exchange rules. Even though there would no longer be pre-approval of specialist information barriers, any specialist written policies and procedures would continue to be subject to oversight by the Exchange and therefore the elimination of prescribed restrictions should



not reduce the effectiveness of the Exchange rules to protect against the misuse of material non-public information. Rather, members and member organizations will be able to utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. Moreover, while specified information barriers may no longer be required, a member or member organization's business model or business activities may dictate that an information barrier or functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules. The Exchange therefore believes that the proposed rule change will maintain the existing protection of investors and the public interest that is currently applicable to specialists, while at the same time removing impediments to and perfecting a free and open market by moving to a principles-based approach to protect against the misuse of material non-public information.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As indicated above, the rule change is being proposed as a competitive response to a filing submitted by NYSE MKT that was recently approved by the Commission. The Exchange believes that the proposal will enhance competition by allowing specialists to comply with applicable Exchange rules in a manner best suited to their business models, business activities, and the securities markets, thus reducing regulatory burdens while still ensuring compliance with applicable securities laws and regulations and Exchange

rules. The Exchange believes that the proposal will foster a fair and orderly marketplace without being overly burdensome upon specialists.

Moreover, the Exchange believes that the proposed rule change would eliminate a burden on competition for members and member organizations which currently exists as a result of disparate rule treatment between options and equities markets regarding how to protect against the misuse of material non-public information. For those members and member organizations that are also members of equity exchanges, their respective equity market maker operations are now subject to a principles-based approach to protecting against the misuse of material non-public information. The Exchange believes it would remove a burden on competition to enable members and member organizations to similarly apply a principles-based approach to protecting against the misuse of material non-public information in the options space as ISE has recently done. To this end, the Exchange notes that Exchange Rule 761, Commentary .02 still requires a specialist to evaluate its business to assure that its policies and procedures are reasonably designed to protect against the misuse of material non-public information. However, with this proposed rule change, a member or member organization that trades equities and options could look at its firm more holistically to structure its operations in a manner that provides it with better tools to manage its risks across multiple security classes, while at the same time protecting against the misuse of material non-public information.

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 foregoing 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, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>17</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>18</sup>

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 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:

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(a)(iii).

<sup>18</sup> 17 CFR 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.

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-2015-85 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-2015-85. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2015-85 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>19</sup>

Robert W. Errett  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

New text is underlined, deletions are [bracketed].

**Rules of the Exchange**

\* \* \* \* \*

**Options Rules**

\* \* \* \* \*

**Rule 1020. Registration and Functions of Options Specialists**

(a) – (d) No Change.

(e) No member (other than a specialist acting pursuant to paragraphs (c) or (d) above), limited partner, officer, employee, approved person or party approved, who is affiliated with a specialist or specialist member organization, shall, during the period of such affiliation, purchase or sell any option in which such specialist is registered for any account in which such person or party has a direct or indirect interest. Any such person or party may, however, reduce or liquidate an existing position in an option in which such specialist is registered provided that such orders are (i) identified as being for an account in which such person or party has a direct or indirect interest; (ii) approved for execution for an Options Exchange Official; and (iii) executed by the specialist in a manner reasonably calculated to contribute to the maintenance of price continuity with reasonable depth. No order entered pursuant to this paragraph (e) shall be given priority over, or parity with, any order represented in the market at the same price.

(f) Notwithstanding the provisions of paragraph (a) of this Rule, an approved person or member organizations which is affiliated with a specialist member organization shall not be subject to Rule 1020(e) and Rule 1023(a) and (b), provided that it has established and obtained Exchange approval of procedures restricting the flow of material non-public corporate or market information between itself and the specialist member organization and any member, officer, or employee associated therewith.

(g) For such approved person or member organization which controls or is controlled by or is under common control with, another organization, the exemption provided in paragraph (f) of this Rule shall be available to it only where the Exchange has determined that the relationship between the specialist member organization, each specialist associated therewith, and such other organization satisfies all the conditions specified in the guidelines.

(h) The procedures referred to in paragraph (f) of this Rule shall comply with such guidelines as are promulgated by the Exchange.

**Guidelines for Exemptive Relief Under Rule 1020 for Approved Persons or Member Organizations Affiliated with a Specialist Member Organization.**

(a) The Exchange Rules listed below impose certain restrictions on an approved person or member organization which is affiliated with a specialist or specialist unit (collectively referred to herein as an "affiliated upstairs firm"):

Rule 1020(e) provides that an affiliated upstairs firm may not purchase or sell any security in which the specialist is registered for any account in which such person or party has a direct or indirect interest.

Rule 1023(a) prohibits an affiliated upstairs firm from engaging in any business transaction with the issuer of a specialty security and its insiders.

Rule 1023(b) prohibits an affiliated upstairs firm from accepting orders in specialty securities directly from the issuer, its insiders and certain designated parties.

Exchange Rule 1020 provides a means by which an affiliated upstairs firm may obtain an exemption from the restrictions discussed above. This exemption is only available to an affiliated upstairs firm which obtains prior Exchange approval for procedures restricting the flow of material, non-public information between it and its affiliated specialist, i.e., a "Chinese Wall." These Guidelines set forth, at a minimum, the steps an affiliated upstairs firm must undertake to seek to qualify for exemptive relief. Any firm that does not obtain Exchange approval for its procedures in accordance with these Guidelines shall remain subject to the restrictions in the Rules set forth above.

(b) These Guidelines require that an affiliated upstairs firm establish procedures which are sufficient to restrict the flow of privileged information between itself and the specialist organization. Generally, an affiliated upstairs firm seeking an exemption from the Rules discussed in paragraph (a) above should establish its operational structure along the lines discussed below.

- (i) The affiliated upstairs firm and the specialist organization must be organized as separate and distinct organizations. At a minimum, the two organizations must maintain separate and distinct books, records and accounts and satisfy separately all applicable financial and capital requirements. While the Exchange will permit the affiliated upstairs firm and the specialist organization to be under common management, in no instance may persons on the upstairs firm's side of the "Wall" exercise influence over or control the specialist organization's conduct with respect to particular securities or vice versa. Any general managerial oversight must not conflict with or compromise in any way the specialist's market making responsibilities pursuant to the Rules of the Exchange.
- (ii) The affiliated upstairs firm and the specialist organization must establish procedures designed to prevent the use of material non-public corporate or market information in the possession of the affiliated upstairs firm to influence the specialist organization's conduct and avoid the misuse of specialist market information to influence the affiliated upstairs

firm's conduct. Specifically, the affiliated upstairs firm and the specialist organization must ensure that material non-public corporate information relating to, or trading positions taken by the affiliated upstairs firm in a specialty security are not made available to the specialist organization; or to any member, partner, director or employee thereof; by a specialist in the specialist organization while in possession of non-public corporate information derived by the affiliated upstairs firm from any transaction or relationship with the issuer or any other person in possession of such information; that advantage is not taken of knowledge of pending transactions or the upstairs firm's recommendations; and that all information pertaining to positions taken or to be taken by the specialist and to the specialist's "book" in a specialty security, is kept confidential and is not made available to the affiliated upstairs firm.

(c) An affiliated upstairs firm seeking the Rule 1020 exemption shall submit to the Exchange a written statement which shall set forth:

- (i) The manner in which it intends to satisfy each of the conditions stated in subparagraphs (b) (i) and (b) (ii) of these Guidelines, and the compliance and audit procedures it proposes to implement to ensure that the functional separation is maintained;
- (ii) The designation and identification of the individual(s) within the affiliated upstairs firm responsible for maintenance and surveillance of such procedures;
- (iii) That the specialist organization may make available to a broker affiliated with it only the sort of market information that it would make available in the normal course of its specializing activity to any other broker and in the same manner that it would make information available to any other broker; and that the specialist organization may only make such information available to a broker affiliated with the upstairs firm pursuant to a request by such broker for such information and may not, on its own initiative, provide such broker with such information;
- (iv) That where it "popularizes" a specialty security it must disclose that an associated specialist makes a market in the security, may have a position in the security, and may be on the opposite side of public orders executed on the Floor of the Exchange in the security, and the firm will notify the Exchange immediately after the issuance of a research report or written recommendation;
- (v) That it will file with the Exchange such information and reports as the Exchange may, from time to time, require relating to its transactions in a specialty security;
- (vi) That it will take appropriate remedial action against any person violating these Guidelines and/or its internal compliance and audit procedures adopted pursuant to subsection (c) (i) of these Guidelines, and that it and its associated specialist organization each recognizes that the Exchange may take appropriate remedial action, including (without limitation) reallocation of specialty securities and/or revocation of the exemption provided in Rule 1020, in the event of such a violation;



- (vii) Whether the firm intends to clear proprietary trades of the specialist organization and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the firm's Chinese Wall. (The procedures followed shall, at a minimum, be the same as those used by the firm to clear for unaffiliated third parties); and
- (viii) That no individual associated with it may trade as a Registered Options Trader in any security or option in which the associated specialist organization specializes.

(d) Paragraph (b) of these Guidelines requires the establishment of procedures designed to prohibit the flow of certain market sensitive information from an upstairs firm to its affiliated specialist organization or to any member, partner, director or employee thereof. In the event that, notwithstanding these procedures, any specialist in the specialist organization becomes aware of the fact that he has received any such information relating to any of his specialty stocks or Exchange-Traded Fund Shares from his organization's affiliated upstairs firm, the specialist shall promptly communicate that fact and disclose the information so received to the person in the affiliated upstairs firm responsible for compliance with securities laws and regulations (the compliance officer) and shall seek a determination from the compliance officer as to whether he should, as a consequence of his receipt of such information, give up the book in the specialty stock or Exchange-Traded Fund Share involved. If the compliance officer determines that the specialist should give up the book, the specialist shall, at a minimum, give it up to another member who is registered as specialist in the stock or Exchange-Traded Fund Share and who is not in possession of the information so received. In any such event, the compliance officer shall determine when it is appropriate for the specialist to recover the book and recommence acting as specialist in the specialty stock or Exchange-Traded Fund Share involved. Procedures shall be established by the affiliated upstairs firm to assure that in any instance when the compliance officer determines that a specialist should give up the book, such transfer is effected in a manner which will prevent the market sensitive information from being disclosed to the temporary specialist.

The compliance officer shall keep a written record of each request received from a specialist for a determination as referred to above. Such record shall be adequate to record the pertinent facts and shall include, at a minimum, the identification of the security the date, a description of the information received by the specialist, the determination made by the compliance officer and the basis therefore. If the book is given up, the record shall also set forth the time at which the specialist reacquired the book and the basis upon which the compliance officer determined that such reacquisition was appropriate. The Exchange shall be given prompt notice of any instance when the compliance officer determines that a specialist should give up the book and also of the determination that such specialist should be permitted to reacquire the book. In accordance with such schedules as the Exchange shall from time to time prescribe (at least monthly), the written record of all requests received by the compliance officer from specialists in the affiliated specialist organization for a determination as referred to above shall be furnished to the Exchange for its review. Members and member organizations are cautioned that any trading by any person while in possession of material, non-public information received as a result of any breach of the internal controls required by the Guidelines may violate Rule 10b-5, Rule 14e-3, just and equitable principles of trade or one or more other provisions of the 1934 Act, or

regulations thereunder or Rules of the Exchange. The Exchange intends to review carefully any such trading of which it becomes aware with a view towards determining whether any such violation has occurred.

(e) Subparagraph (c) (vii) of these Guidelines permits an upstairs firm to clear the specialist transactions of its affiliated specialist organization provided it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the firm's Chinese Wall. Such procedures should provide that any information pertaining to security positions and trading activities of the specialist organization, and information derived from any clearing and margin financing arrangements between the affiliated upstairs firm and the specialist organization, may be made available only to those (other than employees actually performing clearing and margin financing functions) in senior management positions in the affiliated upstairs firm who are involved in exercising general managerial oversight over the specialist organization. Generally, such information may be made available only to the affiliated upstairs firm's chief executive officer, chief operations officer, chief financial officer, and senior officer responsible for managerial oversight of the specialist organization, and only for the purpose of exercising permitted managerial oversight. Such information may not be made available to anyone actually engaged in making day-to-day trading decisions for the affiliated upstairs firm, or in making recommendations to the customers or potential customers of the affiliated upstairs firm. Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of any specialist in the specialist organization to meet market-making or other obligations under Exchange Rules.

(f) The written statement required by Paragraph (c) of these Guidelines shall detail the internal controls which both the affiliated upstairs firm and the specialist organization intend to adopt to satisfy each of the conditions stated in subparagraphs (c) (i) through (c) (viii) of these Guidelines, and the compliance and the audit procedures it proposes to implement to ensure that the internal controls are maintained. If the Exchange determines that the organization structure and the compliance and audit procedures proposed by the upstairs firm and its affiliated specialist organization are acceptable under the Guidelines, the Exchange shall so inform the upstairs firm and its affiliated specialist organization, in writing, at which point the exemptions provided by Rule 1020 shall be granted. Absent such prior written approval, the exemptions provided by Rule 1020 shall not be available. The written statement should identify the individuals in senior management positions (and their titles/levels of responsibility) of the affiliated upstairs firm to whom information concerning the specialist member organization's trading activities and security positions, and information concerning clearing and margin financing arrangements, is to be made available, the purpose for which it is to be made available, the frequency with which the information is to be made available, and the format in which the information is to be made available. If any partner, director, officer or employee of the affiliated upstairs firm intends to serve in any such capacity with the specialist organization, to serve in any such capacity with the specialist organization, or vice versa, the written statement must include a statement of the duties of the particular individual at both entities, and why it is necessary for such individual to be a partner, director, officer or employee of both entities. The Exchange will grant approval for service at both entities only if the dual affiliation is for overall management control purposes or for administrative and support purposes. Dual affiliation will not be permitted for an individual who intends to be active in the day-to-day business operations

of both entities. Nothing in the foregoing, however, shall preclude an employee of one entity who performs strictly administrative or support functions (such as facilities, accounting, data processing, personnel and similar types of services) from performing similar functions on behalf of the other entity, provided that such individual is clearly identified, and the functions performed on behalf of each entity are specified, in the written statement described above, and all requirements in Paragraph (b) above as to maintaining the confidentiality of information are met.]

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**Rule 1023. Reserved. [Specialist's Transactions with Listed Company**

(a) No specialist or his member organization, or any member, limited partner, officer, employee, approved person or party approved shall directly or indirectly, effect any business transaction with a company or any officer, director or 10% stockholder of a company in which options of such company the specialist is registered, except for business transactions in goods and services on terms generally available to the public.

(b) No specialist, his member organization or corporate subsidiary of such organization shall accept an order for the purchase or sale of any option in which he is registered as a specialist directly (i) from the company issuing such stock or (ii) from any officer, director or 10% stockholder of that company.]

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