SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74746; File No. SR–Phlx–2014–66]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Amendment No. 2 and Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change, as Modified by Amendment No. 2, To Adopt New Exchange Rule 1081, Solicitation Mechanism, To Introduce a New Electronic Solicitation Mechanism

April 16, 2015.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on April 9, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment No. 2 to the proposed rule change as described in Items II and III below, which Items have been substantially prepared by the Exchange.[3] Amendment No. 2 replaces the original filing in its entirety.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and to designate a longer period within which to issue an order approving or disapproving the proposed rule change, as modified by Amendment No. 2.

On October 14, 2014, the Exchange filed with the Commission, pursuant to Section 19(b)(1) of the Act [5] and Rule 19b–4 thereunder,[6] a proposed rule change to adopt new Exchange Rule 1081, Solicitation Mechanism, to introduce a new electronic solicitation mechanism pursuant to which a member would be able to electronically submit all-or-none orders of 500 contracts or more (or, in the case of mini options, 5,000 contracts or more) that the member represents as agent against contra orders that the member solicited. The proposed rule change was published for comment in the **Federal Register** on October 31, 2014.[7] On December 8, 2014, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to January 29, 2015.[8] On January 28, 2015, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [9] to determine whether to approve or disapprove the proposed rule change.[10] The Commission received one comment letter regarding the proposal,[11] as well as a response to the comment letter from the Exchange.[12]

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

The Exchange proposes to adopt new Exchange Rule 1081, Solicitation Mechanism, to introduce a new electronic solicitation mechanism pursuant to which a member can electronically submit all-or-none orders of 500 contracts or more (or, in the case of mini options, 5,000 contracts or more) the member represents as agent against contra orders the member solicited. The Exchange is also proposing a corresponding amendment to the definition of ''professional'' in Rule 1,000(b)(14) and a clarification to Rule 1080, Phlx XL and Phlx XL II. The proposed rule change was filed on October 14, 2014.[13] Amendment No. 2 amends and replaces the original filing in its entirety.[14]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposal is to introduce an electronic solicitation mechanism. Currently, under Phlx Rule 1080(c)(ii)(C)(2), Order Entry Firms [15] must expose orders they represent as agent for at least one second before such orders may be automatically executed, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders.[16] The proposed rule change would provide an alternative, enabling a member to electronically execute orders it represents on behalf of a public customer, broker-dealer, or any other

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

[2] 17 CFR 240.19b–4.

[3] The Exchange filed Amendment No. 1 on April 1, 2015. Amendment No. 1 was withdrawn on April 8, 2015.

[4] *See infra* note 7. *See also infra* note 14 for the Exchange's description of the changes in Amendment No. 2.

[5] 15 U.S.C. 78s(b)(1).

[6] 17 CFR 240.19b–4.

[7] *See* Securities Exchange Act Release No. 73441 (October 27, 2014), 79 FR 64862 (''Notice'').

[8] *See* Securities Exchange Act Release No. 73791 (December 8, 2014), 79 FR 73924 (December 12, 2014).

[9] 15 U.S.C. 78s(b)(2)(B).

[10] *See* Securities Exchange Act Release No. 74167 (January 28, 2015), 80 FR 5865 (February 3, 2015) (''Order Instituting Proceedings'').

[11] *See* Letter from Michael J. Simon, Secretary and General Counsel, International Securities Exchange LLC, dated February 25, 2015.

[12] *See* Letter from Carla Behnfeldt, Associate General Counsel, Nasdaq, dated March 11, 2015.

[13] *See* Securities Exchange Act Release No. 73441 (October 27, 2014), 79 FR 64862 (October 31, 2014). The Exchange filed Amendment No. 1 on April 1, 2015. Amendment No. 1 was withdrawn on April 8, 2015.

[14] The amendment makes certain changes to Exchange Rule 1080(n) regarding the PIXL auction process, clarifies that the trading system does not currently accept all-or-none Complex Orders, provides that the side of the Agency Order will be disseminated at the commencement of an auction, clarifies the treatment of responsive all-or-none interest in the auction, adds examples and makes certain other technical and clarifying changes.

[15] Rule 1080(c)(ii)(A)(1) defines ''Order Entry Firm'' as a member organization of the Exchange that is able to route orders to AUTOM. (AUTOM is the Exchange's electronic quoting and trading system, which has been denoted in Exchange rules as XL II, XL and AUTOM.)

[16] Section (c), Solicited Orders, of Exchange Rule 1064, Crossing, Facilitation and Solicited Orders, governs execution of solicited orders by open outcry, on the Exchange trading floor, and is unaffected by proposed Rule 1081. Additionally, many aspects of the functionality of the proposed solicitation mechanism are similar to those provided for in Rule 1080(n), PIXL, and certain of the rules proposed herein consequently track the existing PIXL rules. The Exchange adopted PIXL in October 2010 as a price-improvement mechanism that is a component of the Exchange's fully automated options trading system, Phlx XL, now known as XL II. Like the solicitation mechanism, PIXL is a mechanism whereby an initiating member submits a two-sided (buy and sell) order into an auction process soliciting price improvement. *See* Securities Exchange Act Release Nos. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (order approving SR–Phlx–2010–108, for purposes of this proposed rule change, the ''PIXL Filing'') and 69845 (June 25, 2013), 78 FR 39429 (July 1, 2013) (SR–Phlx–2013–46 and, for purposes of this proposed rule change, the ''Complex PIXL Filing'') (Order Granting Approval To Proposed Rule Change, as Modified by Amendment No. 1, Regarding Complex Order PIXL).

entity (an ''Agency Order'') [17] against solicited limit orders of a public customer, broker-dealer, or any other entity (a ''Solicited Order'') through a solicitation mechanism designed for this purpose.[18]

The new mechanism is a process by which a member (the ''Initiating Member'') can electronically submit all-or-none orders [19] of 500 contracts or more (or, in the case of mini options,[20] 5,000 contracts or more) that it represents as agent against contra orders that it has solicited, and initiate an auction (the ''Solicitation Auction'').[21] As explained below, at the end of the Solicitation Auction, allocation will occur with all contracts of the Agency Order trading at an improved price against non-solicited contra-side interest or at the stop price, defined below, against the Solicited Order. The solicitation mechanism would accommodate both simple orders and Complex Orders.[22] Prior to the first time a member enters an Agency Order into the solicitation mechanism on behalf of a customer, the member would be required to deliver to the customer a written notification informing the customer that its Agency Orders may be executed using the Phlx's solicitation mechanism. Such written notification would be required to disclose the terms and conditions contained in Rule 1081 and to be in a form approved by the Exchange.[23]

Solicitation Auction Eligibility Requirements

All options traded on the Exchange, including mini options, are eligible for the Solicitation Auction. Proposed Rule 1081(i) describes the circumstances under which an Initiating Member may initiate a Solicitation Auction.

Proposed Rule 1081(i)(A) provides that the Agency Order and the Solicited Order must each be limit orders for at least 500 contracts (or, in the case of mini options, at least 5,000 contracts) and be designated as all-or-none. The orders must match in size, and their limit prices must match or cross in price.[24] If the orders cross in price, the price at which the Agency Order and the Solicited Order may be considered for submission pursuant to Rules 1081(i)(B) and (C) shall be the limit price of the Solicited Order.[25] The orders may not be stop or stop limit orders, must be marked with a time in force of day, good till cancelled or immediate or cancel, and will not be routed regardless of routing strategy indicated on the order.[26]

Pursuant to Rule 1081(i)(B) the Initiating Member must stop the entire Agency Order at a price (the ''stop price'') that is equal to or better than the National Best Bid/Offer (''NBBO'') on both sides of the market, provided that such price must be at least $0.01 better than any public customer non-contingent limit order on the Phlx order book and must be equal to the Agency Order's limit price or provide the Agency Order with a better price than its limit price. Stop prices may be submitted in $0.01 increments, regardless of the applicable Minimum Price Variation (the ''MPV''). Contingent orders [27] (including all-or-none, stop or stop-limit orders) on the book will not be considered when checking the acceptability of the stop price. Contingent orders are not represented as part of the Exchange Best Bid/Offer since they may only be executed if specific conditions are met. Given these orders are not represented as part of the Exchange Best Bid/Offer, they are not included in the NBBO and thus not considered when checking the acceptability of the stop price.[28]

Orders which are submitted which do not comply with the eligibility requirements set forth in proposed Rule 1081(i)(A) through (C) will be rejected upon receipt and ineligible to initiate a Solicitation Auction.[29] In addition, Agency Orders submitted at or before the opening of trading are not eligible to initiate a Solicitation Auction and will be rejected.[30] Orders submitted during a specified period of time, as determined by the Exchange and communicated to Exchange membership on the Exchange's Web site, prior to the end of the trading session in the affected series [31] (including, in the case of Complex Orders, in any series which is a component of the Complex Order) are

[17] Rule 1080(b)(i)(A) provides in part that ''[f]or purposes of Exchange options trading, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.'' However, that provision did not contemplate, and is not applicable to, the capitalized and defined term ''Agency Order'' as used in proposed Rule 1081.

[18] To be clear, participants must ensure that their records adequately demonstrate the solicitation of an order that is entered into the mechanism for execution against an Agency Order as a Solicited Order prior to entry of such order into this mechanism.

[19] Exchange Rule 1066(c)(4) defines an ''all-or-none'' order as a market or limit order which is to be executed in its entirety or not at all.

[20] A given Solicitation Auction may be for options contracts exclusively or for mini options contracts exclusively, but cannot be used for a combination of both options contracts and mini options contracts together.

[21] Similar electronic functionality is offered today by competing exchanges. *See* Chicago Board Options Exchange (''CBOE'') Rule 6.74B, Solicitation Auction Mechanism (the ''CBOE Mechanism''), and International Securities Exchange (''ISE'') Rule 716(e), Solicited Order Mechanism (the ''ISE Mechanism'').

[22] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. A Complex Order may also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). Complex Orders on Phlx are discussed in Commentary .07 to Rule 1080.

[23] *See* Rule 1081(i)(H). The rule would require delivery of this disclosure only prior to the first submission of an Agency Order on behalf of a customer rather than prior to the submission of each and every Agency Order on behalf of such customer.

[24] In the case of Complex Orders, the underlying components of both Complex Orders must also match. Additionally, all the option legs of each Complex Order must consist entirely of options or entirely of mini options.

[25] For example, assume an Agency Order to buy 1000 contracts for $2.00 and a Solicited Order to sell 1,000 contracts at $1.90 are entered into the solicitation mechanism. Since the limits of these orders cross in price, the Agency Order and Solicited Order are considered to be submitted into the mechanism with a stop price equal to the Solicited Order price of $1.90.

[26] Whether an order is marked with a time in force of day as opposed to, for example, good till cancelled or immediate or cancel is irrelevant to the manner in which they will be treated once they are entered into the solicitation mechanism.

[27] A contingent order is a limit or market order to buy or sell that is contingent upon a condition being satisfied. PIXL also does not consider contingent orders on the book when checking the acceptability of the stop price.

[28] Rule 1081(i)(B) does not apply if the Agency Order is a Complex Order (a ''Complex Agency Order''). Rather, Rule 1081(i)(C) applies to Complex Agency Orders and requires them to be of a conforming ratio, as defined in Commentary .07(a)(ix) to Rule 1080. A Complex Agency Order which is not of a conforming ratio will be rejected. (PIXL operates in the same manner. *See* Rule 1080(n)(i)(C).) Rule 1081(i)(C) requires all component option legs of the order to be for at least 500 contracts (or, in the case of mini options, at least 5,000 contracts). It also provides that the Initiating Member must stop the entire Complex Agency Order at a price that is better by at least $0.01 than the best net price (debit or credit) (i) available on the Complex Order book regardless of the Complex Order book size; and (ii) achievable from the best Phlx bids and offers for the individual options (an ''improved net price'') regardless of size, provided in either case that such price is equal to or better than the Complex Agency Order's limit price. Stop prices for Complex Agency Orders may be submitted in $0.01 increments, regardless of MPV, and contingent orders on the book will not be considered when checking the acceptability of the stop price. *See* proposed Rule 1081(i)(C).

[29] *See* Rule 1081(i)(D).

[30] *See* Rule 1081(i)(E).

[31] The term ''series'' of options means all option contracts of the same class having the same expiration date and exercise price. A ''class'' of options means all option contracts of the same ''type'' of option covering the same underlying stock. A ''type'' of option means the classification of an option contract as a put or a call. *See* Rule 1000, Applicability, Definitions and References.

not eligible to initiate a Solicitation Auction and will be rejected.[32] Agency Orders which are not Complex Orders received while another electronic auction (including any Solicitation Auction, PIXL auction, or any other kind of auction) involving the same option series is in progress are not eligible to initiate a Solicitation Auction and will be rejected.[33] Similarly, a Complex Agency Order received while another auction in the same Complex Order strategy is in progress is not eligible to initiate a Solicitation Auction and will be rejected.[34]

Finally a solicited order for the account of any Exchange specialist, streaming quote trader (''SQT''), remote streaming quote trader (''RSQT'') or non-streaming registered options trader (''ROT'') assigned in the affected series may not be a Solicited Order.[35] Consistent with the explanation the Exchange made in the PIXL Filing, the Exchange believes that in order to maintain fair and orderly markets, a market maker assigned in an option should not be solicited for participation in a Solicitation Auction by an Initiating Member. The Exchange believes that market makers interested in participating in transactions on the Exchange should do so by way of his/her quotations, and should *respond* to Solicitation Auction notifications rather than create them by having an Initiating Member submitting Solicited Orders on the market maker's behalf.

Solicitation Auction Process

Pursuant to Rule 1081(ii)(A)(1), to begin the process the Initiating Member must mark the Agency Order and the Solicited Order for Solicitation Auction processing, and specify the stop price at which it seeks to cross the Agency Order with the Solicited Order. The system will determine the stop price based upon the submitted limit prices if such prices do not match as discussed above. Once the Initiating Member has submitted an Agency Order and Solicited Order for processing pursuant to this subparagraph, such Agency Order and Solicited Order may not be modified or cancelled.[36]

Crossing Two Public Customer Orders Without a Solicitation Auction

As noted above, the proposed rule change would enable a member to electronically execute an Agency Order, which is an order it represents on behalf of a public customer, broker-dealer, or any other entity, against a Solicited Order, which is a solicited limit order of a public customer, broker-dealer, or any other entity through the solicitation mechanism.

However, pursuant to Rule 1081(v), if a member enters an Agency Order for the account of a public customer paired with a Solicited Order for the account of public customer and if the paired orders adhere to the eligibility requirements of Rule 1081(i), such paired orders will be automatically executed without a Solicitation Auction.[37] The execution price for such paired public customer orders (except if they are Complex Orders) must be expressed in the minimum quoting increment applicable to the affected series.[38] Such an execution may not trade through the NBBO or at the same price as any resting public customer order. If all-or-none orders are on the order book in the affected series, the public customer-to-public customer order may not be executed at a price at which the all-or-none order would be eligible to trade based on its limit price and size.[39]

In the case of a Complex Order, a public customer-to-public customer cross may only occur at a price which improves the calculated Phlx Best Bid/Offer or ''cPBBO'' and improves upon the net limit price of any Complex Orders (excluding all-or-none) on the Complex Order book in the same strategy.[40] If all-or-none Complex Orders [41] are on the Complex Order

[32] *See* Rule 1081(i)(F).

[33] A similar restriction applies with respect to PIXL auctions. *See* PIXL Rule 1080(n)(ii) which provides that ''[o]nly one Auction may be conducted at a time in any given series or strategy.'' The Exchange is proposing to revise this provision to make clear that only one electronic auction of any kind may be conducted at a time in any given series or strategy. The Exchange is proposing to further amend the PIXL rule by adding Rule 1080(n)(i)(H) to provide that PIXL Orders that are received while another electronic auction involving the same option series or the same Complex Order strategy is in progress are not eligible to initiate a PIXL Auction and will be rejected.

[34] However, a simple Agency Order in one series that is submitted while an electronic auction is already in process with respect to a Complex Agency Order that includes the same series will *not* be rejected. Instead, a Solicitation Auction will be initiated for that incoming Agency Order offering each unique strategy or individual series the same opportunity to initiate an auction. This behavior is consistent with the handling of overlapping PIXL and Complex PIXL auctions. *See* PIXL Rule 1080(n)(ii). Any Legging Orders will automatically be removed from the order book upon receipt of an Agency or Complex Agency Order which consists of a component in which there is a Legging Order (whether a buy order or a sell order) that initiates a Solicitation Auction. *See* Rule 1080.07(f)(iii)(C)(4)(vi). Complex Orders submitted during normal trading hours in a strategy which has not yet opened under Commentary .07 of Exchange Rule 1080 will cause the strategy to immediately open and a Solicitation Auction may be initiated. *See* Rule 1081(i)(E). In addition, neither a Solicitation Auction for a simple Agency Order or Complex Agency Order may be initiated prior to the regular opening of the individual option in the case of a simple Agency Order, or the regular opening of all individual components in the case of a Complex Agency Order.

[35] *See* Rule 1081(i)(G). An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(A). A RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member affiliated with a 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. A qualified RSQT may function as a Remote Specialist upon Exchange approval. An RSQT may only submit such quotations electronically from off the floor of the Exchange. An RSQT may not submit option quotations in eligible options to which such RSQT is assigned to the extent that the RSQT is also approved as a Remote Specialist in the same options. An RSQT may only trade in a market making capacity in classes of options in which he is assigned or approved as a Remote Specialist. An RSQTO is a member organization in good standing that satisfies the SQTO readiness requirements in Rule 507(a).

[36] For clarity, Rule 1080(ii)(A)(l) does not apply to Complex Agency Orders. Rather, in a parallel provision, proposed Rule 1081(ii)(A)(2) provides that to initiate a Solicitation Auction in the case of a Complex Agency Order and Complex Solicited Order (a ''Complex Solicitation Auction''), the Initiating Member must mark the orders for Solicitation Auction processing, and specify the price (''stop price'') at which it seeks to cross the Complex Agency Order with the Complex Solicited Order. The system will determine the stop price based upon the submitted limit prices if such prices do not match as discussed above. Once the Initiating Member has submitted the orders for processing pursuant to this subparagraph, they may not be modified or cancelled.

[37] The eligibility requirements require the orders to each be limit orders for at least 500 contracts (or, in the case of mini options, at least 5000 contracts) and be designated as all-or-none. The orders must match in size, and the limit prices must match or cross in price. The orders may not be stop or stop limit orders, must be marked with a time in force of day, good till cancelled or immediate or cancel. In the case of Complex Orders, the orders must be of a conforming ratio, and all component option legs of the order must be for at least 500 contracts (or, in the case of mini options, at least 5000 contracts). *See* Rule 1081(i). The Exchange also accommodates the crossing of two public customer orders in PIXL. *See* Rule 1080(n).

[38] The execution price for a Complex Order may be in $.01 increments.

[39] All-or-none orders can only be submitted for non-broker dealer customers. As stated above, all-or-none orders are not considered when checking the acceptability of the stop price of an Agency Order.

[40] The term ''cPBBO'' means the best net debit or credit price for a Complex Order Strategy based on the PBBO for the individual options components of such Complex Order Strategy, and, where the underlying security is a component of the Complex Order, the National Best Bid and/or Offer for the underlying security. *See* Rule 1080.07(a)(iv).

[41] The Exchange's trading system is capable of accepting all-or-none Complex Orders which are not, however, affirmatively permitted to be submitted under Exchange rules. Rule 1080.07(b)(v) provides in part that ''Complex Orders may be submitted as: All-or-none orders—to be executed in

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book in the same strategy, the public customer-to-public customer Complex Order may not be executed at a price at which the all-or-none Complex Order would be eligible to trade based on its limit price and size.

The Exchange believes that permitting such executions will benefit public customers on both sides of the crossing transaction by providing speedy and efficient executions to public customer orders in this circumstance while maintaining the priority of public customer interest on the book. The proposed handling of a public customer Agency Order paired with a public customer Solicited Order is similar to the handling of a public customer PIXL Order paired with a public customer Initiating Order which is submitted into the PIXL mechanism.[42]

Solicitation Auction Notification

Pursuant to proposed Rule 1081(ii)(A)(3), when the Exchange receives an order for Solicitation Auction processing, a Request for Response with the option details (meaning, the security, strike price, and expiration date), size, side and stop price of the Agency Order and the Solicitation Auction start time is then sent over the PHLX Orders data feed [43] and Specialized Quote Feed (''SQF'').[44] The Exchange believes that providing option details, size, side and stop price is sufficient information for participants to determine whether to submit responses to the Solicitation Auction.[45]

Solicitation Auction

The Solicitation Auction process is described in proposed Rules 1081(ii)(A)(4)–(10). Following the issuance of the Request for Response, the Solicitation Auction will last for a period of 500 milliseconds [46] unless it is concluded as the result of any of the circumstances described below.[47]

Any person or entity may submit Responses to the Request for Response, provided such Response is properly marked specifying the price, size and side of the market at which it would be willing to participate in the execution of the Agency Order.[48] The Exchange believes that permitting any person or entity to submit Responses to the Request for Response should attract Responses from all sources, maximizing the potential for liquidity in the Solicitation Auction and thus affording the Agency Order the best opportunity for price improvement. Responses will not be visible to Solicitation Auction participants, and will not be disseminated to the Options Price Reporting Authority (''OPRA''). A Response may be for any size up to the size of the Agency Order.[49] The minimum price increment for Responses will be $0.01. A Response must be equal to or better than the NBBO on both sides of the market at the time of receipt of the Response. A Response with a price that is outside the NBBO at the time of receipt will be rejected.[50] Multiple Responses from the same member may be submitted at different prices during the Solicitation Auction. Responses may be modified or cancelled during the Solicitation Auction. The acceptance and handling of Responses to a Solicitation Auction is the same as the acceptance and handling of Responses today for a PIXL Auction.[51]

Conclusion of the Solicitation Auction

Rules 1081(ii)(B)(1)–(4) describe a number of circumstances that will cause the Solicitation Auction to conclude. Generally, it will conclude at the end of the Solicitation Auction period, except that it may conclude earlier: (i) Any time the Phlx Best Bid/Offer (''PBBO'') on the same side of the market as the Agency Order crosses the stop price (since further price improvement will be unlikely and any Responses offering improvement are likely to be cancelled),[52] or (ii) any time there is a

its entirety or not at all.'' *See* Securities Exchange Act Release No. 72351 (June 9, 2014), 79 FR 33977 (June 13, 2014) (SR–Phlx–2014–39). Nevertheless, all-or-none Complex Orders may not be submitted at this time. To make this clear, the Exchange proposes to add a sentence at the end of Rule 1080.07(b)(v) stating that ''[n]otwithstanding the above, the trading system does not currently accept all-or-none Complex Orders.'' The Exchange anticipates that it will file a proposed rule change to provide for the handling and execution of all-or-none Complex Orders and thereafter permit the trading system to accept them. The Exchange therefore intends to delete this new sentence if the Exchange submits and the Commission approves a proposed rule change that provides for all-or-none orders to be submitted through the trading system. The instant proposed rule change describes how the solicitation mechanism will deal with all-or-none Complex Orders once they are permitted under Exchange rules. Complex Agency Orders and Complex Solicited Orders provided for herein are not Complex Orders that will require filing of a proposed rule change in order to be submitted into the system. Complex Agency Orders and Complex Solicited Orders, while all-or-none in character, are unique to the solicitation mechanism and are explicitly provided for herein.

[42] *See* Rule 1080(n)(vi).

[43] The PHLX Orders data feed is designed to provide the real-time status of simple and Complex Orders on the Phlx order book directly to subscribers. This includes new orders and changes to orders resting on the Phlx book for all Phlx listed options. PHLX Orders also includes opening imbalance information, PIXL information and Complex Order Live Auction (''COLA'') data.

[44] SQF is an interface that allows specialists and market makers to connect and send quotes into Phlx XL and assists them in responding to auctions and providing liquidity to the market.

[45] In the case of a Complex Agency Order, the Request for Response will include the strategy, side, size, and stop price of the Agency Order as well as the Solicitation Auction start time.

[46] In April/May 2014, to determine whether the proposed Solicitation Auction timer would provide sufficient time to respond to a Request for Response, the Exchange polled all Phlx market makers, 20 of which responded. Of those that responded to the survey, 15 are currently responding to auctions on Phlx or intend to do so. 100% of those respondents indicated that their firm could respond to auctions with a duration of at least 50 milliseconds. Thus, the Exchange believes that the proposed Solicitation Auction duration of 500 milliseconds would provide a meaningful opportunity for participants on Phlx to respond to a Solicitation Auction, whether initiated by an Agency Order or a Complex Agency Order, while at the same time facilitating the prompt execution of orders. The Exchange notes that both ISE and Miami International Securities Exchange LLC (''MIAX'') rules provide for a 500 millisecond response time. *See* ISE Rule 716, Supplementary Material .04 and MIAX Rule 515A(b)(2)(i)(C).

[47] Rule 1080(c)(ii)(C)(2), which states that Order Entry Firms must expose orders they represent as agent for at least one second before such orders may be automatically executed against solicited orders, is being amended to clarify that it does not apply to Rule 1081, Solicitation Mechanism. *See also* Rule 1081(ii)(A)(4).

[48] In the case of a Complex Agency Order, the Response must also specify the price, size and side of the market at which the person submitting the Response would be willing to participate in the execution of the Complex Agency Order.

[49] Responses may not be submitted with an all-or-none contingency. All-or-none (as a Response) is not available for any type of auction in the Phlx market because all-or-none orders may be submitted *only* for Customer accounts under Exchange rules, and Customers typically do not respond to auctions in any event. (Note, however, that all-or-none *orders* entered and present in the system at the end of the Solicitation Auction will be considered for execution, as discussed below.)

[50] Similarly, in the case of Complex Order Responses, the Response must be equal to or better than the cPBBO on both sides, as defined in Commentary .07(a)(iv) of Rule 1080 at the time of receipt of the Complex Order Response but need not improve upon the limit of orders on the CBOOK since the CBOOK is not displayed on OPRA and may not be known to the responding participant. If a Complex Order Response was received which was equal to or crossed the limit of orders on the CBOOK, such Responses will only be executed at a price which improves the resting order's limit price by at least $0.01. *See* proposed rule 1081(ii)(H). A Complex Order Response submitted with a price that is outside the cPBBO at the time of receipt will be rejected. *See* proposed Rule 1081(ii)(A)(9).

[51] *See* Exchange Rule 1080(n).

[52] In the case of a Complex Solicitation Auction, it would end any time the cPBBO or the Complex Order book, excluding all-or-none Complex Orders, on the same side of the market as the Complex Agency Order, crosses the stop price. *See* Rule 1081(ii)(B)(3). The Exchange believes that when either the cPBBO or Complex Order interest, excluding all-or-none, is present on the Exchange on the same side as the Complex Agency Order and crosses the stop price that further price improvement will be unlikely and Responses offering improvement are likely to be cancelled. The Exchange also believes that an all-or-none Complex Order crossing the stop price should not end the Complex Solicitation Auction since the order is contingent and may not actually be tradable based on its size contingency. The Exchange believes continuing to run the Complex Solicitation Auction for the duration of the auction timer

trading halt on the Exchange in the affected series (or, in the case of a Complex Solicitation Auction, any time there is a trading halt on the Exchange in any component of a Complex Agency Order).[53]

Pursuant to proposed Rule 1081(ii)(C), if the Solicitation Auction concludes before the expiration of the Solicitation Auction period as the result of the PBBO, cPBBO or Complex Order book (excluding all-or-none Complex Orders) crossing the stop price as described in Rules 1081(ii)(B)(2) and 1081(ii)(B)(3), the entire Agency Order will be executed using the allocation algorithm set forth in Rule 1081(ii)(E). The algorithm is described below under the heading ''Order Allocation''.

Also pursuant to proposed Rule 1081(ii)(C), if the Solicitation Auction concludes before the expiration of the Solicitation Auction period as the result of a trading halt, the entire Agency Order or Complex Agency Order will be executed solely against the Solicited Order or Complex Solicited Order at the stop price and any unexecuted Responses will be cancelled.[54] Responses and other interest present in the system will not be considered for trade against the Agency Order in the case of a trading halt. The Exchange believes this is appropriate since the participants representing tradable interest in the Solicitation Auction have not 'stopped' the Agency Order in its entirety and would have no means after the auction executions occur to offset the trading risk they would incur because the market is halted if they were permitted to execute against the Agency Order in this instance. However, the Solicited Order 'stopped' the Agency Order when the order was submitted into the Solicitation Auction and will therefore execute against the Agency Order if the Solicitation Auction concludes before the expiration of the Solicitation Auction period as the result of a trading halt.

Furthermore, when Agency and Solicited Orders are submitted into the Solicitation Auction, the stop price must be equal to or improve the NBBO and be at least $0.01 better than any public customer non-contingent limit orders on the Phlx order book. The Exchange believes that public customer interest submitted to Phlx after submission of the Agency and Solicited Orders but prior to the trading halt should not prevent the Agency Order from being executed at the stop price since such public customer interest was not present at the time the Agency Order was 'stopped' by the Solicited Order.

Entry of an unrelated market or marketable limit order on the opposite side of the market from the Agency Order received during the Solicitation Auction will *not* cause the Solicitation Auction to end early. Rather, the unrelated order will execute against interest outside the Solicitation Auction (if marketable against the PBBO) or will post to the book and then route if eligible for routing (in the case of an order marketable against the NBBO but not against the PBBO), pursuant to Rule 1081(ii)(D). If contracts remain from such unrelated order at the time the Solicitation Auction ends, the total unexecuted volume of such unrelated interest will be considered for participation in the order allocation process, regardless of the number of contracts in relation to the Solicitation Auction size, described in Rule 1081(ii)(E).[55] The handling of unrelated opposite side interest which is received during the Solicitation Auction is the same as the handling of unrelated opposite side interest which is received during a PIXL Auction.[56] Participants submitting such unrelated interest may not be aware that an auction is in progress and should therefore be able to access firm quotes that comprise the NBBO without delay. Considering such unrelated interest which remains unexecuted upon receipt for participation in the order allocation process described in Rule 1081(ii)(E) will increase the number of contracts against which an Agency Order could be executed, and should therefore create more opportunities for the Agency Order to be executed at better prices.

Order Allocation

The allocation of orders executed upon the conclusion of a Solicitation Auction will depend upon whether the Solicitation Auction has yielded sufficient improving interest to improve the price of the entire Agency Order. As noted above, all contracts of the Agency Order will trade at an improved price against non-solicited contra-side interest or, in the event of insufficient improving interest to improve the price of the entire Agency Order, at the stop price against the Solicited Order.

Consideration of All-or-None Interest. The treatment of all-or-none interest in assessing the presence of sufficient improving interest differs between simple Solicitation Auctions and Complex Solicitation Auctions. In all Solicitation Auctions, whether simple or complex, the system will not consider an all-or-none order when determining if there is sufficient size to execute the Agency Order (or Complex Agency Order) at a price(s) better than the stop price if the all-or-or none contingency cannot be satisfied by an execution. However, all-or-none interest of a size which could potentially be executed consistent with its all-or-none contingency *is* considered when determining whether there is sufficient size to execute simple Agency Orders at price(s) better than the stop price. By contrast, pursuant to proposed Rule 1081(ii)(E)(5), when determining if there is sufficient size to execute Complex Agency Orders at a price(s) better than the stop price, *no* all-or-none interest of *any* size will be considered. This difference in behavior is due to a system limitation relating to all-or-none Complex Orders.[57] The Exchange believes this behavior is not impactful since all-or-none Complex Orders are

benefits the Agency Order in allowing for interest to continue to be collected which may offer price improvement over the stop price. This behavior is consistent with Solicitation Auctions involving simple orders. Simple Solicitation Auctions conclude early when the PBBO on the same side of the market as the Agency Order crosses the stop price. All-or-none orders are not part of the PBBO as they are contingent and not displayed on OPRA.

[53] Trading on the Exchange in any option contract is halted whenever trading in the underlying security has been paused or halted by the primary listing market. *See* Exchange Rule 1047(e). *See also* Securities Exchange Act Release No. 62269 (June 10, 2010), 75 FR 34491 (June 17, 2010) (SR–Phlx–2010–82). Any executions that occur during any latency between the pause or halt in the underlying security and the processing of the halt on the Exchange are nullified pursuant to Exchange Rule 1092(c)(iv)(B).

[54] The Exchange's PIXL auction features similar functionality. Pursuant to Exchange Rule 1080(n)(ii)(C), in the case of a trading halt on the Exchange in the affected series, a PIXL Order will be executed solely against the Initiating Order at the stop price and any unexecuted PAN responses will be cancelled.

[55] Similarly, pursuant to Rule 1081(ii)(D), in the case of a Complex Solicitation Auction, an unrelated market or marketable limit Complex Order on the opposite side of the market from the Complex Agency Order as well as orders for the individual components of the unrelated Complex Order received during the Complex Solicitation Auction will not cause the Complex Solicitation Auction to end early and will execute against interest outside of the Complex Solicitation Auction. If contracts remain from such unrelated Complex Order at the time the Complex Solicitation Auction ends, the total unexecuted volume of such unrelated interest will be considered for participation in the order allocation process, regardless of the number of contracts in relation to the Complex Solicitation Auction size, described in Rule 1081(ii)(E).

[56] *See* Exchange Rule 1080(n)(ii)(D).

[57] All-or-none simple orders reside with simple orders on the book. By contrast, all-or-none Complex Orders reside in a separate book, in a different part of the trading system. Thus aggregation of all-or-none Complex Orders with other Complex Orders in order to determine the presence of sufficient improving interest is a more difficult process than aggregation of all-or-none simple orders with other simple orders.

rare[58] and if sufficient size exists to execute the entire Complex Agency Order at an improved price, the all-or-none Complex Order will be considered for trade and executed if possible as explained below.

Assessing Sufficiency of Improving Interest in a Simple Solicitation Auction. Assume an Agency Order to buy 1000 contracts stopped by a Solicited Order at $2.00 is entered when the PBBO is $1.90–$2.10. Assume that during the Solicitation Auction, Responses are received to sell 700 contracts at $1.97 and sell 150 contracts at $1.99. In addition, assume an order to sell 300 contracts at $1.98 with an all-or-none contingency is received. At the end of the Solicitation Auction, the system *will* consider the all-or-none order when determining if there is sufficient size to execute the Agency Order at a price(s) better than the stop price since the all-or-none contingency can be satisfied by an execution.[59] In this example, at the end of the Solicitation Auction, the Agency Order will execute against improving interest with 700 contracts executing at $1.97 and 300 contracts (representing the all-or-none order) executing at $1.98.

Assessing Sufficiency of Improving Interest in a Complex Solicitation Auction. Assume a Complex Agency Order to buy 1000 contracts stopped by a Complex Solicited Order at $2.00 is entered when the cPBBO is $1.90–$2.10. Assume that during the Solicitation Auction a Response is received to sell 900 contracts at $1.98 and an all-or-none Complex Order is received to sell 100 contracts at $1.99. At the end of the Solicitation Auction involving a Complex Order, the system does *not* consider all-or-none interest in determining whether it can execute the Complex Agency Order at a better price than the stop price.[60] In this case, excluding the all-or-none Complex Order, only 900 contracts are available to sell at a better price than the stop price. Therefore the Complex Agency Order would trade against the Solicited Order at the $2.00 stop price.

In both simple Solicitation Auctions and Complex Solicitation Auctions, once a determination is made that sufficient improving interest exists, all-or-none interest will be executed pursuant to normal priority rules, except that it will not be executed if the all-or-none contingency cannot be satisfied. If an execution which can adhere to the all-or-none contingency is not possible, such all-or-none interest will be ignored and will remain on the order book.

Solicitation Auction with Sufficient Improving Interest. Pursuant to the Rule 1081(ii)(E)(1) algorithm, if there is sufficient size (considering all resting orders, quotes and Responses) to execute the entire Agency Order at a price or prices better than the stop price, the Agency Order will be executed against such better priced interest with public customers having priority at each price level. After public customer interest at a particular price level has been satisfied, including all-or-none orders with a size which can be satisfied, remaining contracts will be allocated among all Exchange quotes, orders and Responses in accordance with Exchange Rules 1014(g)(vii)(B)(1)(b) and (d), and the Solicited Order will be cancelled.[61]

Example of Solicitation Auction with Sufficient Improving Interest. To illustrate a case where a Solicitation Auction yields enough improving interest to better the stop price and the application of the Rule 1081(ii)(E)(1) algorithm, assume the NBBO is $0.95–$1.03, and a buy side Agency Order for 1000 contracts is submitted with a contra-side Solicited Order to stop the Agency Order at $1.00. During the Solicitation Auction, assume a market maker (''MM1'') Response is submitted to sell 800 contracts at $0.97, a broker-dealer Response is submitted to sell 100 contracts at $0.99, and a public customer sends in an order, outside of the Solicitation Auction, to sell 100 contracts at $0.99. Upon receipt of the public customer order, the NBBO changes to $0.95–$0.99. In addition, assume two market makers send in quotes of $0.95–$0.99 during the Solicitation Auction. Market Maker 2 (''MM2'') quotes $0.95–$0.99 with 100 contracts and Market Maker 3 (''MM3'') quotes $0.95–$0.99 with 50 contracts. At the end of the Solicitation Auction, since there is enough interest to execute the entire Agency Order at a price(s) better than the stop price, the Agency Order will be executed against the better priced interest as follows:

—the Agency Order trades 800 contracts at $0.97 against MM1 Response;
—the Agency Order trades 100 contracts at $0.99 against public customer;
—the Agency Order trades 67 contracts at $0.99 against MM2 quote (pro-rata allocation); and
—the Agency Order trades 33 contracts at $0.99 against MM3 quote (pro-rata allocation).

The broker-dealer does not trade any contracts since broker-dealer orders execute only after all public customer

[58] The Exchange reviewed six months of data which showed that all-or-none Complex Orders represented only 0.12% of all Complex Orders.

[59] Consider a similar scenario whereby the Responses received were to sell 700 contracts at $1.97 and sell 300 contracts at $1.99 and an all-or-none order to sell 500 contracts at $1.98 was received. In this scenario, the system will not consider the all-or-none order when determining if there is sufficient size to execute the Agency Order at a price(s) better than the stop price since the all-or-or none contingency cannot be satisfied by an execution. However, excluding the all-or-none order, the Agency Order can still be satisfied at a price(s) better than the stop price. In this scenario, at the end of the Solicitation Auction, the Agency Order will execute against improving interest with 700 contracts executing at $1.97 and 300 contracts executing at $1.99. The 500 contract all-or-none order does not execute because the all-or-none contingency cannot be satisfied.

[60] If however, the example is changed and Responses are received to sell 900 contracts at $1.98 and sell 100 contracts at $1.99 and an order to sell 100 contracts at $1.98 all-or-none is received, at the end of the Solicitation Auction, there is enough interest which is not all-or-none to satisfy the Complex Agency Order at a better price than the $2.00 stop price. Therefore the Agency Order would be executed against the 900 lot at $1.98 and the remaining 100 contracts executed against the all-or-none Complex Order at $1.98.

[61] Similarly, pursuant to Rule 1081(ii)(E)(3), in the case of a Complex Solicitation Auction, if there is sufficient size (considering resting Complex Orders and Responses) to execute the entire Complex Agency Order at a price(s) better than the stop price, the Complex Agency Order will be executed against better priced Complex Orders, Responses, as well as quotes and orders which comprise the cPBBO at the end of the Complex Solicitation Auction. (The cPBBO is not considered in determining whether there is sufficient improving size because the market and/or size of the individual components can change between the calculation of sufficient size and the actual execution.) Such interest will be allocated at a given price in the following order: (i) To public customer Complex Orders and Responses in time priority; (ii) to SQT, RSQT, and non-SQT ROT Complex Orders and Responses on a size pro-rata basis; (iii) to non-market maker off-floor broker-dealer Complex Orders and Responses on a size pro-rata basis, and (iv) to quotes and orders which comprise the cPBBO at the end of the Complex Solicitation Auction with public customer interest being satisfied first in time priority, then to SQT, RSQT, and non-SQT ROT interest satisfied on a size pro-rata basis, and lastly to non-market maker off-floor broker-dealers on a size pro-rata basis. This allocation methodology is consistent with the allocation methodology utilized for a Complex Order executed in PIXL. In addition, providing public customer's with priority over SQT, RSQT, and non-SQT ROTs, who in turn have priority over non-market maker off-floor broker-dealers is the same priority scheme used for regular orders. *See* Exchange Rule 1014(g).

When determining if there is sufficient size to execute the entire Complex Agency Order at a price(s) better than the stop price, if the short sale price test in Rule 201 of Regulation SHO is triggered for a covered security, Complex Orders and Responses which are marked ''short'' will not be considered because of the possibility that a short sale price restriction may apply during the interval between assessing for adequate size and the execution of the Complex Agency Order. However, if there is sufficient size to execute the entire Complex Agency Order at a price(s) better than the stop price irrespective of any covered securities for which the price test is triggered that may be present, then all Complex Orders and Responses which are marked ''short'' will be considered for allocation in accordance with Rule 1081(ii)(J)(3).

and market maker interest is satisfied. The unexecuted Solicited Order and broker-dealer Response are cancelled back to the sending participants.[62]

Solicitation Auction with Insufficient Improving Interest. Pursuant to proposed Rule 1081(ii)(E)(2), if there is not sufficient size (considering all resting orders, quotes and Responses) to execute the entire Agency Order at a price(s) better than the stop price, the Agency Order will be executed against the Solicited Order at the stop price provided such price is better than the limit of any public customer order (excluding all-or-none) on the limit order book, on either the same side as or the opposite side of the Agency Order, and equal to or better than the contra-side PBBO.[63] Otherwise, both the Agency Order and Solicited Order will be cancelled without a trade occurring. This proposed behavior ensures non-contingent public customer orders on the limit order book maintain priority. While the Exchange recognizes that at least one other solicitation mechanism offered by another exchange considers public customer orders on the limit order book at the stop price when determining if there is sufficient improving interest to satisfy the Agency Order, the proposed solicitation mechanism offered on Phlx will not consider such interest.[64] The Exchange believes that requiring the stop price to be at least $0.01 better than any public customer interest on the limit order book ensures public customer priority of existing interest and in turn provides the Solicited Order participant certainty that if an execution occurs at the stop price, such execution will represent the Solicited Order and not interest which arrived after the Solicited Order participant stopped the Agency Order for its entire size.

Example of Solicitation Auction with Insufficient Improving Interest. To illustrate a case where the Solicitation Auction has not yielded sufficient interest to improve the price for the entire Agency Order, assume the NBBO is $0.97–$1.03, and a buy side Agency Order for 1000 contracts is submitted with a contra-side Solicited Order to stop the Agency Order at $1.00. During the Solicitation Auction, assume a Response is submitted to sell 100 contracts at $0.97 and another to sell 100 contracts at $0.99. At the end of the Solicitation Auction period, since there is not enough interest to execute the entire Agency Order at a price(s) better than the stop price, the Agency Order will be executed at $1.00 against the Solicited Order. The unexecuted Responses are then cancelled back to the sending participant.[65]

Proposed Rule 1081(ii)(E)(6) provides that a single quote, order or Response shall not be allocated a number of contracts that is greater than its size.

Finally, Rule 1081(ii)(E)(7) provides that a Complex Agency Order consisting of a stock/ETF component will not execute against interest comprising the cPBBO at the end of the Complex Solicitation Auction.[66] Legging of a stock/ETF component would introduce the risk of a participant not receiving an execution on all components of the Complex Order and is therefore not considered as a means of executing a Complex Order which includes a stock/ETF component. The Exchange believes that introducing the risk of inability to fully execute a complex strategy is counterproductive to, and inconsistent with, the effort to allow Complex Orders in the solicitation mechanism.

Miscellaneous Provisions

Proposed Rules 1081(ii)(F) through (I) address the handling of the Agency Order and other orders, quotes and Responses when certain conditions are present. Pursuant to Rule 1081(ii)(F), if the market moves following the receipt of a Response, such that there are Responses that cross the then-existing NBBO (provided such NBBO is not crossed) at the time of the conclusion of the Solicitation Auction, such Responses will be executed, if possible, at their limit price(s).[67] Although Exchange Rule 1084, Order Protection, generally prohibits trade-throughs, an exception to the prohibition exists pursuant to Rule 1084(b)(x) when the transaction that constituted the trade-through was the execution of an order that was stopped at a price that did not trade-through at the time of the stop.

Since Responses may be cancelled at any time prior to the conclusion of the Solicitation Auction, the Exchange believes that this behavior is, at best, highly unlikely as participants will cancel Responses when better priced

[62] To illustrate a Complex Solicitation Auction with enough improving interest and the operation of Rule 1081(ii)(E)(3), assume that a Complex Order to buy one of option A and sell one of option B, 1000 times, with a cPBBO of $0.40 bid, $0.70 offer, is submitted with a stop price of $0.65. Assume that during the Solicitation Auction, the following Responses and order interest are received: A market maker (''MM1'') responds to sell the strategy 100 times at a price of $0.55; MM1 responds to sell the strategy 100 times at a price of $0.60; a broker-dealer responds to sell the strategy 400 times at a price of $0.60; a public customer Complex Order to sell the strategy 300 times at a price of $0.60; and another market maker (''MM2'') responds to sell the strategy 200 times at $0.60.

After all these Responses and orders are received, option A of the simple market moves causing the cPBBO to become offered 200 times at $0.60. Option A is quoted in the simple market as $1.00–$1.10 and Option B is quoted in the simple market as $0.50–$0.60. At the end of the Solicitation Auction, the Complex Agency Order will be executed as follows: The Complex Agency Order trades 100 contracts at $0.55 against MM1; the Complex Agency Order trades 300 contracts at $0.60 against public customer; the Complex Agency Order trades 100 contracts at $0.60 against MM1; the Complex Agency Order trades 200 contracts at $0.60 against MM2; the Complex Agency Order trades 300 contracts at $0.60 against the broker-dealer; and the Solicited Order and the residual unexecuted contracts of the broker-dealer Response are cancelled.

[63] Rule 1081(ii)(E)(2) does not apply to Complex Solicitation Auctions. Rather, a parallel provision, Rule 1081(ii)(E)(4), provides that in a Complex Solicitation Auction, if there is not sufficient size (considering resting Complex Orders and Responses) to execute the entire Complex Agency Order at a price(s) better than the stop price, the Complex Agency Order will be executed against the Solicited Order at the stop price, provided such stop price is better than the limit of any public customer Complex Order (excluding all-or-none) on the Complex Order book, better than the cPBBO when a public customer order (excluding all or none) is resting on the book in any component of the Complex Agency Order, and equal to or better than the cPBBO on the opposite side of the Complex Agency Order. This proposed behavior ensures non-contingent public customers on the limit order book maintain priority. Otherwise, both the Complex Agency Order and the Solicited Order will be cancelled with no trade occurring.

[64] *See* ISE Rule 716(e)(2) which provides in part that in the case of insufficient improving interest ''[i]f there are Priority Customer Orders on the Exchange on the opposite side of the Agency Order at the proposed execution price and there is sufficient size to execute the entire size of the Agency Order, the Agency Order will be executed against the bid or offer, and the solicited order will be cancelled.''

[65] To illustrate a Complex Solicitation Auction that yields insufficient improving interest and the operation of Rule 1081(ii)(E)(4), assume a Complex Order to buy one of option A and sell one of option B, 1000 times, with a cPBBO of $0.40 bid, $0.70 offer, is submitted with a stop price of $0.65. Assume that during the Complex Solicitation Auction, the following Responses and order interest are received: A market maker (''MM1'') responds to sell the strategy 100 times at a price of $0.55; MM1 responds to sell the strategy 100 times at a price of $0.60; a broker-dealer responds to sell the strategy 300 times at a price of $0.60; and another market maker (''MM2'') responds to sell the strategy 200 times at $0.60.

At the end of the Complex Solicitation Auction, since there is not sufficient size to execute the entire Complex Agency Order at a price(s) better than the stop price, the Complex Agency Order executes at the stop price of $0.65 against the Solicited Order. All unexecuted Responses are cancelled back to the sending participants.

[66] This provision parallels PIXL Rule 1080(n)(ii)(E)(2)(g) and is being proposed for the same reasons explained in the Complex PIXL Filing. This limitation is also consistent with the handling of Complex Orders that include a stock/ETF component and are entered into the Phlx XL system. Commentary .07(a)(i) to Rule 1080 states, for example, that stock-option orders can only be executed against other stock-option orders and cannot be executed by the System against orders for the individual components.

[67] Similarly, in the case of a Complex Solicitation Auction, if there are Responses that cross the then-existing cPBBO at the time of conclusion of the Complex Solicitation Auction, such Responses will be executed, if possible, at their limit prices. This provision parallels PIXL Rule 1080(n)(ii)(F).

interest that they could trade against is present in the marketplace. This behavior is consistent with the current handling of PAN Responses in a PIXL Auction.

Rule 1081(ii)(G) provides that if the Solicitation Auction price when trading against non-solicited interest (except if it is a Complex Solicitation Auction) would be the same as or cross the limit of an order (excluding an all-or-none order) on the limit order book on the same side of the market as the Agency Order, the Agency Order may only be executed at a price that is at least $0.01 better than the resting order's limit price [68] provided such execution price improves the stop price. If such execution price would not improve the stop price, the Agency Order will be executed at a price which is $0.01 better for the Agency Order than the stop price provided the price does not equal or cross a public customer order and is equal to or improves upon the PBBO on the opposite side of the Agency Order.[69] If such price is not possible, the Agency Order and Solicited Order will be cancelled with no trade occurring. For example, assume the NBBO is $1.03–$1.10 when an order is submitted into the Solicitation Auction, that the Agency Order is buying and that the order is stopped at $1.05. The $1.03 bid is an order on Phlx. During the Solicitation Auction a Response arrives to sell at $1.03. At the end of the Solicitation Auction, if the Response to sell at $1.03 can fully satisfy the Agency Order, the auction price would theoretically be $1.03 but, since that price is the same as the price of a resting order on the book, the Agency Order will trade against the Response at $1.04 (an improvement of $0.01 over the resting order's limit). By contrast, assume a case where the NBBO is $1.03–$1.10 and where during the Auction an unrelated *non-customer* order to pay $1.04 is received. This order rests on the book and the NBBO becomes $1.04–$1.10. Assume the same stop price of $1.05 for an Agency Order to buy, and the receipt of a Response to sell at $1.04 which can fully satisfy the Agency order. At the end of the Solicitation Auction, the auction price would be $1.04 which equals the resting order on the book. In this case, if the trade were executed with $0.01 improvement over the resting order limit (that is, if the trade were theoretically executed at $1.05 due to the $1.04 order on the book) the execution would be at the stop price. However, the system only permits the Solicited Order and no other interest to trade against the Agency Order at the stop price since the Solicited Order stopped the entire size Agency Order at a price which was required upon receipt to be equal to or improve the NBBO and to be at least $0.01 improvement over any public customer orders resting on the Phlx limit order book, thereby establishing priority at the stop price. Therefore the execution price in this example will be $1.04, which is the same price as the $1.04 resting non-customer order on the book, in order to execute at a price which is $0.01 better than the stop price. This system logic ensures that the Agency Order receives a better priced execution than the stop price when trading against interest other than the Solicited Order.

Rule 1081(ii)(I) provides that any unexecuted Responses or Solicited Orders will be cancelled at the end of the Solicitation Auction. This behavior is consistent with the handling of unexecuted PAN Responses and Initiating Orders in PIXL.[70] Both Responses and Solicited Orders are specifically entered into the Solicitation Auction to trade against the Agency Order. The Exchange believes that cancelling the unexecuted portion of Responses and Solicited Orders is consistent with the expected behavior of such interest by the submitting participants.

Complex Agency Orders With Stock/ETF Components

Rule 1081(ii)(J) deals with Complex Agency Orders with stock or ETF components and generally tracks Rule 1080(n)(ii)(J) applicable to PIXL . Rule 1081(ii)(J)(1) states that member organizations may only submit Complex Agency Orders, Complex Solicited Orders, Complex Orders and/or Responses with a stock/ETF component if such orders/Responses comply with the Qualified Contingent Trade Exemption from Rule 611(a) of Regulation NMS pursuant to the Act. Member organizations submitting such orders with a stock/ETF component represent that such orders comply with the Qualified Contingent Trade Exemption. Members of FINRA or the NASDAQ Stock Market (''NASDAQ'') are required to have a Uniform Service Bureau/Executing Broker Agreement (''AGU'') with Nasdaq Execution Services LLC (''NES'') in order to trade orders containing a stock/ETF component; firms that are not members of FINRA or NASDAQ are required to have a Qualified Special Representative (''QSR'') arrangement with NES in order to trade orders containing a stock/ETF component.

New Rule 1081(ii)(J)(2) provides that where one component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response is the underlying stock or ETF share, the Exchange shall electronically communicate the underlying security component of the Complex Agency Order (together with the Complex Solicited Order or Response, as applicable) to NES, its designated broker-dealer, for immediate execution. Such execution and reporting will occur otherwise than on the Exchange and will be handled by NES pursuant to applicable rules regarding equity trading.

Finally, new Rule 1081(ii)(J)(3) states that when the short sale price test in Rule 201 of Regulation SHO [71] is triggered for a covered security, NES will not execute a short sale order in the underlying covered security component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response if the price is equal to or below the current national best bid.[72] However, NES will execute a short sale

[68] The system does not consider the origin of the resting order but seeks to ensure the priority of all resting orders on the book by requiring that any execution occur at a price which improves upon the limit of a resting order by at least $0.01 if possible. If an execution cannot occur at least $0.01 better than the limit of a resting order on the book, the system will permit the Solicited Order to trade against the Agency Order at the resting limit order price provided the resting order is not for a public customer.

[69] *See also* PIXL Rule 1080(n)(ii)(H). Proposed Rule 1081(ii)(G) does not apply to Complex Solicitation Auctions. Rather, a parallel provision, Rule 1081(ii)(H), provides that if the Complex Solicitation Auction price when trading against non-solicited interest would be the same as or cross the limit of that of a Complex Order (excluding all-or-none) on the Complex Order Book on the same side of the market as the Complex Agency Order, the Complex Agency Order may only be executed at a price that improves the resting order's limit price by at least $0.01, provided such execution price improves the stop price. If such execution price would be equal to or would not improve the stop price, the Agency Order will be executed $0.01 better than the stop price provided the price does not equal or cross a non-all-or-none public customer Complex Order or a non-all-or-none public customer order present in the cPBBO on the same side as the Complex Agency Order in a component of the Complex Order Strategy and is equal to or better than the cPBBO on the opposite side of the Complex Agency Order. If such price is not possible, the Agency Order and Solicited Order will be cancelled with no trade occurring. This functionality is consistent with that of Complex PIXL auctions.

[70] *See* Exchange Rule 1080(n)(ii)(I).

[71] 17 CFR 242.201. *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, January 20, 2011 (''SHO FAQs'') at *www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm*.

[72] The term ''national best bid'' is defined in SEC Rule 201(a)(4). 17 CFR 242.201(a)(4).

order in the underlying covered security component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response if such order is marked ''short exempt,'' regardless of whether it is at a price that is equal to or below the current national best bid.[73] If NES cannot execute the underlying covered security component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex Agency Order, Complex Solicited Order, Complex Order or Response to the entering member organization. For purposes of this paragraph, the term ''covered security'' has the same meaning as in Rule 201(a)(1) of Regulation SHO.[74]

The Exchange believes that this approach is consistent with Rule 201. Under this proposal, the Exchange and NES, as trading centers, will prevent the execution or display of a short sale of the stock/ETF component of a complex order priced at or below the current national best bid when the short sale price test restriction is triggered. Specifically, while the Exchange and NES are determining, respectively, the prices of the options component and of the stock or ETF component of the complex order, as described above, NES will check the current national best bid of the stock or ETF component at the time of execution. The execution of one component is contingent upon the execution of all other components and once a complex order is accepted and validated by the Phlx trading System, the entire package is processed as a single transaction and both the option leg and stock/ETF components are simultaneously processed.

Regulatory Issues

The proposed rule change contains two paragraphs describing prohibited practices when participants use the solicitation mechanism. These new provisions track similar provisions in the PIXL rule.[75]

Proposed Rule 1081(iii) states that the Solicitation Auction may be used only where there is a genuine intention to execute a bona fide transaction. It will be considered a violation of Rule 1081 and will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Exchange Rule 707 if an Initiating Member submits an Agency Order (thereby initiating a Solicitation Auction) and also submits its own Response in the same Solicitation Auction. The purpose of this provision is to prevent Solicited Members from submitting an inaccurate or misleading stop price or trying to improve their allocation entitlement by participating with multiple expressions of interest.

Proposed Rule 1081(iv) states that a pattern or practice of submitting unrelated orders or quotes that cross the stop price causing a Solicitation Auction to conclude before the end of the Solicitation Auction period will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 707.

Definition of Professional in Rule 1000(b)(14)

In addition to adopting Rule 1081, the Exchange is amending Rule 1000(b)(14). In 2010 the Exchange amended its priority rules to give certain non-broker-dealer orders the same priority as broker-dealer orders. In so doing, the Exchange adopted a new defined term, the ''professional,'' for certain persons or entities.[76] Rule 1000(b)(14) defines professional as a person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A professional account is treated in the same manner as an off-floor broker-dealer for purposes of Phlx Rule 1014(g), to which the trade allocation algorithm described in proposed Rule 1081(ii)(E)(1) refers. However, Rule 1000(b)(14) also currently states that all-or-none professional orders will be treated like customer orders. The Exchange proposes to amend Rule 1000(b)(14) by (i) specifying that orders submitted pursuant to Rule 1081 for the accounts of professionals will be treated in the same manner as off-floor broker-dealer orders for purposes of Rule 1014(g), and (ii) adding proposed Rule 1081 to the list of rules for the purpose of which a professional will be treated in the same manner as an off-floor broker-dealer.

The effect of these changes to Rule 1000(b)(14) is that professionals will not receive the same execution priority afforded to public customers in a Solicitation Auction under new Rule 1081, and instead will be treated as broker-dealers in this regard. Therefore, Agency Orders or Solicited Orders submitted for professionals are not public customer orders and will not be paired with a public customer order or another professional order and automatically executed without a Solicitation Auction pursuant to Rule 1081(v) discussed above. Additionally, unrelated professional orders, excluding all-or-none orders, or responses for the account of a professional will be treated as broker-dealers for purposes of execution priority. Unrelated professional all-or-none orders will continue to receive customer priority as stipulated in rule 1000(b)(14).

Deployment

The Exchange anticipates that it will deploy the solicitation mechanism within 30 days of the Commission's approval of this proposed rule change. Members will be notified of the deployment date by an Options Trader Alert posted on the Exchange's Web site.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[77] in general, and furthers the objectives of Section 6(b)(5) of the Act[78] 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 by providing new functionality that offers the potential for price improvement. Specifically, the new functionality may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that already offer an electronic solicitation mechanism, while providing an opportunity for price improvement for Agency Orders.

As discussed below, the proposed solicitation mechanism on Phlx is similar in relevant respects to solicitation mechanisms on other exchanges. The Commission previously has found such mechanisms consistent with the Act, stating that they should allow for greater flexibility in pricing large-sized orders and may provide a greater opportunity for price

[73] The Exchange notes that a broker or dealer may mark a sell order ''short exempt'' only if the provisions of SEC Rule 201(c) or (d) are met. 17 CFR 242.200(g)(2). Since NES and the Exchange do not display the stock or ETF portion of a Complex Order, however, a broker-dealer should not mark the short sale order ''short exempt'' under Rule 201(c). *See* SHO FAQs Question and Answer Nos. 4.2, 5.4, and 5.5. *See also* Securities Exchange Act Release No. 63967 (February 25, 2011), 76 FR 12206 (March 4, 2011) (SR–Phlx–2011–27) (discussing, among other things, Complex Orders marked ''short exempt'') and the Complex PIXL Filing. The system will handle short sales of the orders and Responses described herein the same way it handles the short sales discussed in the Complex PIXL Filing.

[74] 17 CFR 242.201(a)(4).

[75] *See* Rules 1080(n)(iii) and (iv).

[76] *See* Securities Exchange Act Release No. 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010) (approving SR–Phlx–2010–05).

[77] 15 U.S.C. 78f(b).

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

improvement.[79] The Exchange believes that its proposal will allow the Exchange to better compete for solicited transactions, while providing an opportunity for price improvement for Agency Orders and assuring that public customers on the book are protected. The new solicitation mechanism should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit market participants, investors, and traders.

Section 11(a)(1) of the Act [80] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, ''covered accounts'') unless an exception applies. Rule 11a2–2(T) under the Act,[81] known as the ''effect versus execute'' rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; [82] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. The Exchange believes that this proposed rule change is consistent with Section 11(a)(1) of the Act and the Commission's regulations thereunder.

The Rule's first condition is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[83] Only specialists and on-floor SQTs [84] have the ability to submit orders into the solicitation mechanism from on the floor of the Exchange. These members, however, would be subject to the ''market maker'' exception to Section 11(a) of the Act and Rule 11a2–2(T)(a)(1) thereunder.[85] RSQTs may only submit orders into the solicitation mechanism from off the floor of the Exchange.[86] While Floor Brokers have the ability to submit orders they represent as agent to the electronic limit order book through the Exchange's Options Floor Broker Management System (''FBMS''), there is no mechanism by which such Floor Brokers can directly submit orders to the solicitation mechanism or send orders to off-floor broker-dealers through FBMS for indirect submission into the solicitation mechanism.[87] Because no Exchange members, other than specialists and SQTs, may submit orders into the solicitation mechanism from on the floor of the Exchange, the Exchange believes that the solicitation mechanism satisfies the off-floor transmission requirement.

Second, the Rule requires that the member not participate in the execution of its order. At no time following the submission of an order is a member organization able to acquire control or influence over the result or timing of an order's execution. The execution of a member's order is determined by what other orders are present in the solicitation mechanism and the priority of those orders.[88] Accordingly, the Exchange believes that a member does not participate in the execution of an order submitted to the solicitation mechanism.

Third, Rule 11a2–2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated systems, such as the solicitation mechanism, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[89] The design of the solicitation mechanism ensures that no member organization has any special or unique trading advantage in the handling of its

[79] *See* Securities Exchange Act Release Nos. 49141 (January 28, 2004), 69 FR 5625 (February 5, 2004) (SR–ISE–2001–22) (approval of ISE Solicited Order Mechanism); and 57610 (April 3, 2008), 73 FR 19535 (April 10, 2008) (SR–CBOE–2008–14) (approval of CBOE Solicitation Auction Mechanism).

[80] 15 U.S.C. 78k(a)(1).

[81] 17 CFR 240.11a2–2(T).

[82] The member may, however, participate in clearing and settling the transaction.

[83] *See, e.g.,* Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (''1979 Release'').

[84] As discussed above, an SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(A).

[85] *See* 15 U.S.C. Section 78k(a)(1)(A); 17 CFR 240.11a2–2(T)(a)(1). There are no other on-floor members, other than Exchange specialists and SQTs, who have the ability to submit orders into the Solicitation Auction.

[86] As discussed above, an RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member affiliated with a 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. A qualified RSQT may function as a Remote Specialist upon Exchange approval. An RSQT may only submit such quotations electronically from off the floor of the Exchange. An RSQT may not submit option quotations in eligible options to which such RSQT is assigned to the extent that the RSQT is also approved as a Remote Specialist in the same options. An RSQT may only trade in a market making capacity in classes of options in which he is assigned or approved as a Remote Specialist. An RSQTO is a member organization in good standing that satisfies the SQTO readiness requirements in Rule 507(a). While RSQTs may only submit orders into the Auction from off the Exchange floor, RSQTs also would be subject to the ''market maker'' exception to Section 11(a) of the Act and Rule 11a2–2(T)(a)(1) thereunder.

[87] Because FBMS does not have the coding required to enter orders into the Solicitation Auction, it is impossible for such Floor Brokers to submit orders into the Solicitation Auction.

[88] A member may cancel or modify the order, or modify the instruction for executing the order, but only from off the floor. The Commission has stated that the non-participation requirement is satisfied under such circumstances, so long as such modifications or cancellations are also transmitted from off the floor. *See* Securities Exchange Act Release No. 14713 (April 27, 1978), 43 FR 18557 (May 1, 1978) (''1978 Release'') (stating that the ''non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor'').

[89] In considering the operation of automated execution systems operated by an exchange, the Commission has noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T).

orders after transmitting its orders to the solicitation mechanism. The Exchange therefore believes the solicitation mechanism satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the Initiating Member or an associated person thereof exercises investment discretion, neither the Initiating Member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[90] Member organizations relying on Rule 11a2–2(T) for transactions effected through the solicitation mechanism must comply with this condition of the Rule.

For all of the foregoing reasons and as discussed in the proposal, the Exchange believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange.

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. To the contrary, the Exchange believes the proposal is pro-competitive. The proposal would diminish the potential for foregone market opportunities on the Exchange by allowing Agency Orders to be entered into the solicitation mechanism by all members. The solicitation mechanism is similar to electronic solicitation mechanism functionality that is allowed on two other options exchanges. The Exchange believes that the new solicitation mechanism functionality should help it compete with these other exchanges.

With respect to intra-market competition, the solicitation mechanism will be available to all Phlx members for the execution of Agency Orders. Moreover, as explained above, the proposal should encourage Phlx participants to compete amongst each other by responding with their best price and size for a particular Solicitation Auction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments prior to filing the proposed rule change. Written comments on the proposed rule change were solicited by the Commission in response to the institution of proceedings for SR–Phlx–2014–66. The Commission received one comment letter and one letter from the Exchange in response.[91]

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 180 days after the date of publication of the initial notice in the **Federal Register** (*i.e.,* October 31, 2014) or within such longer period up to an additional 60 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will issue an order approving or disapproving such proposed rule change, as amended. As discussed in Item VI below, the Commission is designating an additional 60 days within which to issue an order approving or disapproving the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2014–66 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–2014–66. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal 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–2014–66, and should be submitted on or before May 7, 2015.

VI. Designation of Longer Period for Commission Action

Section 19(b)(2) of the Act[92] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on October 31, 2014. April 29, 2015 is 180 days from

[90] *See* 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See* also 1978 Release (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[91] *See supra* notes 11 and 12. The letters are available on the Commission's Web site at *http://www.sec.gov/comments/sr-phlx-2014-66/phlx201466.shtml.*

[92] 15 U.S.C. 78s(b)(2).

that date, and June 28, 2015 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, the issues raised in the comment letter that has been submitted in connection with the proposal and the response from the Exchange and any comments that may be submitted on the proposed rule change, as modified by Amendment No. 2. As the Commission noted in the Order Instituting Proceedings, the proposal raises questions as to whether the Exchange's proposed rule change is consistent with the requirements of Sections 6(b)(5) [93] of the Act.[94] Extending the time within which to approve or disapprove the proposed rule change, as modified by Amendment No. 2, will enable the Commission to more fully consider the issues raised by the proposed rule change, the comment letter received to date and the Exchange's response and any comments that may be submitted on the proposed rule change, as modified by Amendment No. 2.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[95] designates June 28, 2015, as the date by which the Commission should either approve or disapprove the proposed rule change, as modified by Amendment No. 2 (File No. SR–Phlx–2014–66).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[96]

Brent J. Fields,

Secretary.

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[93] 15 U.S.C. 78f(b)(5*).*

[94] *See supra* note 10.

[95] 15 U.S.C. 78s(b)(2).

[96] 17 CFR 200.30–3(a)(12) and (a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74743; File No. SR–BATS–2015–30]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 3.5 (Advertising Practices) and Repeal Exchange Rule 3.20 (Initial or Partial Payments)

April 16, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2015, BATS Exchange, Inc. (''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. 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 filed a proposal to: (i) Amend Exchange Rule 3.5 (Advertising Practices); and (ii) repeal Exchange Rule 3.20 (Initial or Partial Payments) to conform with the rules of the Financial Industry Regulatory Authority, Inc. (''FINRA'') for purposes of an agreement between the Exchange and FINRA pursuant to Rule 17d–2 under the Act.[5] The proposed rule change is identical to proposed rule changes submitted by the EDGX Exchange, Inc. (''EDGX'') and the EDGA Exchange, Inc. (''EDGA'') that were published by the Commission.[6]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.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 parts of such statements.

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.17d–2.

[6] *See* Securities Exchange Act Release Nos. 70837 (Nov. 8, 2013), 78 FR 68889 (Nov. 15, 2013) (SR–EDGA–2013–32) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGA Rule 3.5 (Advertising Practices) and to Repeal Rule 3.20 (Initial or Partial Payments) to Conform with the Rules of the Financial Industry Regulatory Authority); and 70836 (Nov. 8, 2013), 78 FR 68897 (Nov. 15, 2013) (SR–EDGX–2013–40) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 3.5 (Advertising Practices) and to Repeal Rule 3.20 (Initial or Partial Payments) to Conform with the Rules of the Financial Industry Regulatory Authority).

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

1. Purpose

Pursuant to Rule 17d–2 under the Act,[7] the Exchange and FINRA entered into an agreement to allocate regulatory responsibility for common rules (''17d–2 Agreement''). The 17d–2 Agreement covers common members of the Exchange and FINRA (''Common Members'') and allocates to FINRA regulatory responsibility, with respect to Common Members, for the following: (i) Examination of Common Members for compliance with federal securities laws, rules, and regulations, and rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules; (ii) investigation of Common Members for violations of federal securities laws, rules, and regulations, and Exchange rules that the Exchange has certified as identical or substantially identical to FINRA rules; and (iii) enforcement of compliance by Common Members with the federal securities laws, rules, and regulations, and the rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules.[8]

The 17d–2 Agreement included a certification by the Exchange that states that the requirements contained in certain Exchange rules are identical to, or substantially similar to, certain FINRA rules that have been identified as comparable. To conform with comparable FINRA rules for purposes of the 17d–2 Agreement, the Exchange proposes to: (i) Amend Exchange Rule 3.5 (Advertising Practices); and (ii) repeal Exchange Rule 3.20 (Initial or Partial Payments).

Rule 3.5 (Advertising Practices)

The Exchange proposes to delete the current text of Rule 3.5 and adopt text that would require Exchange members [9]

[7] 17 CFR 240.17d–2.

[8] *See* Securities and Exchange Release No. 61698 (Mar. 12, 2010), 75 FR 13151 (Mar. 18, 2010) (approving File No. 10–196).

[9] ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a 'member' of the Exchange as that