II. Notice of Commission Action

The Commission establishes Docket No. CP2015–86 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than July 2, 2015. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Cassie D'Souza to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–86 for consideration of the matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, Cassie D'Souza is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).
3. Comments are due no later than July 2, 2015.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–16050 Filed 6–30–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

International Product Change—Global Expedited Package Services—Non-Published Rates

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add Global Expedited Package Services—Non-Published Rates 7 (GEPS—NPR 7) to the Competitive Products List.

DATES: *Effective date:* July 1, 2015.

FOR FURTHER INFORMATION CONTACT: Sylvia Baylis, 202–268–6464.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642, on June 19, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to add Global Expedited Package Services—Non-Published Rates 7 (GEPS—NPR 7) to the Competitive Products List,* and *Notice of Filing GEPS—NPR 7 Model Contract and Application for Non-public Treatment of Materials Filed Under Seal.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–55 and CP2015–83.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–16142 Filed 6–30–15; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75297; File No. SR–EDGX–2015–18]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Establish Rules Governing the Trading of Options on the EDGX Options Exchange

June 25, 2015.

On April 30, 2015, EDGX Exchange, Inc. (''EDGX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules to govern the trading of options on the EDGX Options Exchange. The proposed rule change was published for comment in the **Federal Register** on May 19, 2015.[3] The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is July 3, 2015. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. The proposed rule change, if approved, would adopt rules in connection with EDGX Options, which would be a facility of the Exchange. EDGX Options would operate an electronic trading system developed to trade options.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates August 17, 2015, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–EDGX–2015–18).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16086 Filed 6–30–15; 8:45 am]

BILLING CODE 8011–01–P

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74949 (May 13, 2015), 80 FR 28745.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75300; File No. SR–Phlx–2014–66]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 2, To Adopt New Exchange Rule 1081, Solicitation Mechanism, To Introduce a New Electronic Solicitation Mechanism

June 25, 2015.

I. Introduction

On October 14, 2014, NASDAQ OMX PHLX LLC (''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to 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, 5000 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.[3] On December 8, 2014, the Commission extended the time period

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

[2] 17 CFR 240.19b–4.

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

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.[4] On January 28, 2015, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.[6] The Commission received two comment letters from the same commenter regarding the proposal,[7] as well as a response from the Exchange to the commenter's first letter.[8] On April 9, 2015, the Exchange filed Amendment No. 2 to the proposed rule change.[9] The proposed rule change, as modified by Amendment No. 2, was published for comment in the **Federal Register** on April 22, 2015, on which date the Commission also designated a longer period for Commission action on the proposed rule change.[10]

This Order disapproves the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposal

The Exchange proposes to adopt new 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, 5000 contracts or more) that the member represents as agent against contra orders that the member had solicited. Currently, under Phlx Rule 1080(c)(ii)(C)(2), Order Entry Firms[11] 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.[12] The proposed rule change would provide an alternative method, to enable a member to electronically execute orders it represents on behalf of a public customer, broker-dealer, or any other entity (an ''Agency Order'')[13] 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.[14]

The proposed mechanism would be a process by which a member (the ''Initiating Member'') would be able to electronically submit an all-or-none Agency Order of 500 contracts or more (or, in the case of mini options,[15] 5000 contracts or more) against a Solicited Order, and to initiate an auction (the ''Solicitation Auction'').[16] As noted below, at the end of the Solicitation Auction, allocation would 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.[17] 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 Phlx's solicitation mechanism. Such written notification would be required to disclose the terms and conditions contained in proposed Rule 1081 and to be in a form approved by the Exchange.[18]

Solicitation Auction Eligibility Requirements

All options traded on the Exchange, including mini options, would be eligible for the Solicitation Auction. Proposed Rule 1081(i) describes the circumstances under which an Initiating Member would be permitted to 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 5000 contracts) and must be designated as all-or-none. The orders must match in size, and their limit prices must match or cross in price.[19] If the orders cross in price, the price at which the Agency Order and the Solicited Order would be considered for submission pursuant to proposed Rules 1081(i)(B) and (C) would be the limit price of the Solicited Order.[20] The orders would not be able to be stop or stop limit orders; would need to be marked with a time in force of day, good

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

[5] 15 U.S.C. 78s(b)(2)(B).

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

[7] *See* Letters from Michael J. Simon, Secretary and General Counsel, International Securities Exchange LLC (''ISE''), dated February 25, 2015 (''ISE Letter'') and dated June 15, 2015 (''Second ISE Letter''). The Second ISE Letter notes that ISE reiterates its original comments.

[8] *See* Letter from Carla Behnfeldt, Associate General Counsel, Nasdaq, dated March 11, 2015 (''Phlx Response Letter'').

[9] The Exchange filed Amendment No. 1 on April 1, 2015. Amendment No. 1 was withdrawn on April 8, 2015. Amendment No. 2 amends and replaces the original filing in its entirety. In Amendment No. 2, the Exchange: (1) Makes certain changes to Exchange Rule 1080(n) regarding the PIXL auction process; (2) clarifies that the trading system does not currently accept all-or-none Complex Orders; (3) provides that the side of the Agency Order will be disseminated at the commencement of an auction; (4) clarifies the treatment of responsive all-or-none interest in the auction; (5) adds examples regarding the operation of the solicitation mechanism; and (6) makes certain other technical and clarifying changes.

[10] *See* Securities Exchange Act Release No. 74746 (April 16, 2015), 80 FR 22569 (April 22, 2015) (''Notice of Amendment No. 2''). The comment period for the Notice of Amendment No. 2 closed on May 7, 2015.

[11] 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.)

[12] According to the Exchange, Section (c), Solicited Orders, of Exchange Rule 1064, Crossing Facilitation and Solicited Orders, governs execution of solicited orders by open outcry, on the Exchange's trading floor, and would not be affected by proposed Rule 1081. The Exchange states that 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 proposed rules correspond to the existing PIXL rules. For information about specific provisions of proposed Rule 1081 that correspond to the PIXL rule and that have been omitted in the description of the proposal herein, *see* Notice of Amendment No. 2, *supra* note 10.

[13] The Exchange notes that the capitalized and defined term ''Agency Order'' as used in proposed Rule 1081 differs from the term ''agency order'' as used in Phlx Rule 1080(b)(i)(A). *See* Notice of Amendment No. 2, *supra* note 10, 80 FR at 22570 n. 17.

[14] The Exchange states that participants would be required to 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.

[15] A given Solicitation Auction could be for options contracts exclusively or for mini options contracts exclusively, but could not be used for a combination of both options contracts and mini options contracts.

[16] The Exchange notes that similar electronic functionality is offered today by other option exchanges. *See* Chicago Board Options Exchange (''CBOE'') Rule 6.74B, Solicitation Auction Mechanism, and ISE Rule 716(e), Solicited Order Mechanism.

[17] 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.

[18] *See* proposed 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.

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

[20] As noted below, under Rule 1081(i)(B), the limit price of the Solicited Order must also be equal to or better than the National Best Bid/Offer.

'til cancelled or immediate or cancel; and would not be routed regardless of routing strategy indicated on the order.[21]

Pursuant to proposed Rule 1081(i)(B), the Initiating Member would need to 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 would need to be at least $0.01 better than any public customer non-contingent limit order on the Phlx order book and would need to be equal to the Agency Order's limit price or provide the Agency Order with a better price than its limit price. Stop prices could be submitted in $0.01 increments, regardless of the applicable Minimum Price Variation (the ''MPV''). Contingent orders (including all-or-none, stop or stop-limit orders) on the order book would not be considered when checking the acceptability of the stop price. The Exchange states that 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 that these orders are not represented as part of the Exchange Best Bid/Offer, they are not included in the NBBO and thus would not be considered when checking the acceptability of the stop price.[22]

Orders that are submitted but that do not comply with the eligibility requirements set forth in proposed Rule 1081(i)(A) through (C) would be rejected upon receipt and would be ineligible to initiate a Solicitation Auction.[23] In addition, Agency Orders submitted at or before the opening of trading would not be eligible to initiate a Solicitation Auction and would be rejected.[24] Agency Orders that 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 would not be eligible to initiate a Solicitation Auction and would be rejected.[25] Similarly, a Complex Agency Order received while another auction in the same Complex Order strategy is in progress would not be eligible to initiate a Solicitation Auction and would be rejected.[26]

Finally, a solicited order may not be 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.[27] 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 a market maker interested in participating in transactions on the Exchange should do so by way of his or 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 proposed Rule 1081(ii)(A)(1), to begin the Solicitation Auction process, the Initiating Member would need to 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 would determine the stop price based upon the submitted limit prices, if such prices for the Agency Order and Solicited Order do not match as discussed above.[28] Once the Initiating Member has submitted an Agency Order and Solicited Order for processing in the Solicitation Auction, the Agency Order and the Solicitation Order could not be modified or cancelled.[29]

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

[21] According to the Exchange, 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 would be treated once they are entered into the solicitation mechanism.

[22] Proposed Rule 1081(i)(B) would not apply if the Agency Order is a Complex Order (a ''Complex Agency Order''). Rather, proposed Rule 1081(i)(C) would apply to Complex Agency Orders and would require 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 would be rejected. The Exchange represents that PIXL operates in the same manner. *See* Amendment No. 2, *supra* note 9 (citing Rule 1080(n)(i)(C)). Proposed Rule 1081(i)(C) would require all component option legs of the order to be for at least 500 contracts (or, in the case of mini options, at least 5000 contracts). It also would provide 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 would be submitted in $0.01 increments, regardless of MPV, and contingent orders on the order book would not be considered when checking the acceptability of the stop price. *See* proposed Rule 1081(i)(C).

[23] *See* proposed Rule 1081(i)(D).

[24] *See* proposed Rule 1081(i)(E). 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 (including, in the case of Complex Orders, in any series that is a component of the Complex Order) also would not be eligible to initiate a Solicitation Auction and would be rejected. *See* proposed Rule 1081(i)(F).

[25] The Exchange notes that a similar restriction currently 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 proposes to revise this provision to make clear that only one electronic auction may be conducted at a time in any given series or strategy. The Exchange proposes to 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 would not be eligible to initiate a PIXL Auction and would be rejected. *See* Amendment No. 2, *supra* note 9.

[26] According to the Exchange, 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 would not be rejected. Instead, a Solicitation Auction would be initiated for that incoming Agency Order offering each unique strategy or individual series the same opportunity to initiate an auction. Any Legging Orders would automatically be removed from the order book upon receipt of an Agency or Complex Agency Order that 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* Amendment No. 2, *supra* note 9, 80 FR at 22571, n. 34 (noting that this feature of proposed Rule 1081 comports with a feature of PIXL). Complex Orders submitted during normal trading hours in a strategy that has not yet opened under Commentary .07 of Rule 1080 would cause the strategy to immediately open and permit a Solicitation Auction to be initiated. *See* proposed Rule 1081(i)(E). In addition, neither a Solicitation Auction for a simple Agency Order or for 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. *See* Notice of Amendment No. 2, *supra* note 10, 80 FR at 22571 n. 34.

[27] *See* proposed Rule 1081(i)(G). *See also* Notice of Amendment No. 2, *supra* note 10, 80 FR at 22571 n. 35, for a description of each of these types of market participants.

[28] *See* Notice of Amendment No. 2, *supra* note 10, 80 FR at 22571, n 36.

[29] Rule 1081(ii)(A)(l) would not apply to Complex Agency Orders. Rather, a parallel provision, proposed Rule 1081(ii)(A)(2) would provide 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 would need to 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 would determine the stop price based upon the submitted limit prices if such prices do not match as discussed above. *See* Notice of Amendment No. 2, *supra* note 10, 80 FR at 22571, n. 36. Once the Initiating Member has submitted the Complex Agency Order and the Complex Solicited Order for processing pursuant to proposed Rule 1081(ii)(A)(1)–(2), the Complex Agency Order and Complex Solicited Order could not be modified or cancelled.

of a public customer, broker-dealer, or any other entity through the solicitation mechanism.[30]

However, pursuant to proposed Rule 1081(v), if a member were to enter 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 adhered to the eligibility requirements of proposed Rule 1081(i), such paired orders would be executed automatically without a Solicitation Auction.[31] The execution price for such paired public customer orders (except if they are Complex Orders) would need to be expressed in the minimum quoting increment applicable to the affected series.[32] Such an execution would not be permitted to 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.[33]

In the case of a Complex Order, a public customer-to-public customer cross would be permitted to occur only at a price that would improve the calculated Phlx Best Bid/Offer or ''cPBBO'' and would improve upon the net limit price of any Complex Orders (excluding all-or-none) on the Complex Order book in the same strategy.[34] If all-or-none Complex Orders[35] are on the Complex Order book in the same strategy, the public customer-to-public customer Complex Order would not be permitted to 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 public customer to public customer crosses for simple orders and Complex Orders through use of the solicitation mechanism would 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.

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 (name of security, strike price, and expiration date), size, side,[36] and stop price of the Agency Order and the Solicitation Auction start time would then be sent over the PHLX Orders data feed and Specialized Quote Feed (''SQF'').[37] 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.[38]

Solicitation Auction

The proposed Solicitation Auction process is described in proposed Rules 1081(ii)(A)(4) through 1081(ii)(A)(10). Following the issuance of the Request for Response, the Solicitation Auction would last for a period of 500 milliseconds,[39] unless the auction was concluded as the result of any of the circumstances of early termination described below.[40]

Any person or entity would be permitted to submit Responses to the Request for Response, provided each 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.[41] 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 would not be visible to Solicitation Auction participants, and would not be disseminated to the Options Price Reporting Authority (''OPRA''). A Response would be permitted to be for any size up to the size of the Agency Order.[42] The

[30] However, the Solicited Order may not be for the account of any Exchange specialist, SQT, RSQT or ROT assigned in the affected series. *See* note 27, *supra* and accompanying text.

[31] 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, would be amended to clarify that it would not apply to Rule 1081, Solicitation Mechanism. *See also* Rule 1081(ii)(A)(4).

[32] The execution price for a Complex Order would be permitted to be in $.01 increments.

[33] All-or-none orders can be submitted on the Exchange only for non-broker-dealer customers. As stated above, the mechanism would not consider all-or-none orders when checking the acceptability of the stop price of an Agency Order.

[34] 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).

[35] According to the Exchange, its trading system is capable of accepting all-or-none Complex Orders, but such orders are not 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 its [sic] 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). The Exchange states, however, that 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.'' *See* Amendment No. 2, *supra* note 9, 80 FR at 22571, n. 40. The Exchange states that it 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 states that it intends to delete this new sentence to be added to Rule 1080.07(b)(v) if the Exchange submits, and the Commission approves, a proposed rule change that provides for all-or-none Complex Orders to be submitted through the trading system. *See id.* The proposed rule change describes how the solicitation mechanism would handle all-or-none Complex Orders once they are permitted under Exchange rules. According to the Exchange, the Complex Agency Orders and Complex Solicited Orders that would be permitted to be entered into the Solicitation Auction, however, are unique to the mechanism and their acceptability is mandated by it, despite the requirement that these orders must be entered with an all-or-none contingency. Thus, the Exchange states that it would not need to file a proposed rule change in order to allow Complex Agency Orders and Complex Solicited Orders to be submitted into the system.

[36] *See* Notice of Amendment No. 2, *supra* note 10, 80 FR at 22572.

[37] 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.

[38] *See* Notice of Amendment No. 2, *supra* note 10, 80 FR at 22572. 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. *See id.*

[39] 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 states that it 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).

[40] 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, would be amended by the proposed rule change to clarify that it would not apply to proposed Rule 1081, Solicitation Mechanism. *See also* proposed Rule 1081(ii)(A)(4).

[41] In the case of a Complex Agency Order, the Response would need to 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. *See* Notice of Amendment No. 2, *supra* note 10.

[42] The Exchange's proposal would not permit Responses to be submitted with an all-or-none contingency. The Exchange states that an all-or-

Continued

minimum price increment for Responses would be $0.01. A Response would need to 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 would be rejected.[43] Multiple Responses at different prices from the same member would be permitted during the Solicitation Auction.[44] Responses would be permitted to be modified or cancelled during the Solicitation Auction.

Conclusion of the Solicitation Auction

Proposed Rules 1081(ii)(B)(1) through (B)(4) describe a number of circumstances that would cause the Solicitation Auction to conclude. Generally, it would conclude at the end of the Solicitation Auction period, except that it would 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 [45] (because, the Exchange states, further price improvement would be unlikely and any Responses offering improvement would likely be cancelled); [46] or (ii) any time there is a 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).[47]

Pursuant to proposed Rule 1081(ii)(C), if the Solicitation Auction concluded before the expiration of the Solicitation Auction period because of the PBBO, cPBBO or Complex Order book (excluding all-or-none Complex Orders) crossed the stop price, as described above, the entire Agency Order would be executed using the allocation algorithm set forth in proposed Rule 1081(ii)(E). The algorithm is described below under the heading ''Order Allocation''.

In addition, pursuant to proposed Rule 1081(ii)(C), if the Solicitation Auction concluded before the expiration of the Solicitation Auction period as the result of a trading halt, the entire Agency Order or Complex Agency Order would be executed solely against the Solicited Order or Complex Solicited Order at the stop price and any unexecuted Responses would be cancelled.[48] Responses and other interest present in the system would not be considered for trading against the Agency Order in the case of a trading halt. The Exchange believes that this result 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 that they otherwise would incur because the market is halted, if they were permitted to execute against the Agency Order in this instance. By contrast, the Solicited Order ''stopped'' the Agency Order when the order was submitted into the Solicitation Auction and, in the Exchange's view, therefore should 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, the Exchange notes, when an Agency Order and Solicited Order are submitted into the Solicitation Auction, the stop price would need to 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 Order and Solicited Order 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 would not cause the Solicitation Auction to end early. Rather, the unrelated order would execute against interest outside the Solicitation Auction (if marketable against the PBBO) or would post to the order 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 proposed 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 would be considered for participation in the order allocation process set forth in proposed Rule 1081(ii)(E) (described below), regardless of the number of contracts in relation to the Solicitation Auction size.[49] The

none contingency included 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. *See* Notice of Amendment No. 2, *supra* note 10, 80 FR at 22572. (However, all-or-none orders entered and present on the Exchange book at the end of the Solicitation Auction would be considered for execution, as discussed below.)

[43] Similarly, in the case of Complex Order Responses, the Response would need to 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. However, the Responses would not need to improve upon the limit of orders on the Complex Order book because, the Exchange states, the Complex Order book is not displayed on OPRA and would not necessarily be known to the responding participant. If a Complex Order Response was received that was equal to or crossed the limit of orders on the Complex Order book, the Response would only be executed at a price that improves the resting order's limit price by at least $0.01. *See* proposed rule 1081(ii)(H). *See also* Notice of Amendment No. 2, *supra* note 10, 80 FR at 22572, n. 50. A Complex Order Response submitted with a price that is outside the cPBBO at the time of receipt would be rejected. *See* proposed Rule 1081(ii)(A)(9).

[44] *See* Notice of Amendment No. 2, *supra* note 10, 80 FR at 22572.

[45] *See* proposed Rule 1081(ii)(B)(2).

[46] In the case of a Complex Solicitation Auction, the auction 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* proposed Rule 1081(ii)(B)(3). The Exchange believes that, when either the cPBBO or Complex Order interest, excluding all-or-none interest, is present on the Exchange on the same side as the Complex Agency Order and crosses the stop price, further price improvement would be unlikely and Responses offering improvement would likely be cancelled. The Exchange also states that an all-or-none Complex Order crossing the stop price should not end the Complex Solicitation Auction since the order would be contingent and might not actually be able to trade based on its size contingency. The Exchange believes that continuing to run the Complex Solicitation Auction in this instance for the duration of the auction timer would benefit the Agency Order in allowing interest that may offer price improvement over the stop price to continue to be collected. This approach would be consistent with the proposed rules for Solicitation Auctions involving simple orders. Under the proposal, Simple Solicitation Auctions would conclude early when the PBBO on the same side of the market as the Agency Order crossed the stop price. All-or-none orders are not part of the PBBO as they are contingent and not displayed on OPRA. *See* Amendment No. 2, *supra* note 9, 80 FR at 22572, n.52.

[47] *See* proposed Rule 1081(ii)(B)(4). 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* Rule 1047(e). *See also* Securities Exchange Act Release No. 62269 (June 10, 2010), 75 FR 34491 (June 17, 2010) (SR–Phlx–2010–82). The Exchange states that 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 would be nullified pursuant to Exchange Rule 1092(c)(iv)(B).

[48] 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.

[49] Similarly, pursuant to proposed 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 would not cause the Complex Solicitation Auction to end early and would 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

Exchange states that unrelated opposite side interest received during the Solicitation Auction is handled in this manner because 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. The Exchange further believes that considering such unrelated interest that remains unexecuted upon receipt for participation in the order allocation process would 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 would 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 would 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 Exchange states that the treatment of all-or-none interest in assessing the presence of sufficient improving interest would not always be the same for Complex Solicitation Auctions as it would be for simple Solicitation Auctions. In all Solicitation Auctions, whether simple or complex, the system would 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 it would not be possible to satisfy the all-or-or none contingency in the execution.[50] However, in the case of simple Solicitation Auctions, all-or-none interest of a size that could potentially be executed consistent with its all-or-none contingency would be considered when determining whether there is sufficient size to execute the Agency Orders at a price(s) better than the stop price.[51]

By contrast, in the case of Complex Solicitation Auctions, pursuant to proposed Rule 1081(ii)(E)(5), when determining if there is sufficient size to execute the Complex Agency Orders at a price(s) better than the stop price, no all-or-none interest of any size would be considered. Phlx states that this difference is due to a system limitation relating to all-or-none Complex Orders.[52] The Exchange believes that the difference in the treatment of all-or-none Complex Orders would not be impactful since, according to a study it made of the matter, all-or-none Complex Orders are rare.[53] Moreover, the Exchange notes, if sufficient size exists in other non-solicited interest to execute the entire Complex Agency Order at an improved price, the all-or-none Complex Order would be considered for trade and executed if possible.[54]

In both simple Solicitation Auctions and Complex Solicitation Auctions, once a determination is made that sufficient improving interest exists, all-or-none interest would be executed at the auction's conclusion pursuant to normal priority rules, except in a case where the all-or-none contingency could not be satisfied. If an execution that can adhere to the all-or-none contingency would not be possible, the all-or-none interest would be ignored and would remain on the order book.[55]

Solicitation Auction with Sufficient Improving Interest. Pursuant to the proposed 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 would be executed against such better priced interest, with public customers having priority in the allocation 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 would be allocated among all Exchange quotes, orders and Responses in accordance with Phlx Rules 1014(g)(vii)(B)(1)(b) and (d), and the Solicited Order would be cancelled.[56] The Exchange provided an example of allocation in a Solicitation Auction with sufficient improving interest.[57]

volume of such unrelated interest would 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 proposed Rule 1081(ii)(E).

[50] *See* Amendment No. 2, *supra* note 9.

[51] The Exchange provided an example of assessing the sufficiency of improving interest in a simple Solicitation Auction. *See* Notice of Amendment No. 2, *supra* note 10, 80 FR at 22574.

[52] Phlx explains that 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. According to the Exchange, the aggregation of all-or-none Complex Orders with other Complex Orders in order to determine the presence of sufficient improving interest would be a more difficult process than aggregation of all-or-none simple orders with other simple orders. *See also* Amendment No. 2, *supra* note 9.

[53] The Exchange reviewed six months of data which showed that all-or-none Complex Orders represented only 0.12% of all Complex Orders. *See* Notice of Amendment No. 2, *supra* note 10.

[54] The Exchange provided the following example of assessing the sufficiency of improving interest in a Complex Solicitation Auction. Assume a Complex Agency Order to buy 1000 contracts that was 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 would not consider all-or-none interest in determining whether it can execute the Complex Agency Order at a better price than the stop price. In this example, by excluding the all-or-none Complex Order, only 900 contracts would be 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. *See* Notice of Amendment No. 2, *supra* note 10.

[55] As discussed above, however, if without the size of the all-or-none order there would be insufficient interest to satisfy the Agency Order at an improved price, the Agency Order would be executed against the Solicited Order, and the responding interest would be cancelled.

[56] Similarly, pursuant to proposed 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 would 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 Exchange states that 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 would 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 that 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* Rule 1014(g).

When determining if there would be 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 would be triggered for a covered security, Complex Orders and Responses marked ''short'' would 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 was 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 would be triggered that might be present, then all Complex Orders and Responses marked ''short'' would be considered for allocation in accordance with proposed Rule 1081(ii)(J)(3).

[57] *See* Notice of Amendment No. 2, *supra* note 10, at 80 FR 22574. The Exchange also provided an example of allocation in a Complex Solicitation Auction with sufficient improving interest. *See*

Continued

Solicitation Auction with Insufficient Improving Interest. Pursuant to proposed Rule 1081(ii)(E)(2), if there was 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 would 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.[58] Otherwise, both the Agency Order and Solicited Order would be cancelled without a trade occurring.[59] The Exchange believes that this proposed provision would ensure that non-contingent public customer orders on the limit order book would maintain priority. The Exchange notes 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 . . . .'' [60] In contrast, the Exchange points out that the proposed solicitation mechanism offered on Phlx would not consider such interest.[61] The Exchange states that requiring the stop price to be at least $0.01 better than any public customer interest on the limit order book would ensure public customer priority of existing interest and in turn provide the Solicited Order participant certainty that if an execution occurs at the stop price, such execution would represent the Solicited Order and not interest that arrived after the Solicited Order participant stopped the Agency Order for its entire size.

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

Finally, proposed Rule 1081(ii)(E)(7) provides that a Complex Agency Order consisting of a stock/ETF component would not execute against interest comprising the cPBBO at the end of the Complex Solicitation Auction.[62] 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 would therefore not be considered as a means of executing a Complex Order that includes a stock/ETF component. The Exchange states 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) would address the handling of the Agency Order and other orders, quotes and Responses when certain conditions are present. Pursuant to proposed 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 would be executed, if possible, at their limit price(s). Although Exchange Rule 1084, Order Protection, generally prohibits trade-throughs, the Exchange notes that 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.[63]

In addition, the Exchange believes that, since the proposal would permit Responses to be cancelled at any time prior to the conclusion of the Solicitation Auction, Responses being executed at a price trading through the market is, at best, highly unlikely as participants would cancel Responses when better priced interest that they could trade against is present in the marketplace.

Proposed Rule 1081(ii)(G) would provide that if, the Solicitation Auction price when trading against non-solicited interest (except if it was a Complex Solicitation Auction), would be the same as or would cross the limit of an order (excluding an all-or-none order) resting on the limit order book on the same side of the market as the Agency Order, the Agency Order could be executed only at a price that is at least $0.01 better than the resting order's limit price.[64] However, if such execution price would be equal to or would not improve the stop price, the Agency Order would be executed against the non-solicited interest at a price that is $0.01 better for the Agency Order than the stop price, provided the price would not equal or cross a public customer order and would be equal to or improved upon the PBBO on the opposite side of the Agency Order.[65] If

Notice of Amendment No. 2, *supra* note 10, 80 FR 22575 n.62.

[58] Proposed Rule 1081(ii)(E)(2) would not apply to Complex Solicitation Auctions. Rather, a parallel provision, proposed Rule 1081(ii)(E)(4), would provide 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 would be executed against the Solicited Order at the stop price, provided such stop price was 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. The Exchange states that this proposed behavior would ensure that non-contingent public customers on the limit order book maintain priority. Otherwise, both the Complex Agency Order and the Solicited Order would be cancelled with no trade occurring.

[59] The Exchange provided examples of allocation in a Solicitation Auction with insufficient improving interest. With respect to simple Solicitation Auctions, *see* Notice of Amendment No. 2, *supra* note 10, 80 FR at 22575. With respect to Complex Solicitation Auctions, *see* Notice of Amendment No. 2, *supra* note 10, 80 FR at 22575 n.63.

[60] *See* Notice of Amendment No. 2, *supra* note 10, at 80 FR 22575.

[61] *See* ISE Rule 716(e)(2)(i) 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.''

[62] The Exchange states that this provision, which parallels Phlx Rule 1080(n)(ii)(E)(2)(g) concerning Complex Orders in its PIXL auction, is being proposed for the same reasons explained in its File No. SR-Phlx- 2013–46 with respect to that rule. *See* Securities Exchange Act Release No. 69845 (June 25, 2013), 78 FR 39429 (July 1, 2013) (Order Granting Approval To Proposed Rule Change, as Modified by Amendment No. 1, Regarding Complex Order PIXL) (for purposes of this Order, the ''Complex PIXL Filing''). The Exchange states that 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, noting that Commentary .08(a)(i) to Phlx 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.

[63] *See* Notice of Amendment No. 2, *supra* note 10, at 80 FR at 22575.

[64] The system would not consider the origin of the resting order but would seek to ensure the priority of all resting orders on the order book by requiring that any execution occur at a price which would improve upon the limit of a resting order by at least $0.01, if possible. If an execution could not occur at least $0.01 better than the limit of a resting order on the book, the system would 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. *See* Notice of Amendment No. 2, *supra* note 10, at 80 FR at 22576.

[65] *See also* Phlx Rule 1080(n)(ii)(H). Proposed Rule 1081(ii)(G) would not apply to Complex Solicitation Auctions. Rather, a parallel provision, proposed Rule 1081(ii)(H), would provide that if the Complex Solicitation Auction price when trading against non-solicited interest was the same as or would 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 would be permitted to be executed only at a price that improves the resting order's limit price by at least $0.01, provided such execution price would improve the stop price. If such execution price would be equal to or would not improve the stop price, the Agency Order would be executed $0.01 better than the stop price provided the price does

such price is not possible, the Agency Order and Solicited Order would be cancelled with no trade occurring.[66] The Exchange states that the system would permit only 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 order book, thereby establishing priority at the stop price. The Exchange further states that this system logic ensures that the Agency Order would receive a better priced execution than the stop price when trading against interest other than the Solicited Order.

Proposed Rule 1081(ii)(I) would provide that any unexecuted Responses or Solicited Orders would be cancelled at the end of the Solicitation Auction. The Exchange notes that because both Responses and Solicited Orders would be specifically entered into the Solicitation Auction to trade against the Agency Order, and then cancelling the unexecuted portion of Responses and Solicited Orders would be consistent with the expected behavior of such interest by the submitting participants.

Complex Agency Orders With Stock/ETF Components

Proposed Rule 1081(ii)(J) deals with Complex Agency Orders with stock or ETF components. Proposed Rule 1081(ii)(J)(1) provides that member organizations would be permitted to submit Complex Agency Orders, Complex Solicited Orders, Complex Orders and/or Responses with a stock/ETF component only if such orders/Responses comply with the Qualified Contingent Trade Exemption from Rule 611(a) of Regulation NMS[67] 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.[68] 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.

Proposed 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,[69] the Exchange would be required to electronically communicate the underlying security component of the Complex Agency Order (together with the Complex Solicited Order, Complex Order or Response, as applicable) to NES, its designated broker-dealer, for immediate execution. The Exchange states that such execution and reporting would occur otherwise than on the Exchange and would be handled by NES pursuant to applicable rules regarding equity trading.

Finally, proposed Rule 1081(ii)(J)(3) states that when the short sale price test in Rule 201 of Regulation SHO[70] would be triggered for a covered security, NES would 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 was equal to or below the current national best bid.[71] However, NES would execute a short sale order in the underlying covered security component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response if such order was marked ''short exempt,'' regardless of whether it was at a price that was equal to or below the current national best bid.[72] If NES could not 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 would cancel back the Complex Agency Order, Complex Solicited Order, Complex Order or Response to the entering member organization. For purposes of proposed Rule 1081(ii)(J)(3), the term ''covered security'' would have the same meaning as in Rule 201(a)(1) of Regulation SHO.[73]

The Exchange states that this approach is consistent with Rule 201 of Regulation SHO. Under this proposal, the Exchange and NES, as trading centers, would 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 would 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 would be processed as a single transaction and both the option leg and stock/ETF components would be simultaneously processed.[74]

Regulatory Issues

The proposed rule change contains two paragraphs describing prohibited practices when participants use the solicitation mechanism.

Proposed Rule 1081(iii) states that the Solicitation Auction could be used only where there is a genuine intention to execute a bona fide transaction. It would be considered a violation of proposed Rule 1081 and would be deemed conduct inconsistent with just and equitable principles of trade and a

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 would be equal to or better than the cPBBO on the opposite side of the Complex Agency Order. If such price would not be possible, the Agency Order and Solicited Order would be cancelled with no trade occurring. The Exchange noted that this functionality is consistent with the operation of PIXL auctions.

[66] The Exchange provided an example of the operation of proposed Rule 1081(ii)(G). *See* Notice of Amendment No. 2, *supra* note 10 (adding clarifying language to the example).

[67] 17 CFR 242.611(a).

[68] *See, e.g.,* Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (order granting an exemption for each NMS stock component of certain qualified contingent trades from Rule 611(a) of Regulation NMS).

[69] *See* text of proposed Rule 1081(ii)(J)(2), Amendment No. 2, *supra* note 9.

[70] 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.*

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

[72] 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 would handle short sales of the orders and Responses described herein the same way it handles the short sales discussed in the Complex PIXL Filing.

[73] 17 CFR 242.201(a)(4).

[74] *See* Notice of Amendment No. 2, *supra* note 10, at 80 FR 22577.

violation of Rule 707 [75] if an Initiating Member submitted an Agency Order (thereby initiating a Solicitation Auction) and also submitted its own Response in the same Solicitation Auction. The Exchange states that 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 would 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 proposing Rule 1081, the Exchange also proposes an amendment to 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 are to 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 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 would be treated in the same manner as an off-floor broker-dealer. The effect of these proposed changes to Rule 1014 would be that professionals would not receive the same priority afforded to public customers in a Solicitation Auction under proposed Rule 1081, and instead would be treated as broker-dealers in this regard. Therefore, an Agency Order or Solicited Order submitted for a professional would not be considered a public customer order eligible to be paired with a public customer order or another professional order and these would not be automatically executed without a Solicitation Auction pursuant to Rule 1081(v), discussed above. In addition, unrelated professional orders, excluding all-or-none orders, or Responses for the account of a professional would be treated under the proposed rule as broker-dealer orders for purposes of execution priority. Unrelated professional all-or-none orders would continue to receive customer priority as stipulated in Rule 1000(b)(14).[77]

III. Discussion and Commission Findings

Under Section 19(b)(2)(C) of the Act, the Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to such organization.[78] The Commission shall disapprove a proposed rule change if it does not make such a finding.[79] The Commission's Rules of Practice, under Rule 700(b)(3), state that the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change'' and that a ''mere assertion that the proposed rule change is consistent with those requirements . . . is not sufficient.'' [80]

After careful consideration, the Commission does not find that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission does not find that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act, which, among other things, requires that the rules of a national securities exchange be 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 . . . .'' [81] Because this determination under the Act necessitates disapproving the proposed rule change, as modified by Amendment No. 2, the Commission does so.[82]

The Commission recognizes that it has previously approved rules of other national securities exchanges that provide for solicited order mechanisms.[83] Phlx's proposed solicitation mechanism rules, however, would deviate from the solicited order mechanism rules of other exchanges that previously were approved by the Commission.

In the Order Instituting Proceedings, the Commission invited the views of interested persons concerning whether the Exchange's proposal is consistent with Section 6 or any other provision of the Act, or the rules and regulations thereunder. The Commission also highlighted specific features of the Exchange's proposal and requested the views of interested persons on those features.[84] In particular, the Commission noted that, under the Exchange's proposal, if at the conclusion of the Solicitation Auction period there is a public customer order on the order book at the stop price, the auction would be cancelled.[85] The Commission stated that this result is consistent with the rule of another exchange's solicited order mechanism.[86] The Commission remarked that the Exchange's proposed rule differs from

[75] Phlx Rule 707 states, ''[a] member, member organization, or person associated with or employed by a member or member organization shall not engage in conduct inconsistent with just and equitable principles of trade.''

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

[77] *See* Amendment No. 2, *supra* note 9.

[78] *See* 15 U.S.C. 78s(b)(2)(C)(i).

[79] *See* 15 U.S.C. 78s(b)(2)(C)(ii); and *see also* 17 CFR 201.700(b)(3).

[80] *See* 17 CFR 201.700(b)(3). ''The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. Any failure of a self-regulatory organization to provide the information elicited by Form 19b-4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization.'' *Id. See also* General Instructions to Form 19b-4, Item 3(b), 17 CFR 249.819.

[81] 15 U.S.C. 78f(b)(5).

[82] The Commission notes that, other than as discussed below, this order makes no findings with respect to whether other aspects of the proposed rule change are consistent with the Act.

[83] *See, e.g.,* ISE Rule 716(e), Solicited Order Mechanism; CBOE Rule 6.74B, Solicitation Auction Mechanism; BOX Rule 7270(b), Solicitation Auction; and MIAX Rule 515A(b), PRIME Solicitation Mechanism.

[84] *See* Order Instituting Proceedings, *supra* note 6, 80 FR at 5874–5875.

[85] *See* Order Instituting Proceedings, *supra* note 6, 80 FR at 5874.

[86] *See id.*, citing to ISE Rule 716(e), Solicited Order Mechanism.

the other exchange's rule in a case where, in addition to the public customer order at the stop price, there is sufficient price-improving interest along with the public customer order at the stop price to fill the Agency Order.[87] The Commission pointed out that, on the other exchange, the public customer order at the stop price and the price-improving interest would trade against the Agency Order.[88] The Commission noted that, under Phlx's proposal, the Agency Order and the Solicited Order would be cancelled.[89]

The Commission also sought comment on a similar feature of the Exchange's proposal.[90] The Commission noted that, under Phlx's proposal, generally, if, upon the conclusion of an auction, a public customer order is resting on the book opposite the Agency Order at the Solicited Order's stop price, both the Solicited Order and the Agency Order are canceled. However, if the public customer order was an all-or-none order, the proposal provides that the execution of the Solicited Order against the Agency Order can take place.[91] The Commission understands this result to apply even if the size of the all-or-none public customer order was such that it otherwise would be eligible to trade against the Agency Order.[92]

The Commission further sought comment on another feature of the Exchange's proposal.[93] The Commission noted that, under Phlx's proposal, in the case of a Solicitation Auction for simple orders, all interest on the opposite side of the Agency Order would be considered in determining whether the price can be improved for the full size of the Agency Order.[94] The Commission noted that, in the case of a Complex Order Solicitation Auction, all-or-none interest would not be considered.[95] The Commission pointed to the Exchange's explanation that this difference was due to a system limitation relative to all-or-none Complex Orders: ''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.'' [96]

As noted above, the Commission received two comment letters, each letter from ISE, on the proposed rule change and a response from the Exchange to ISE's first comment letter.[97] The Commission below discusses the issues raised in ISE's comment letters and the Exchange's response to ISE's first comment letter and sets forth the Commission's consideration of the arguments made by both the ISE and the Exchange.

A. Cancellation of the Solicitation Auction when the Agency Order Could Be Satisfied by a Public Customer Order at the Stop Price and Improving Interest

In its first letter, ISE notes that it operates a solicitation mechanism. ISE expresses concern that the Phlx proposal would not contain appropriate safeguards to ensure that customer orders on the book would be protected and that agency orders would be adequately exposed to all potential price improvement.[98] ISE states that Phlx's proposed solicitation mechanism would not serve the public interest and the protection of investors, maintaining that it ''fails to provide important protections guaranteed by competing markets.'' [99] In its response, Phlx states that it strongly disagrees with ''ISE's negative characterization'' of its proposed rule change,[100] and concludes that ISE's concerns are ''misguided and raised no valid concerns.'' [101]

ISE notes that Phlx would cancel a solicitation auction if there was customer interest on the order book at the stop price that, combined with other available price improving interest, would be of sufficient size to trade with the Agency Order.[102] ISE states that Phlx does not provide any policy justification for this ''change from established customer protections.'' [103] ISE also states that Phlx's ''weakened protections'' would enable regulatory arbitrage by broker-dealers seeking to reduce the likelihood that their crosses will be broken up.[104] ISE suggests that ISE and other competing exchanges ''would be forced to match these changes in order to maintain competitive standing.'' [105] ISE urges that the Commission hold Phlx to ''the same standards guaranteed by other options exchanges,'' maintaining that the Commission would thereby uphold ''principles of customer protection that were central to the approval of solicitation mechanisms operated by ISE and other markets.'' [106]

In response, Phlx states that ISE's argument is ''without merit.'' [107] Phlx notes that it ''*will not* allow a solicitation auction to be initiated at a price where there is non-contingent customer interest on the PHLX book and will continue to prevent customers from being traded through.'' [108] In addition, Phlx notes, customer interest that arrives after an order is submitted into the solicitation mechanism would still be protected, ''but in a different manner than on ISE.'' [109]

Phlx states that its protection of customer interest at the stop price would not result in regulatory arbitrage. Rather, Phlx argues, its proposal would represent ''merely a different process for customer protection.'' Phlx points out that its proposal ''would not permit trading through the customer, nor would it allow trading ahead of the customer.'' [110] Phlx describes its proposal as ''simply not providing customer interest (or any other interest)'' that arrives after the solicited order is stopped with the unfair advantage of trading against the agency order ahead of the solicited contra order at a price that does not offer price improvement,[111] adding that ''there is no justification for permitting *any* market participant to step ahead of the solicited contra order at a price which does not offer price improvement.'' [112]

Phlx notes that ISE cancels a solicitation auction with no trade resulting when there is a customer order at the stop price that, together with any improving interest, cannot satisfy the agency order. ''Whether ISE 'protects' a customer order at the stop price,'' Phlx

[87] *See* Order Instituting Proceedings, *supra* note 6, 80 FR at 5874.

[88] *See* Order Instituting Proceedings, *supra* note 6, 80 FR at 5875, citing to proposed Rule 1081(ii)(E)(1).

[89] *See* Order Instituting Proceedings, *supra* note 6, 80 FR at 5875.

[90] *See* Order Instituting Proceedings, *supra* note 6, 80 FR at 5874.

[91] *See id.*

[92] *See id.*

[93] *See* Order Instituting Proceedings, *supra* note 6, 80 FR at 5874.

[94] *See* Order Instituting Proceedings, *supra* note 6, 80 FR at 5874, citing to proposed Rule 1081(ii)(E)(1).

[95] *Id.*, citing to proposed Rule 1081(ii)(E)(5).

[96] *See* Order Instituting Proceedings, *supra* note 6, 80 FR at 5870 n.48 and accompanying text.

[97] *See supra* notes 7 and 8.

[98] *See* ISE Letter at 1.

[99] *See* ISE Letter at 2.

[100] *See* Phlx Response Letter at 1.

[101] *See* Phlx Response Letter at 4.

[102] *See* ISE Letter at 1. ISE noted that other options exchanges, including ISE, would execute the agency order against the customer order and the other price improving interest, thereby providing an execution for the customer on the book as well as an improved price for the agency order. *Id.*

[103] *See* ISE Letter at 1.

[104] *Id.*

[105] *Id.*

[106] *See* ISE Letter at 1–2.

[107] *See* Phlx Response Letter at 2.

[108] *Id.* (emphasis in original).

[109] *Id.*

[110] *Id.*

[111] *Id.*

[112] *See* Phlx Response Letter at 2 (emphasis in original).

asserts, ''evidently depends upon the size of that customer order (or the absence of other orders sufficient to aggregate into a size sufficient for the agency order to execute against),'' arguing that ISE's approach ''cannot really be considered customer 'protection.' ''[113]

Further, Phlx observes that, in its PIXL auction mechanism, customers rarely submit interest priced at the stop price after the auction has been initiated, with that interest being executed in the auction.[114] Phlx states that there is ''no reason to expect that customer orders would be received at the stop price more frequently in solicitation auctions than in PIXL Auctions.'' Specifically, Phlx represents that in February 2015, customer executions at the stop price occurred only 70 times out of 474,388 PIXL auctions, or approximately .015% of the time. The Exchange observes that cancellations caused by customer orders arriving at the stop price after a Solicitation Auction was initiated might occur only roughly 0.015% more often in its solicitation mechanism than in ISE's solicitation mechanism.[115] Phlx states that, ''[g]iven how rarely a customer order can be expected to be received during a solicitation auction at the stop price, the PHLX's proposal to cancel a solicitation order with no trade occurring when a customer order is received at the stop price during the auction does not pose a significant risk to the protection of customer interest nor to the opportunity for price improvement.''[116]

The Second ISE Letter reiterates the comments that ISE made in its initial letter.[117] ISE states that ''Phlx should instead be held to the same high standard required of other markets that guarantee an execution for the customer order by allowing the solicitation auction to be broken up. This remains the case even when dealing with customer orders that are received after an auction has been initiated, and regardless of how rare Phlx anticipates such orders may be.''[118]

The Commission notes that solicited order mechanisms generally are designed to enable a member firm to assist a customer that wishes to buy or sell 500 or more contracts (*i.e.,* an agency order) by finding a counterparty (*i.e.,* a solicited order) to execute against the full size of the customer's interest at the NBBO or better.[119] The agency order must be exposed to the broader market in a solicitation auction so that it has the possibility of obtaining a better price, before the solicited order is permitted to be crossed with the agency order.[120] In a solicited order mechanism, the trading crowd to which the agency order is exposed does not have the right to trade against the agency order at the price proposed by the solicited party.[121] Unless the trading crowd provides (i) a better price and (ii) enough interest at that better price for the entire size of the order, the solicited order is permitted to trade against the agency order for its full size, with all other participants excluded.[122]

The exchanges that currently feature a solicited order mechanism include provisions that address, among other scenarios, the circumstance where there is a public customer order on the order book at the stop price that, when combined with price-improving interest that otherwise could not fill the agency order on its own, would be able to fill the agency order.[123] In that circumstance, those exchanges' rules provide that the public customer order and the available price-improving interest would be executed against the agency order. By contrast, under its proposal, Phlx would cancel the Agency Order rather than permit it to be executed against a public customer at the stop price that, when combined with available price-improving interest, would be of sufficient size to fill the Agency Order.

In view of the fact that the purpose of the Phlx's proposed solicitation mechanism is to enable the Agency Order to be executed, the Commission believes that the Agency Order should be given the opportunity to receive an execution in the above-described circumstance. Moreover, to the extent that the Agency Order could execute against the customer order at the stop price, along with available price-improving interest that otherwise could not fill the Agency Order on its own, the composite price that the Agency Order would receive would be at a better price than the Solicited Order's stop price. In addition, the public customer order and any available price-improving interest that arrived on the order book after the auction's commencement also would receive an execution, rather than simply remaining on the book.

In explaining its approach, Phlx notes that, under its proposal, at the initiation of the auction, the stop price must be at least $0.01 better than any public customer interest on the limit order book at that time. According to Phlx, this ''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, it will be against the Solicited Order rather than against interest (including public customer orders) that arrived after the solicited party had already stopped the Agency Order for its entire size at that price.''[124] Phlx also states that it is ''simply not providing customer interest (or any other interest) which arrives *after* the solicited order is stopped with the unfair advantage of trading against the solicited agency order ahead of the solicited contra order at a price which does not offer price improvement.''[125]

The Commission does not view a public customer order at the stop price that arrives after the auction has commenced as trading ''ahead of'' the Solicited Order and thereby as receiving an ''unfair advantage'' when the Solicited Order would be required to be cancelled in any event under the Phlx's proposal. On the contrary, the Commission believes that the Agency Order should be given the opportunity to execute against the later-arriving public customer interest at the stop price, together with sufficient price-improving interest to satisfy the size of the Agency Order, and thus benefit from a measure of price improvement, rather than being cancelled as under the Exchange's proposal.

In making the argument that its proposal ''does not pose a significant risk to the protection of customer interest nor to the opportunity for price improvement,'' Phlx cites to data from its PIXL auction showing that public customer orders arrive on the order book at the stop price very infrequently.[126] The Commission notes that this data also could be cited to argue, on the other side of the issue, that the incentive for solicited parties to provide liquidity through the proposed solicitation mechanism would be little affected by later-arriving public customer orders. In any event, the Commission believes that data showing the potential infrequency of a situation should not be dispositive of the Commission's consideration regarding

[113] *See* Phlx Response Letter at 2.

[114] *Id.*

[115] *Id.*

[116] *See* Phlx Response Letter at 2.

[117] *See* Second ISE Letter at 1.

[118] *See* Second ISE Letter at 2.

[119] *See supra* note 83.

[120] *Id.*

[121] *Id.*

[122] *Id.*

[123] *Id.*

[124] *See* Notice of Amendment No. 2, *supra* note 10, 80 FR at 22575.

[125] *See* Phlx Response Letter at 2 (emphasis in original).

[126] *See* Phlx Response Letter at 2.

the Exchange's proposed treatment of public customer orders at the stop price that arrive during the auction and that otherwise could satisfy the size of the Agency Order when combined with price-improving interest.

For the reasons stated above, the Commission believes that Phlx's proposed approach not to execute the Agency Order against a public customer order at the stop price, that when combined with price-improving interest could fulfill the Agency Order, would result in an outcome that does not appear to be consistent with the Act. Specifically, cancelling the Agency Order and leaving the public customer order on the order book unexecuted would disadvantage both of these orders. It would also disadvantage any price-improving interest that arrived on the book during the auction (but was insufficient in size to trade against the Agency Order without taking into account the public customer order), which, under the other exchanges' rules, also would receive an execution. While such a result may be expedient for the firm that entered the Agency Order and Solicited Order into the Solicitation Auction and for the solicited party, it would raise concerns under Section 6(b)(5) of the Act, which, among other things, requires that the rules of a national securities exchange be 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 . . .'' [127] In light of these observations, the Commission cannot find that the proposed rule change is consistent with the Act.

B. Execution of the Solicitation Auction at the Stop Price When There Is a Contingent Public Customer Order at the Stop Price

In addition, ISE expresses a concern regarding Phlx's handling of all-or-none customer orders on the book. ISE notes that the Exchange's proposal would allow a Solicited Order to cross with the Agency Order when there is a resting customer all-or-none order at the stop price of the Solicited Order, even if the customer order is eligible to trade based on its size contingency.[128] ISE maintains that customer protection was ''a central principle in the approval of solicitation mechanisms of other markets.'' [129] ISE does not believe that Phlx should be permitted to ''eliminate this protection'' without providing a policy rationale.[130]

In response, Phlx notes that all-or-none orders ''continue to be protected from being traded through when their all-or-none contingency can be satisfied.'' However, Phlx explains, due to the contingency, such orders are offered a ''less robust protection'' than non-contingent orders.[131] Phlx states that a customer seeking the same protection could submit the order without this contingency, since the contingency is within the discretion and control of the customer.[132] Further, Phlx notes that ISE does not provide priority to all-or-none orders on ISE's book [133] and cited to ISE Rule 713.

The Commission believes that Phlx's proposed approach to permit the Agency Order and Solicited Order to cross when an all-or-none customer order at the stop price exists on Phlx's order book would result in an outcome that is not consistent with the Act. Specifically, rather than protecting the all-or-none public customer order at the stop price, Phlx's proposal to allow the Solicited Order to execute against the Agency Order and leave the all-or-none public customer order on the order book would disadvantage the public customer order. While such a result may be expedient for the firm that entered the Agency Order and Solicited Order into the Solicitation Auction and for the solicited party, it would raise concerns under Section 6(b)(5) of the Act, which, among other things, requires that the rules of a national securities exchange be 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 . . .'' [134] In light of these observations, the Commission cannot find that the proposed rule change is consistent with the Act.

C. No Consideration of All-or-None Complex Orders When Determining Whether the Price Has Been Improved for the Full Size of the Agency Order

The ISE Letter expresses a concern regarding the provision of the Phlx proposal that would allow all-or-none orders in the Complex Order Book to be ignored when determining whether there would be sufficient interest to execute the Agency Order at a better price.[135] ISE states that Phlx does not cite any relevant policy considerations to justify this provision, but ''simply reasons that it should be exempted from providing this functionality due to 'systems limitations' that make it more difficult to aggregate complex orders with all-or-none orders.'' [136] ISE contends that other options exchanges ''have spent the necessary time and resources to overcome such obstacles in the interest of maintaining a fair and orderly market where agency orders are adequately exposed to potential price improvement.'' [137] ISE remarks that ''Phlx should not be singled out for favorable treatment simply because it was unwilling to invest in appropriate safeguards offered by its competitors.'' [138]

In response, Phlx reiterates its position that aggregation of all-or-none complex orders with other complex orders was a more difficult process than aggregation of all-or-none simple orders with other simple orders, because all-or-none complex orders reside in a separate book that is in a different part of the trading system.[139] Citing data that it had reviewed to demonstrate that all-or-none complex orders are rare,[140] Phlx responds that it must carefully weigh the costs and benefits of changes to its trading system and deploy resources in the manner it determines most beneficial to its market participants.[141] In this case, Phlx states that it has elected to ''enhance the efficiency and effectiveness of its markets'' rather than to ''overhaul the trading system to include a mere 0.12% of all Complex Orders in the calculation of sufficiency of improving interest.'' [142] Phlx does not believe that such an overhaul would advance the interests of market participants.[143]

The Second ISE Letter states that ''[b]y ignoring all-or-none complex orders, Phlx would allow the execution of an agency order against the solicited order at a worse price than available from other market participants.'' [144] ISE notes that ''Phlx attempts to equate their proposal with ISE's rules regarding the priority of all-or-none orders. To clarify this here, all-or-none orders on ISE have

[127] 15 U.S.C. 78f(b)(5).

[128] *See* ISE Letter at 2; The Second ISE Letter reiterates comments ISE included in its first letter.

[129] *Id.*

[130] *Id.*

[131] *See* Phlx Response Letter at 3.

[132] *Id.*

[133] *Id.*

[134] 15 U.S.C. 78f(b)(5).

[135] *See* ISE Letter at 2.

[136] *Id.*

[137] *Id.*

[138] *Id.*

[139] *See* Phlx Response Letter at 3.

[140] *Id.* The Exchange noted that it had reviewed six months of data which showed that all-or-none complex orders represented only 0.12% of all Complex Orders. *Id.*

[141] *Id.*

[142] *See* Phlx Response Letter at 3–4.

[143] *See* Phlx Response Letter at 4.

[144] *See* Second ISE Letter at 2.

no priority over other orders *at the same price* (emphasis in original). Our rules make clear, however, that all-or-none orders are available for execution after other trading interest at the same price has been exhausted. All-or-none orders on ISE decidedly may not be ignored when such orders would result in a better price for the other side of the trade.'' [145] ISE further remarks that ''[i]t is fundamental to the solicitation process that the agency order be fully exposed to all other price improving interest, including all-or-none orders.'' [146]

As described above, under Phlx's proposal, at the conclusion of a Solicitation Auction involving Complex Orders, the Exchange's system would not consider all-or-none complex interest in determining whether such interest could execute against the Complex Agency Order at a better price than the stop price. Therefore, when the determination of whether there is sufficient improving interest to execute against the Complex Agency Order otherwise would require the inclusion of such all-or-none complex interest, the Complex Agency Order simply would trade against the Solicited Order at the stop price, rather than against the sufficient improving interest that could be available on the Exchange at a better price.

The Commission notes that the solicited order mechanisms of other exchanges that accommodate complex orders provide for the consideration of all-or-none complex order interest in determining whether there is sufficient improving interest.[147] ISE Rule 722 Supplementary Material .08 permits complex orders in ISE's solicited order mechanism and provides no carve-out for the consideration of all-or-none complex orders.[148] CBOE Rule 6.74B Interpretation .01 permits complex orders in CBOE's solicited order mechanism and provides no carve-out for the consideration of all-or-none complex orders.[149]

Similar to these other exchanges' solicitation mechanisms, under Phlx's proposal, when there is sufficient improving interest that is not all-or-none interest to satisfy a Complex Agency Order at a better price than the stop price, any resting all-or-none Complex Orders would participate in the execution pursuant to normal priority rules, so long as the all-or-none contingency can be satisfied. However, Phlx's proposal differs when there is sufficient improving interest to satisfy the Complex Agency Order at a better price than the stop price only when all-or-none Complex Order interest is included. In those circumstances, Phlx's proposal would deny the all-or-none Complex Order resting elsewhere on the Exchange a potential execution and it would not provide the Complex Agency Order with an execution at a better price than the stop price, even though there was, in fact, sufficient improving interest available.

Phlx has provided data indicating that participants infrequently submit all-or-none Complex Orders. However, Phlx has not provided sufficient information in its proposal to overcome the Commission's fundamental concerns about the impact that the proposal could have on exchanges' incentives to maintain a fair and orderly market where agency orders are adequately exposed to potential price improvement. The Commission believes that data showing the infrequency of a situation should not be dispositive of the Commission's consideration regarding whether the Exchange has met its burden to demonstrate that its proposal is consistent with the Act.

Further, Phlx has stated that it must weigh the costs and benefits of changes to its trading system, and has determined not to overhaul the trading system to include infrequently submitted all-or-none Complex Orders in the calculation of assessing the extent of price-improving interest that could interact with the Complex Agency Order. The Commission notes that other exchanges have overcome such obstacles in the interest of maintaining a fair and orderly market where agency orders are adequately exposed to potential price improvement.[150]

The Commission believes that Phlx's failure to provide a potential execution to all-or-none Complex Orders and to provide meaningful opportunity for price improvement to Complex Agency Orders would result in an execution allocation that is inconsistent with Section 6(b)(5) of the Act,[151] which requires that the rules of an exchange must be designed, among other things, 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. Specifically, rather than including all-or-none Complex Order interest in its consideration of whether there is sufficient improving Complex Order interest, Phlx's proposal, by ignoring all-or-none Complex Orders on one of its systems, would disadvantage both the resting all-or-none Complex Orders and the Complex Agency Order. As discussed above, the Commission does not believe the Exchange has sufficiently demonstrated why its proposal, which fails to take into account interest available in its market, would satisfy the requirements of Section 6(b)(5) of the Act.[152] Accordingly, the Commission cannot find that the proposed rule change is consistent with the Act.

D. Efficiency, Competition and Capital Formation

In analyzing the proposed rule change, as modified by Amendment No. 2, and in making its determination to disapprove the rule change, the Commission has considered whether the action will promote efficiency, competition, and capital formation,[153] but, as discussed above, the Commission does not find that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act.

IV. Conclusion

For the foregoing reasons, the Commission does not believe that Phlx has met its burden to demonstrate that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Phlx–2014–66), as modified by Amendment No. 2, be, and hereby is, disapproved.

[145] *Id.*

[146] See Second ISE Letter at 3.

[147] *See* ISE Rule 716(e) and Supplementary Material .08 and CBOE Rule 6.74B, Solicitation Auction Mechanism. Neither BOX Rule 7270(b), Solicitation Auction, or MIAX Rule 515A(b), PRIME Solicitation Mechanism, permit solicitation auctions for complex orders.

[148] *See* ISE Rule 716(e) and Supplementary Material .08; *see also* ISE Rule 722(b)(4) (permitting complex orders to be entered as all-or-none).

[149] *See* CBOE Rule 6.74B and Interpretation .01; *see also* CBOE Rule 6.53C(b) (permitting complex orders to be entered as all-or-none).

[150] *See supra* notes 151–153.

[151] 15 U.S.C. 78f(b)(5).

[152] 15 U.S.C. 78f(b)(5).

[153] Whenever pursuant to the Act the Commission is engaged in rulemaking or the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[154]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16088 Filed 6–30–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–9854; 34–75303; File No. 265–27]

Advisory Committee on Small and Emerging Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: The Securities and Exchange Commission Advisory Committee on Small and Emerging Companies is providing notice that it will hold an open, public telephone meeting on Wednesday, July 15, 2015, beginning at 1:00 p.m. EDT. Members of the public may attend the meeting by listening to the webcast accessible on the Commission's Web site at *www.sec.gov.* Persons needing special accommodations to access the meeting because of a disability should notify the contact person listed below. The agenda for the meeting includes a continuation of discussions started at the Committee's meeting on June 3, 2015, including regarding public company disclosure effectiveness and the treatment of ''finders.'' The public is invited to submit written statements to the Committee.

DATES: The public meeting will be held on Wednesday, July 15, 2015. Written statements should be received on or before Monday, July 13, 2015.

ADDRESSES: Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/info/smallbus/acsec.shtml*); or
- Send an email message to *rule-comments@sec.gov.* Please include File Number 265–27 on the subject line; or

Paper Statements

- Send paper statements to Brent J. Fields, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–27. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the Advisory Committee's Web site at *http://www.sec.gov./info/smallbus/acsec.shtml.*

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Julie Z. Davis, Senior Special Counsel, at (202) 551–3460, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.–App. 1, and the regulations thereunder, Keith F. Higgins, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: June 25, 2015.

Brent J. Fields,

Committee Management Officer.

[FR Doc. 2015–16108 Filed 6–30–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75302; File No. SR–CBOE–2015–062]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Front-End Order Entry and Management Tools in Connection With Purchase of Livevol Assets

June 25, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 the Substance of the Proposed Rule Change

The purpose of this filing is to describe the functionality and adopt fees for the use of two new front-end order entry and management applications. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

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

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

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

1. Purpose

The purpose of this filing is to describe the functionality and adopt fees for the use of two new front-end order entry and management applications. On June 1, 2015, CBOE IV, LLC (''Newco'') (a wholly owned subsidiary of CBOE's parent company, CBOE Holdings, Inc.) entered into a definitive asset purchase agreement with Livevol[5] pursuant to which Newco agreed to purchase certain software and technology, including Livevol X (''LVX'') and Livevol Core X (''LVCX''

[154] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b 4(f)(6).

[5] Livevol, Inc. has an additional subsidiary, Livevol Securities, Inc. (''LVS''), which is a registered U.S. broker-dealer (but not a Trading Permit Holder of the Exchange). CBOE will not acquire any assets related to this broker-dealer business.