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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2013 - * 132
Amendment No. (req. for Amendments *)

Filing by NASDAQ OMX PHLX LLC.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☑	☐	☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule
☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐

Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

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

A proposed rule change to adopt new Exchange Rule 1081, Solicitation Mechanism, and amend the definition of Professional in Rule 1000(b)(14).

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

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

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 12/31/2013
By Edward S. Knight
(Name *)

(Title *)
Executive Vice President and General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Persona Not Validated - 1383935917270,

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") proposes to adopt new Exchange Rule 1081, Solicitation Mechanism, to introduce a new electronic solicitation mechanism pursuant to which a member can electronically submit all-or-none orders of 500 contracts or more the member represents as agent against contra orders the member solicited. The Exchange is also proposing a corresponding amendment to the definition of "professional" in Rule 1000(b)(14).

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the amended rules is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved the submission of this proposed rule change on December 11, 2012. No other action by the Exchange is necessary for the filing of the rule change. Questions and comments on the proposed rule change may be directed to Carla Behnfeldt, Associate General Counsel, The NASDAQ OMX Group, Inc., at 215-496-5208.

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

[2] 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposal is to introduce an electronic solicitation mechanism. Currently, under Phlx Rule 1080(c)(ii)(C)(2), Order Entry Firms[3] 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. The proposed rule change would provide an alternative, enabling a member to electronically execute orders it represents on behalf of a public customer, broker-dealer, or any other entity (an “Agency Order”) 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.[4]

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3 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.)

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

The new mechanism is a process by which a member (the "Initiating Member") can electronically submit all-or-none orders[5] of 500 contracts or more that it represents as agent against contra orders that it has solicited, and initiate an auction (the "Solicitation Auction").[6] As explained below, at the end of the Solicitation Auction, allocation will occur with all contracts of the Agency Order trading at an improved price against non-solicited contra-side interest or at the stop price against the Solicited Order. The solicitation mechanism would accommodate both simple and Complex Orders.[7]

Solicitation Auction Eligibility Requirements

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

Proposed Rule 1081(i)(A) provides that the Agency Order and the Solicited Order must each be limit orders for at least 500 contracts, including orders in mini options, and be designated as all or none. The orders must match in size, and the limit prices of the

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

[6] Similar electronic functionality is offered today by competing exchanges. See Chicago Board Options Exchange (CBOE) Rule 6.74B, Solicitation Auction Mechanism (the "CBOE Mechanism") , International Securities Exchange (ISE) Rule 716(e), Solicited Order Mechanism (the "ISE Mechanism"), and BOX Options Exchange LLC ("BOX") Rule 7270, Block Trades, Section (b) (the "BOX Mechanism").

[7] 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 .08 to Rule 1080.

Agency Order and the Solicited Order must match or cross in price. If the orders cross in price, the price at which the Agency Order and the Solicited Order may be considered for submission pursuant to Rules 1081(B) and (C) shall be the limit price of the Solicited Order. The orders may not be stop or stop limit orders, must be marked with a time in force of day, good till cancelled or immediate or cancel, and will be treated as DNR (do not route) regardless of routing strategy.

Pursuant to Rule 1081(i)(B) the Initiating Member must stop the entire Agency Order at a price (the "stop price") that is equal to or better than the National Best Bid/Offer ("NBBO") , provided that such price must be at least $0.01 better than any public customer non-contingent limit order on the Phlx order book and must be equal to or better than the Agency Order's limit price. Stop prices may be submitted in $0.01 increments, regardless of the applicable minimum increment. Contingent orders on the book will not be considered when checking the acceptability of the stop price.[8]

Agency Orders submitted at or before the opening of trading are not eligible to initiate a Solicitation Auction and will be rejected. Orders submitted during a specified period of time, as determined by the Exchange and communicated to Exchange

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8 Rule 1081(i)(B) does not apply if the Agency Order is a Complex Order (a "Complex Agency Order"). Rather, Rule 1081(C) applies to Agency Orders and requires them to be of a conforming ratio, as defined in Commentary.08(a)(ix) to Rule 1080. It also provides that the Initiating Member must stop the entire Complex Agency Order at a price that is better by at least $0.01 than the best net price (debit or credit) (i) available on the Complex Order book regardless of the Complex Order book size; and (ii) achievable from the best Phlx bids and offers for the individual options (an "improved net price"), provided in either case that such price is equal to or better than the Complex Agency Order's limit price. Stop prices for Complex Agency Orders may be submitted in $0.01increments, regardless of MPV, and contingent orders on the book will not be considered when checking the acceptability of the stop price. See proposed Rule 1081(i)(C).

membership on the Exchange's website, prior to the end of the trading session in the affected series are not eligible to initiate a Solicitation Auction and will be rejected.

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

Solicitation Auction Process

Pursuant to Rule 1081(ii)(A)(1), to begin the process the Initiating Member must mark the Agency Order and the Solicited Order for Solicitation Auction processing, and specify the stop price at which it seeks to cross the Agency Order with the Solicited Order. Once the Initiating Member has submitted an Agency Order and Solicited Order for processing pursuant to this subparagraph, such Agency Order and Solicited Order may not be modified or cancelled (except that the stop price may be improved to the benefit of the Agency Order).[9] The purpose of this provision is to ensure that an

[9] For clarity, Rule 1080(ii)(A)(l) does not apply to Complex Agency Orders. Rather, in a parallel provision, proposed Rule 1081(ii)(A)(2) provides that to initiate a Solicitation Auction in the case of a Complex Agency Order and Complex Solicited Order (a "Complex Solicitation Auction"), the Initiating Member must mark the orders for Solicitation Auction processing, and specify the price ("stop price") at

Initiating Member guarantees that the Agency Order will be executed at the stop price or better (by way of improvement of the stop price to the Order's benefit during the Solicitation Auction), without "backing away" from that guarantee.

Crossing Two Public Customer Orders without a Solicitation Auction

As noted above, 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 orders of a public customer, broker-dealer, or any other entity through the solicitation mechanism.

However, pursuant to the introductory paragraph of Rule 1081, if a member enters an Agency Order for the account of a public customer paired with a Solicited Order for the account of public customer, such paired orders will be automatically executed without a Solicitation Auction. Rather, the paired public customer orders will be executed in the same manner as two public customer PIXL orders pursuant to current PIXL Rule 1080(n)(vi) which addresses the situation where an Initiating Member holds public customer orders on both sides of the market in the same option series. Instead of initiating a PIXL Auction (or, as proposed, a Solicitation Auction) an Initiating Member may enter an Agency Order for the account of a public customer paired with an order for the account of a public customer and such paired orders will be automatically executed without an auction. The execution price must be expressed in the minimum quoting increment applicable to the affected series. Such an execution may not trade through the

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which it seeks to cross the Complex Agency Order with the Complex Solicited Order. Once the Initiating Member has submitted the orders for processing pursuant to this subparagraph, they may not be modified or cancelled (except that the stop price may be improved to the benefit of the Complex Agency Order).

NBBO (or in the case of a Complex Solicitation Auction, the cPBBO) or at the same price as any resting customer order. The Exchange believes that permitting such executions will benefit public customers on both sides of the crossing transaction by providing speedy and efficient executions to public customer orders in this circumstance.

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 only the option details (meaning, the security and strike price, but not the side, size or the stop price) of the Agency Order and the Solicitation Auction start time is then sent over the PHLX Orders data feed[10] and SQF.[11]

Solicitation Auction

The Solicitation Auction process is described in proposed Rules 1081(ii)(A)(4) – (10). Following the issuance of the Request for Response, the Solicitation Auction will last for a period of no more than one second (as determined by the Exchange and communicated to the Exchange membership on the Exchange's website) unless it is concluded as the result of any of the circumstances described below. Any person or entity may submit Responses provided such Response is properly marked specifying price, size and side of the market at which it would be willing to participate in the

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

11 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.

execution of the Agency Order. The Exchange believes that permitting any person or entity to submit responses to the Request should attract Responses from all sources, maximizing the potential for liquidity in the Solicitation Auction and thus affording the Agency Order the best opportunity for price improvement. Responses will not be visible to Solicitation Auction participants, and will not be disseminated to the Options Price Reporting Authority ("OPRA"). A Response may be for any size. The minimum price increment for Responses will be $0.01. A Response must be equal to or better than the NBBO at the time of receipt of the Response. A Response with a price that is outside the NBBO will be rejected in order to avoid a large number of Responses outside of the NBBO that would be unexecuted (and subsequently cancelled) unless the NBBO moves to make them eligible. Multiple Responses from the same member may be submitted during the Solicitation Auction. Responses may be modified or cancelled during the Solicitation Auction.[12]

Conclusion of the Solicitation Auction

Rule 1081(ii)(B)(1)-(4) describes a number of circumstances that will cause the Solicitation Auction to conclude. It will conclude at the end of the Solicitation Auction period, except that it may conclude earlier: (i) any time the Phlx Best Bid/Offer ("PBBO") crosses the Agency Order stop price on the same side of the market as the Agency Order (since further price improvement will be unlikely and any responses

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[12] Similarly, in the case of Complex Order Responses, the Response must be equal to or better than the cPBBO, as defined in Commentary .08(a)(iv) of Rule 1080 at the time of receipt of the Response. A Complex Order Response submitted with a price that is outside the cPBBO will be rejected. See proposed Rule 1081(ii)(A)(9).

offering improvement are likely to be cancelled),[13] or (ii) any time there is a trading halt on the Exchange in the affected series.[14]

Pursuant to proposed Rule 1081(ii)(C), if the Solicitation Auction concludes before the expiration of the Solicitation Auction period as the result of the PBBO crossing the stop price or a trading halt on the Exchange in an affected series, the entire Agency Order will be executed using the allocation algorithm set forth in Rule 1081(ii)(E). The algorithm is described below under the heading "Order Allocation".

Any unrelated market or marketable limit order on the opposite side of the market from the Agency Order received during the Solicitation Auction will not cause the Solicitation Auction to end early. Rather, the order will execute against interest outside the Solicitation Auction (if marketable against the PBBO) or will post to the book and then route if eligible for routing (in the case of an order marketable against the NBBO but not against the PBBO), pursuant to Rule 1081(ii)(D). If contracts remain from such unrelated order at the time the Solicitation Auction ends, they will be considered for participation in the order allocation process described in Rule 1081(ii)(E).[15] The

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[13] In the case of a Complex Solicitation Auction, it would end any time the cPBBO or the Complex Order book crosses the stop price on the same side of the market as the Complex Agency Order. See Rule 1081(ii)(B)(3).

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

[15] Similarly, pursuant to Rule 1081(ii)(D), in the case of a Complex Solicitation Auction, an unrelated market or marketable limit Complex Order on the opposite side of the market from the Complex Agency Order as well as orders for the individual components of the Complex Order received during the Complex Solicitation Auction

Exchange believes that this should increase the number of contracts against which an Agency Order could be executed, and should create more opportunities for the Agency Order to be executed at each price level.

Order Allocation

The allocation of orders executed upon the conclusion of a Solicitation Auction will depend upon whether or not the Solicitation Auction has yielded sufficient improving interest to improve the price of the entire Agency Order. When determining if there is sufficient size to execute the entire Agency or Complex Agency Order at a price(s) better than the stop price, all-or-none interest will not be considered.[16]

Solicitation Auction with Sufficient Improving Interest. Pursuant to the Rule 1081(ii)(E) algorithm, if there is sufficient size (considering all resting orders, quotes and Responses) to execute the entire Agency Order at a price or prices better than the stop price, the Agency order will be executed against such better priced interest with public customers having priority at each price level. After public customer interest at a particular price level has been satisfied, remaining contracts will be allocated among all Exchange

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will not cause the Complex Solicitation Auction to end early and will execute against interest outside of the Complex Solicitation Auction. If contracts remain from such unrelated order at the time the Complex Solicitation Auction ends, they will be considered for participation in the order allocation process described in sub-paragraph (E) of Rule 1081(ii).

16 However, if it is determined that there is sufficient size to execute the entire Agency or Complex Agency Order at a price(s) better than the stop price irrespective of any all-or-none interest that may be present, then all-or-none interest will be considered for trade and executed if possible. If an execution is not possible which can adhere to the all-or-none contingency, such all-or-none interest will be ignored and remain on the order book or cancelled if such interest is an immediate or cancel order or a Response to the Solicitation Auction.

quotes, orders and Responses in accordance with Exchange Rule 1014(g)(vii)(B)(1)(b) and (d) and the Solicited Order will be cancelled.[17]

Example of Solicitation Auction with enough improving interest: To illustrate a case where a Solicitation Auction yields enough improving interest to better the stop price, assume the NBBO is $0.95 – $1.03, and a buy side Agency Order for 1000 contracts is submitted with a contra-side Solicited Order to stop the Agency Order at $1.00. During the Solicitation Auction, assume a market maker ("MM1") Response is submitted to sell 800 contracts at $0.97, a broker-dealer Response is submitted to sell 100 contracts at $0.99, and a public customer sends in an order to sell 100 contracts at $0.99. Upon receipt of the public customer order, the NBBO changes to $0.95 - $0.99. In addition, assume two market makers send in quotes of $0.95 - $0.99 during the Solicitation Auction. Market Maker 2 ("MM2") quotes $0.95 - $0.99 with 100 contracts

[17] Similarly, pursuant to Rule 1081(ii)(E)(3), in the case of a Complex Solicitation Auction, if there is sufficient size (considering resting Complex Orders and Responses) to execute the entire Complex Agency Order at a price(s) better than the stop price, the Complex Agency Order will be executed against better priced Complex Orders, Responses, as well as quotes and orders which comprise the cPBBO at the end of the Solicitation Auction. Such interest will be allocated at a given price in the following order: (i) to public customer Complex Orders and Responses in time priority; (ii) to SQT, RSQT, and non-SQT ROT Complex Orders and Responses on a size pro-rata basis; (iii) to non-market maker off-floor broker-dealer Complex Orders and Responses on a size pro-rata basis, and (iv) to quotes and orders which comprise the cPBBO at the end of the 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. When determining if there is sufficient size to execute the entire Complex Agency Order at a price(s) better than the stop price, if the short sale price test in rule 201 of Regulation SHO is triggered for a covered security, Complex Orders and Responses which are marked "short" will not be considered. However, if there is sufficient size to execute the entire Complex Agency Order at a price(s) better than the stop price irrespective of any covered securities for which the price test is triggered that may be present, then all Complex Orders and Responses which are marked "short" will be considered for allocation in accordance with Rule 1081(ii)((J)(3).

and Market Maker 3 ("MM3") quotes \$0.95 - \$0.99 with 50 contracts. At the end of the Solicitation Auction, since there is enough interest to execute the entire Agency Order at a price(s) better than the stop price, the Agency Order will be executed against the better priced interest as follows:

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

The broker-dealer does not trade any contracts since broker-dealers execute only after all public customer and market maker interest is satisfied. The unexecuted Solicited Order and broker-dealer Response are cancelled back to the sending participants.[18]

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[18] To illustrate a Complex Solicitation Auction with enough improving interest, assume that a Complex Order to buy one of option A and sell one of option B, 1000 times, with a cPBBO of \$0.40 bid, \$0.70 offer, is submitted with a stop price of \$0.65. Assume that during the Solicitation Auction, the following Responses and order interest is received:

- a market maker ("MM1") responds to sell the strategy 100 times at a price of \$0.55;

- MM1 responds to sell the strategy 100 times at a price of \$0.60;

- a broker-dealer responds to sell the strategy 300 times at a price of \$0.60;

- a public customer Complex Order to sell the strategy 300 times at a price of \$0.60; and

- another market maker ("MM2") responds to sell the strategy 200 times at \$0.60.

After all these Responses and orders are received, option A of the simple market moves causing the cPBBO to become offered 200 times at \$0.55. Option A is quoted in the simple market as \$1.00 – \$1.05 and Option B is quoted in the simple

Solicitation Auction with Insufficient Improving Interest. Pursuant to proposed Rule 1081(ii)(E)(2), if there is not sufficient size (considering all resting orders, quotes and Responses) to execute the entire Agency Order at a price(s) better than the stop price, the Agency Order will be executed against the Solicited Order at the stop price.[19]

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market as \$0.50 - \$0.60. At the end of the Solicitation Auction, the Complex Agency Order will be executed as follows:

the Complex Agency Order trades 100 contracts at \$0.55 against MM1;

- the Complex Agency Order trades 200 contracts at \$0.55 against interest comprising the cPBBO;
- the Complex Agency Order trades 300 contracts at \$0.60 against Public Customer;
- the Complex Agency Order trades 100 contracts at \$0.60 against MM1;
- the Complex Agency Order trades 200 contracts at \$0.60 against MM2; and
- the Complex Agency Order trades 100 contracts at \$0.60 against the broker-dealer.

The Solicited Order and the residual unexecuted contracts of the broker-dealer Response are cancelled.

[19] Rule 1081(ii)(E)(2) does not apply to Complex Solicitation Auctions. Rather, a parallel provision, Rule 1081(ii)(3), provides that in a Complex Solicitation Auction, if there is sufficient size (considering resting Complex Orders and Responses) to execute the entire Complex Agency Order at a price(s) better than the stop price, the Complex Agency Order will be executed against better priced Complex Orders, Responses, as well as quotes and orders which comprise the cPBBO at the end of the Complex Solicitation Auction. Such interest will be allocated at a given price in the following order: (i) to public customer Complex Orders and Responses in time priority; (ii) to SQT, RSQT, and non-SQT ROT Complex Orders and Responses on a size pro-rata basis; (iii) to non-market maker off-floor broker-dealer Complex Orders and Responses on a size pro-rata basis, and (iv) to quotes and orders which comprise the cPBBO at the end of the Complex Solicitation Auction with public customer interest being satisfied first in time priority, then to SQT, RSQT, and non-SQT ROT interest satisfied on a size pro-rata basis, and lastly to non-market maker off-floor broker-dealers on a size pro-rata basis.

Example of Solicitation Auction with Insufficient Improving Interest. To illustrate a case where the Solicitation Auction has not yielded sufficient interest to improve the price for the entire Agency Order, assume the NBBO is $0.97 – $1.03, and a buy side Agency Order for 1000 contracts is submitted with a contra-side Solicited Order to stop the Agency Order at $1.00. During the Solicitation Auction, assume a Response is submitted to sell 100 contracts at $0.97 and another to sell 100 contracts at $0.99. At the end of the Solicitation Auction period, since there is not enough interest to execute the entire Agency Order at a price(s) better than the stop price, the Agency Order will be executed at $1.00 against the Solicited Order. The unexecuted Responses are then cancelled back to the sending participant. [20]

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

Finally, Rule 1081(ii)(E)(7) provides that a Complex Agency Order consisting of a stock/ETF component will not execute against interest comprising the calculated Phlx

[20] To illustrate a Complex Solicitation Auction that yields insufficient improving interest, assume a Complex Order to buy one of option A and sell one of option B, 1000 times, with a cPBBO of $0.40 bid, $0.70 offer, is submitted with a stop price of $0.65. Assume that during the Complex Solicitation Auction, the following Responses and order interest are received:

- a market maker ("MM1") responds to sell the strategy 100 times at a price of $0.55;
- MM1 responds to sell the strategy 100 times at a price of $0.60;
- a broker-dealer responds to sell the strategy 300 times at a price of $0.60; and
- another market maker ("MM2") responds to sell the strategy 200 times at $0.60.

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

Best Bid/Offer ("cPBBO") at the end of the Solicitation Auction.[21] Legging of a stock/ETF component would introduce the risk of a participant not receiving an execution on all components of the Complex order and is therefore not considered as a means of executing a Complex Order which includes a stock/ETF component.

Miscellaneous Provisions

Proposed Rule 1081(ii)(F) through (H) address the handling of the Agency Order and other orders, quotes and Responses when certain conditions are present. Specifically, pursuant to Rule 1081(ii)(F), if there are Responses that cross the then-existing NBBO (provided such NBBO is not crossed) at the time of the conclusion of the Solicitation Auction, such Responses will be executed, if possible, at their limit price(s).[22]

Rule 1081(ii)(G) provides that if the Solicitation Auction price when trading against non-Solicited interest (except if it is a Complex Solicitation Auction) would be the same as or cross the limit of an order on the limit order book on the same side of the market as the Agency Order, the Agency Order may only be executed at a price that is at least $0.01 better than the resting order's limit price provided such execution price is better than the stop price. If such execution price would be equal to or inferior to the stop price, the Agency Order will be executed $0.01 better than the stop price.[23] For example,

[21] This provision parallels PIXL Rule 1080(n)(ii)(E)(2)(g) and is being proposed for the same reasons explained in the Complex PIXL Filing.

[22] Similarly, if in the case of a Complex Solicitation Auction, if there are Responses that cross the then-existing cPBBO at the time of conclusion of the Complex Solicitation Auction, such Responses will be executed, if possible at their limit prices.

[23] Proposed Rule 1081(ii)(G) does not apply to Complex Solicitation Auctions. Rather, a parallel provision, Rule 1081(ii)(H), provides that if the Complex Solicitation Auction price when trading against non-Solicited interest would be the same as or cross the limit of that of a Complex Order on the Complex Order Book on the same side of the market as the Complex Agency Order, the Complex Agency Order may

assume the NBBO is \$1.03 – \$1.10 when an order is submitted into the Solicitation Auction, that the Agency Order is buying and that the order is stopped at \$1.05. The \$1.03 bid is an order on PHLX. During the Auction a Response arrives to sell at \$1.03. At the end of the auction, if the Response to sell at \$1.03 can fully satisfy the Agency Order, the Auction Price would be \$1.03 but, since that price is the same as the price of a resting order on the book, the Agency Order will trade against the response at \$1.04 (\$0.01 better than the resting order) against the Agency Order. By contrast, assume a case where the NBBO is \$1.03 – \$1.10 and where during the Auction an unrelated order to pay \$1.04 is received. This order rests on the book and the NBBO becomes \$1.04 - \$1.10. Assume the same stop price of \$1.05 for an Agency Order to buy, and the receipt of a Response to sell at \$1.04 which can fully satisfy the Agency order. At the end of the Auction, the Auction Price would be \$1.04 which equals the resting order on the book. In this case, if the trade were executed at \$0.01 better than the resting order (that is, if the trade were executed at \$1.05) the execution would be at the stop price. However, because only the Solicited Order may trade against the Agency Order at the stop price, the execution price in this case (\$1.04) will \$0.01 better than the stop price.

Complex Agency Orders with Stock/ETF Components

Rule 1081(ii)(J) deals with Complex Agency Orders with stock or ETF components. Specifically, Rule 1081(ii)(J)(1) states that member organizations may only submit Complex Agency Orders, Complex Solicited Orders, and/or Responses with a stock/ETF component if such orders/Responses comply with the Qualified Contingent

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only be executed at a price that is at least \$0.01 better than the resting order's limit price; provided such execution price is better than the stop price. If such execution price would be equal to or inferior to the stop price, the Agency Order will be executed \$0.01 better than the stop price.

Trade Exemption from Rule 611(a) of Regulation NMS pursuant to the Act. Member organizations submitting such orders with a stock/ETF component represent that such orders comply with the Qualified Contingent Trade Exemption. Members of FINRA or the NASDAQ Stock Market ("NASDAQ") are required to have a Uniform Service Bureau/Executing Broker Agreement ("AGU") with Nasdaq Options Services LLC 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 Nasdaq Options Services LLC ("NOS") in order to trade orders containing a stock/ETF component.

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

Finally, new Rule 1081(ii)(J)(3) states that when the short sale price test in Rule 201 of Regulation SHO[24] is triggered for a covered security, NOS will not execute a short sale order in the underlying covered security component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response if the price is equal to or below

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24 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 http://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm.

the current national best bid.[25] However, NOS will 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 is marked "short exempt," regardless of whether it is at a price that is equal to or below the current national bid.[26] If short sale restrictions of Rule 201 are in effect at the end of the Solicitation Auction and either the Complex Agency Order or the Complex Solicited Order consists of a stock/ETF component which is a short sale, NOS will execute the short sale order in the underlying covered security component if such order is able to be executed at a price which is above than the national best bid at the time of execution. If NOS cannot execute the underlying covered security component of a Complex Agency Order, Complex Solicited Order Complex Order or Response in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex Agency Order, Complex Solicited Order, Complex Order or Response to the entering member organization. Similarly, if short sale restrictions of Rule 201 are in effect at the end of the Solicitation Auction and there exist Complex Orders or Responses which consist of a stock/ETF component which is a short sale, NOS will execute the short sale order in the underlying covered security component if such order is able to be executed at a price which is above the national best bid at the time of execution. If NOS cannot execute the underlying covered security component of a

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

[26] The Exchange notes that a broker or dealer may mark a sell order "short exempt" only if the provisions of Rule 201(c) or (d) are met. 17 CFR 242.200(g)(2). Since NOS and the Exchange do not display the stock or ETF portion of a complex order, however, a broker-dealer should not be in a position to 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").

Complex Agency Order, Complex Solicited Order, Complex Order or Response in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex Agency Order, Complex Solicited Order, Complex Order or Response to the entering member organization. For purposes of this paragraph, the term "covered security" has the same meaning as in Rule 201(a)(1) of Regulation SHO.

Regulatory Issues

The proposed rule change contains two paragraphs describing prohibited practices when participants use the solicitation mechanism. These new provisions track similar provisions in the PIXL rule.[27]

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

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

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

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

In addition to adopting Rule 1081, the Exchange is amending Rule 1000(b)(14). In 2010 the Exchange amended its priority rules to give certain non-broker-dealer orders the same priority as broker-dealer orders. In so doing, the Exchange adopted a new defined term, the "professional," for certain persons or entities.[28] 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(E)(1) refers. However, Rule 1000(b)(14) currently states that all-or-none professional orders will be treated like customer orders.

Agency Orders submitted pursuant to proposed Rule 1081 will be required to be designated as all-or-none orders. The Exchange proposes to amend Rule 1000(b)(14) by: (i) specifying that orders submitted pursuant to Rule 1081 for the beneficial accounts of professionals with an all-or-none designation will be treated in the same manner as off floor broker-dealer orders for purposes of Rule 1014(g), and (ii) adding proposed Rule 1081 to the list of rules for the purpose of which a professional will be treated in the same manner as an off floor broker dealer. The effect of these changes to Rule 1014(b)(14) is that professionals will not receive the same priority afforded to public customers in a Solicitation Auction under new Rule 1081, and instead will be treated as broker-dealers in this regard.

Deployment

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

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

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[29] in general, and furthers the objectives of Section 6(b)(5) of the Act[30] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by providing new functionality that offers the potential for price improvement. Specifically, the new functionality may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that already offer an electronic solicitation mechanism, while providing an opportunity for price improvement for Agency Orders.

The proposed solicitation mechanism on Phlx is modeled in part on similar mechanisms on other exchanges. The Commission previously has found such mechanisms consistent with the Act, stating that they should allow for greater flexibility in pricing large-sized orders and may provide a greater opportunity for price improvement.[31] Phlx has made certain modifications to its solicitation auction and believes that these changes are also consistent with the Act.

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29 15 U.S.C. 78f(b).

30 15 U.S.C. 78f(b)(5).

31 See Securities Exchange Act Release Nos. 49141 (January 28, 2004), 69 FR 5625 (February 5, 2004) (SR-ISE-2001-22) (approval of ISE Solicited Order Mechanism),

The first modification relates to the Agency Order's stop price. Unlike the BOX, ISE and CBOE solicitation mechanism rules, Phlx Rule 1081(i)(B) requires the stop price to be at or between the NBBO when the Agency Order is submitted and consequently permits the Agency Order to be executed outside the NBBO consistent with Phlx Rule 1084(b)(x).[32]

Phlx Rule 1084, approved by the Commission on August 20, 2009, was adopted to implement the Options Order Protection and Locked/Crossed Market Plan (the "Plan").[33] As discussed in the Commission's order approving Rule 1084, the Plan incorporates a number of exceptions to trade-through liability and Rule 1084, with one exception relating to systems issues, contains exceptions which are substantively

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57610 (April 3, 2008), 73 FR 19535 (April 10, 2008) (SR-CBOE-2008-14) (approval of CBOE Solicitation Auction Mechanism), and 65387 (September 23, 2011), 76 FR 60569 (September 29, 2011) (approval of ISE Solicitation Auction Mechanism).

32 Rule 1084(b)(x) provides in part:

> (a) Avoidance of Trade-Throughs. Except as provided in paragraphs (b) and (c) below, Members shall not effect Trade-Throughs.
>
> (b) Exceptions to Trade-Through Liability. The provisions of paragraph (a) pertaining to the satisfaction of Trade-Throughs shall not apply under the following circumstances: …(x) The transaction that constituted the Trade-Through was the execution of an order that was stopped at a price that did not Trade-Through an Eligible Exchange at the time of the stop…"

33 See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (Order Approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Markets Submitted by the Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, the NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX Inc., NYSE Amex LLC and NYSE Arca, Inc.) The Plan requires each Participating Option Exchange ("Participant") to establish, maintain and enforce written policies and procedures reasonably designed to prevent Trade-Throughs (as defined in the Plan) in that Participant's market in Eligible Options Classes that do not fall within an exception.

identical to the parallel exceptions under Section 5(b) of the Plan. While Rule 1084(a) prohibits Exchange members from effecting Trade-Throughs[34] unless an exception applies, Rule 1084(b)(x) provides that the prohibition does not apply if the transaction that constituted the Trade-Through was the execution of an order that was stopped at a price that did not Trade-Through an Eligible Exchange at the time of the stop. In its order approving the Plan the Commission noted that the parallel Plan provision, Section 5(b)((x) of the Plan, allows a Participant to seek price improvement for an order, even if the market moves in the interim, and the transaction ultimately is effected at a price that would trade through the then currently-displayed market. The Commission noted that exchanges' price improvement mechanisms offer price improvement to orders received by the exchange during an auction period during which the NBBO could move from where it was when the order was received. The exception allows a Participant to seek price improvement for an order, even if the market moves in the interim, with the transaction ultimately effected at a price that would trade through the then currently-displayed market. The Commission stated that by allowing this exception, the Commission expects that Participants would be able to continue to use price improvement mechanisms thereby offering market participants potentially better priced

[34] Rule 1083(q) defines Trade-Through as a transaction in an option series at a price that is lower than a Protected Bid or higher than a Protected Offer. Rule 1083(o) defines Protected Bid and Protected Offer as a Bid or Offer in an options series, respectively, that: (i) is disseminated pursuant to the OPRA Plan; and (ii) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. Rule 1083(g) defines Eligible Exchange as a national securities exchange registered with the SEC in accordance with Section 6(a) of the Exchange Act that: (i) is a Participant Exchange in OCC (as that term is defined in Section VII of the OCC by-laws); (ii) is a party to the OPRA Plan (as that term is described in Section I of the OPRA Plan); and (iii) if the national securities exchange is not a party to the Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection.

executions. The Commission found the exception to be in the public interest, appropriate for the protection of investors and the maintenance of fair and orderly markets. The Plan's approval order also stated that the Commission believes that the exception assures fair competition among exchange markets, consistent with Section 11A(a)(1)(C) of the Act.[35]

The second modification proposed by Phlx provides both the Agency Order and the Solicited Order with increased execution possibilities. The ISE, CBOE and BOX rules provide for the cancellation of the Solicited Order in the event of insufficient improving interest, if Priority Customer Orders (in the case of ISE), Book Priority Customer Orders (in the case of BOX) or public customer orders (in the case of CBOE) are resting in the book on the opposite side of the Agency Order and there is sufficient size available to execute the Agency Order. The Agency Order is also cancelled if these customer orders are resting in the book on the opposite side of the Agency Order, but there is not sufficient size to execute the Agency Order. PHLX does not propose to cancel the Solicited Order or the Agency Order in these circumstances. The Exchange believes that by restricting the stop price of an Agency Order to be better than any public customer non-contingent limit order on the book, it has ensured that resting customer interest will maintain priority over the Solicited Order. If however, a public customer order is received during the Solicitation Auction and rests on the limit order book, such public customer order is not entitled to priority over an Agency Order which was already stopped at such price and therefore is considered for execution against the Agency Order but will not cause the Agency Order and Solicited Order to be cancelled. In addition, the

[35] 15 U.S.C. 78k-1(a)(1)(C).

Exchange believes that allowing Solicited Orders and Agency Orders to execute against each other in these circumstances should encourage greater use of its solicitation mechanism, thus providing additional opportunities for price improvement of Agency Orders.

As the third modification, pursuant to Exchange Rule 1081(ii)(a)(3) the Request for Response will specify only the option details and Solicitation Auction start time, and not the side, size or stop price of the Agency Order.[36] The Exchange believes that by omitting the side, size and stop price of the Agency Order from the Request for Response, it will encourage Responses at the best possible size and price at which the participant is willing to participate on both sides of the market. This, in turn, should result in better execution prices, which is the "price improvement" that the solicitation mechanism functionality offers. Stated otherwise, the Exchange wishes to encourage aggressive price competition for the benefit of market participants by not disclosing side, size and stop price. Because Agency Orders are entered with a stop price and a guarantee (in the form of a stop) of a reasonable execution price, they are already assured of a quality execution. By excluding the side, size and stop price from the Request for Responses, participants sending Responses should be incentivized to compete based on price and size and to make an independent decision, rather than merely improving the price minimally. The Exchange believes that this aspect of the proposal should therefore lead to more price competition and an improved price improvement process, such that participants will use the solicitation mechanism to increase the number of customer

[36] By contrast, CBOE Rule 6.74B(b)(1)(B) provides that a Request for Responses message indicating the price and size will be sent to all Trading Permit Holders that have elected to receive such message. The ISE and BOX rules do not specify the content of the broadcast messages that are sent to request responses.

orders that are provided with the opportunity to receive price improvement. As a result, customers will benefit as will the market as a whole. Further, the Exchange believes that the proposed modifications will promote and foster competition among the options exchanges by offering a different solicitation mechanism model which market participants may choose for their Agency Orders seeking price improvement.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposal is pro-competitive. The proposal would diminish the potential for foregone market opportunities on the Exchange by allowing Agency Orders to be entered into the solicitation mechanism by all members. The solicitation mechanism is similar to electronic solicitation mechanism functionality that is allowed on other options exchanges. The Exchange believes that the new solicitation mechanism functionality should help it compete with these other exchanges.

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

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

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

Not applicable.

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

The proposed rule change is based, in part, on CBOE Rule 6.74B, Solicitation Auction Mechanism, ISE Rule 716(e), Solicited Order Mechanism, and BOX Rule 7270, Block Trades, Section (b), Solicitation Auction, as discussed above. The Exchange's proposal includes certain elements of the CBOE, ISE and BOX solicitation mechanism rules. For example, on each exchange the use of the solicitation mechanism is restricted to orders of 500 or more contracts, with the Agency Order required to be designated as all-or-none. Likewise, each exchange's rules provide for crossing the Agency Order with the Solicited Order unless following the auction there is sufficient size to execute the entire Agency Order at any improved price and prohibit solicited orders from being submitted on behalf of a market maker assigned in that class of option. Like the Phlx proposal, BOX permits orders and responses to be submitted in $0.01 increments regardless of the options' minimum price increment. Like the Phlx proposal, the CBOE and ISE solicitation mechanisms accommodate complex orders, do not disclose responses to other participants, and permit responses to be cancelled or modified prior to the conclusion of the auction.

The Exchange's proposal differs from the CBOE, ISE and BOX solicitation mechanisms in several respects which are discussed above.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Exhibit 1, Notice of proposed rule for publication in the Federal Register.

2. Exhibit 5, Proposed rule text.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-Phlx-2013-132

December __, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change to Adopt New Exchange Rule 1081, Solicitation Mechanism and Amend the Definition of "Professional" in Rule 1000(b)(14)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 31, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to 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 the member represents as agent against contra orders the member solicited. The Exchange is also proposing a corresponding amendment to the definition of "professional" in Rule 1000(b)(14).

The text of the proposed rule change is available on the Exchange's Website

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

2 17 CFR 240.19b-4.

at http://nasdaqomxphlx.cchwallstreet.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The purpose of the proposal is to introduce an electronic solicitation mechanism. Currently, under Phlx Rule 1080(c)(ii)(C)(2), Order Entry Firms[3] 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. The proposed rule change would provide an alternative, enabling a member to electronically execute orders it represents on behalf of a public customer, broker-dealer, or any other entity (an "Agency Order") against

[3] 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.)

solicited limit orders of a public customer, broker-dealer, or any other entity (a "Solicited Order") through a solicitation mechanism designed for this purpose.[4]

The new mechanism is a process by which a member (the "Initiating Member") can electronically submit all-or-none orders[5] of 500 contracts or more that it represents as agent against contra orders that it has solicited, and initiate an auction (the "Solicitation Auction").[6] As explained below, at the end of the Solicitation Auction, allocation will occur with all contracts of the Agency Order trading at an improved price against non-

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

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

6 Similar electronic functionality is offered today by competing exchanges. See Chicago Board Options Exchange (CBOE) Rule 6.74B, Solicitation Auction Mechanism (the "CBOE Mechanism") , International Securities Exchange (ISE) Rule 716(e), Solicited Order Mechanism (the "ISE Mechanism"), and BOX Options Exchange LLC ("BOX") Rule 7270, Block Trades, Section (b) (the "BOX Mechanism").

solicited contra-side interest or at the stop price against the Solicited Order. The solicitation mechanism would accommodate both simple and Complex Orders.[7]

Solicitation Auction Eligibility Requirements

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

Proposed Rule 1081(i)(A) provides that the Agency Order and the Solicited Order must each be limit orders for at least 500 contracts, including orders in mini options, and be designated as all or none. The orders must match in size, and the limit prices of the Agency Order and the Solicited Order must match or cross in price. If the orders cross in price, the price at which the Agency Order and the Solicited Order may be considered for submission pursuant to Rules 1081(B) and (C) shall be the limit price of the Solicited Order. The orders may not be stop or stop limit orders, must be marked with a time in force of day, good till cancelled or immediate or cancel, and will be treated as DNR (do not route) regardless of routing strategy.

Pursuant to Rule 1081(i)(B) the Initiating Member must stop the entire Agency Order at a price (the "stop price") that is equal to or better than the National Best Bid/Offer ("NBBO") , provided that such price must be at least $0.01 better than any public customer non-contingent limit order on the Phlx order book and must be equal to

[7] 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 .08 to Rule 1080.

or better than the Agency Order's limit price. Stop prices may be submitted in $0.01 increments, regardless of the applicable minimum increment. Contingent orders on the book will not be considered when checking the acceptability of the stop price.[8]

Agency Orders submitted at or before the opening of trading are not eligible to initiate a Solicitation Auction and will be rejected. Orders submitted during a specified period of time, as determined by the Exchange and communicated to Exchange membership on the Exchange's website, prior to the end of the trading session in the affected series are not eligible to initiate a Solicitation Auction and will be rejected.

Finally, an Agency Order may not be a solicited order for the account of any Exchange specialist, streaming quote trader ("SQT"), remote streaming quote trader ("RSQT") or non-streaming registered options trader ("ROT") assigned in the affected series. As the Exchange explained in the PIXL Filing, it believes that in order to maintain fair and orderly markets, a market maker assigned in an option should not be solicited for participation in a Solicitation Auction by an Initiating Member. The Exchange believes that market makers interested in participating in transactions on the Exchange should do so by way of his/her quotations, and should *respond* to Solicitation

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8 Rule 1081(i)(B) does not apply if the Agency Order is a Complex Order (a "Complex Agency Order"). Rather, Rule 1081(C) applies to Agency Orders and requires them to be of a conforming ratio, as defined in Commentary.08(a)(ix) to Rule 1080. It also provides that the Initiating Member must stop the entire Complex Agency Order at a price that is better by at least $0.01 than the best net price (debit or credit) (i) available on the Complex Order book regardless of the Complex Order book size; and (ii) achievable from the best Phlx bids and offers for the individual options (an "improved net price"), provided in either case that such price is equal to or better than the Complex Agency Order's limit price. Stop prices for Complex Agency Orders may be submitted in $0.01increments, regardless of MPV, and contingent orders on the book will not be considered when checking the acceptability of the stop price. See proposed Rule 1081(i)(C).

Auction notifications rather than create them by having an Initiating Member submitting Agency Orders on the market maker's behalf.

Solicitation Auction Process

Pursuant to Rule 1081(ii)(A)(1), to begin the process the Initiating Member must mark the Agency Order and the Solicited Order for Solicitation Auction processing, and specify the stop price at which it seeks to cross the Agency Order with the Solicited Order. Once the Initiating Member has submitted an Agency Order and Solicited Order for processing pursuant to this subparagraph, such Agency Order and Solicited Order may not be modified or cancelled (except that the stop price may be improved to the benefit of the Agency Order).[9] The purpose of this provision is to ensure that an Initiating Member guarantees that the Agency Order will be executed at the stop price or better (by way of improvement of the stop price to the Order's benefit during the Solicitation Auction), without "backing away" from that guarantee.

Crossing Two Public Customer Orders without a Solicitation Auction

As noted above, 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

[9] For clarity, Rule 1080(ii)(A)(l) does not apply to Complex Agency Orders. Rather, in a parallel provision, proposed Rule 1081(ii)(A)(2) provides that to initiate a Solicitation Auction in the case of a Complex Agency Order and Complex Solicited Order (a "Complex Solicitation Auction"), the Initiating Member must mark the orders for Solicitation Auction processing, and specify the price ("stop price") at which it seeks to cross the Complex Agency Order with the Complex Solicited Order. Once the Initiating Member has submitted the orders for processing pursuant to this subparagraph, they may not be modified or cancelled (except that the stop price may be improved to the benefit of the Complex Agency Order).

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

However, pursuant to the introductory paragraph of Rule 1081, if a member enters an Agency Order for the account of a public customer paired with a Solicited Order for the account of public customer, such paired orders will be automatically executed without a Solicitation Auction. Rather, the paired public customer orders will be executed in the same manner as two public customer PIXL orders pursuant to current PIXL Rule 1080(n)(vi) which addresses the situation where an Initiating Member holds public customer orders on both sides of the market in the same option series. Instead of initiating a PIXL Auction (or, as proposed, a Solicitation Auction) an Initiating Member may enter an Agency Order for the account of a public customer paired with an order for the account of a public customer and such paired orders will be automatically executed without an auction. The execution price must be expressed in the minimum quoting increment applicable to the affected series. Such an execution may not trade through the NBBO (or in the case of a Complex Solicitation Auction, the cPBBO) or at the same price as any resting customer order. The Exchange believes that permitting such executions will benefit public customers on both sides of the crossing transaction by providing speedy and efficient executions to public customer orders in this circumstance.

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 only the option details (meaning, the security and strike price, but not the side, size or the stop price) of the

Agency Order and the Solicitation Auction start time is then sent over the PHLX Orders data feed[10] and SQF.[11]

Solicitation Auction

The Solicitation Auction process is described in proposed Rules 1081(ii)(A)(4) – (10). Following the issuance of the Request for Response, the Solicitation Auction will last for a period of no more than one second (as determined by the Exchange and communicated to the Exchange membership on the Exchange's website) unless it is concluded as the result of any of the circumstances described below. Any person or entity may submit Responses provided such Response is properly marked specifying price, size and side of the market at which it would be willing to participate in the execution of the Agency Order. The Exchange believes that permitting any person or entity to submit responses to the Request should attract Responses from all sources, maximizing the potential for liquidity in the Solicitation Auction and thus affording the Agency Order the best opportunity for price improvement. Responses will not be visible to Solicitation Auction participants, and will not be disseminated to the Options Price Reporting Authority ("OPRA"). A Response may be for any size. The minimum price increment for Responses will be $0.01. A Response must be equal to or better than the NBBO at the time of receipt of the Response. A Response with a price that is outside the

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

[11] 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.

NBBO will be rejected in order to avoid a large number of Responses outside of the NBBO that would be unexecuted (and subsequently cancelled) unless the NBBO moves to make them eligible. Multiple Responses from the same member may be submitted during the Solicitation Auction. Responses may be modified or cancelled during the Solicitation Auction.[12]

<u>Conclusion of the Solicitation Auction</u>

Rule 1081(ii)(B)(1)-(4) describes a number of circumstances that will cause the Solicitation Auction to conclude. It will conclude at the end of the Solicitation Auction period, except that it may conclude earlier: (i) any time the Phlx Best Bid/Offer ("PBBO") crosses the Agency Order stop price on the same side of the market as the Agency Order (since further price improvement will be unlikely and any responses offering improvement are likely to be cancelled),[13] or (ii) any time there is a trading halt on the Exchange in the affected series.[14]

Pursuant to proposed Rule 1081(ii)(C), if the Solicitation Auction concludes before the expiration of the Solicitation Auction period as the result of the PBBO

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[12] Similarly, in the case of Complex Order Responses, the Response must be equal to or better than the cPBBO, as defined in Commentary .08(a)(iv) of Rule 1080 at the time of receipt of the Response. A Complex Order Response submitted with a price that is outside the cPBBO will be rejected. <u>See</u> proposed Rule 1081(ii)(A)(9).

[13] In the case of a Complex Solicitation Auction, it would end any time the cPBBO or the Complex Order book crosses the stop price on the same side of the market as the Complex Agency Order. <u>See</u> Rule 1081(ii)(B)(3).

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

crossing the stop price or a trading halt on the Exchange in an affected series, the entire Agency Order will be executed using the allocation algorithm set forth in Rule 1081(ii)(E). The algorithm is described below under the heading "Order Allocation".

Any unrelated market or marketable limit order on the opposite side of the market from the Agency Order received during the Solicitation Auction will not cause the Solicitation Auction to end early. Rather, the order will execute against interest outside the Solicitation Auction (if marketable against the PBBO) or will post to the book and then route if eligible for routing (in the case of an order marketable against the NBBO but not against the PBBO), pursuant to Rule 1081(ii)(D). If contracts remain from such unrelated order at the time the Solicitation Auction ends, they will be considered for participation in the order allocation process described in Rule 1081(ii)(E).[15] The Exchange believes that this should increase the number of contracts against which an Agency Order could be executed, and should create more opportunities for the Agency Order to be executed at each price level.

Order Allocation

The allocation of orders executed upon the conclusion of a Solicitation Auction will depend upon whether or not the Solicitation Auction has yielded sufficient improving interest to improve the price of the entire Agency Order. When determining if

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

there is sufficient size to execute the entire Agency or Complex Agency Order at a price(s) better than the stop price, all-or-none interest will not be considered.[16]

Solicitation Auction with Sufficient Improving Interest. Pursuant to the Rule 1081(ii)(E) algorithm, if there is sufficient size (considering all resting orders, quotes and Responses) to execute the entire Agency Order at a price or prices better than the stop price, the Agency order will be executed against such better priced interest with public customers having priority at each price level. After public customer interest at a particular price level has been satisfied, remaining contracts will be allocated among all Exchange quotes, orders and Responses in accordance with Exchange Rule 1014(g)(vii)(B)(1)(b) and (d) and the Solicited Order will be cancelled.[17]

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[16] However, if it is determined that there is sufficient size to execute the entire Agency or Complex Agency Order at a price(s) better than the stop price irrespective of any all-or-none interest that may be present, then all-or-none interest will be considered for trade and executed if possible. If an execution is not possible which can adhere to the all-or-none contingency, such all-or-none interest will be ignored and remain on the order book or cancelled if such interest is an immediate or cancel order or a Response to the Solicitation Auction.

[17] Similarly, pursuant to Rule 1081(ii)(E)(3), in the case of a Complex Solicitation Auction, if there is sufficient size (considering resting Complex Orders and Responses) to execute the entire Complex Agency Order at a price(s) better than the stop price, the Complex Agency Order will be executed against better priced Complex Orders, Responses, as well as quotes and orders which comprise the cPBBO at the end of the Solicitation Auction. Such interest will be allocated at a given price in the following order: (i) to public customer Complex Orders and Responses in time priority; (ii) to SQT, RSQT, and non-SQT ROT Complex Orders and Responses on a size pro-rata basis; (iii) to non-market maker off-floor broker-dealer Complex Orders and Responses on a size pro-rata basis, and (iv) to quotes and orders which comprise the cPBBO at the end of the 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. When determining if there is sufficient size to execute the entire Complex Agency Order at a price(s) better than the stop price, if the short sale price test in rule 201 of Regulation SHO is triggered for a covered security, Complex Orders and Responses which are marked "short" will not be considered. However, if there is sufficient size to execute the entire Complex Agency

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

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

Order at a price(s) better than the stop price irrespective of any covered securities for which the price test is triggered that may be present, then all Complex Orders and Responses which are marked "short" will be considered for allocation in accordance with Rule 1081(ii)((J)(3).

The broker-dealer does not trade any contracts since broker-dealers execute only after all public customer and market maker interest is satisfied. The unexecuted Solicited Order and broker-dealer Response are cancelled back to the sending participants.[18]

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[18] To illustrate a Complex Solicitation Auction with enough improving interest, assume that a Complex Order to buy one of option A and sell one of option B, 1000 times, with a cPBBO of $0.40 bid, $0.70 offer, is submitted with a stop price of $0.65. Assume that during the Solicitation Auction, the following Responses and order interest is received:

- a market maker (“MM1”) responds to sell the strategy 100 times at a price of $0.55;

- MM1 responds to sell the strategy 100 times at a price of $0.60;

- a broker-dealer responds to sell the strategy 300 times at a price of $0.60;

- a public customer Complex Order to sell the strategy 300 times at a price of $0.60; and

- another market maker (“MM2”) responds to sell the strategy 200 times at $0.60.

After all these Responses and orders are received, option A of the simple market moves causing the cPBBO to become offered 200 times at $0.55. Option A is quoted in the simple market as $1.00 – $1.05 and Option B is quoted in the simple market as $0.50 - $0.60. At the end of the Solicitation Auction, the Complex Agency Order will be executed as follows:

- the Complex Agency Order trades 100 contracts at $0.55 against MM1;
- the Complex Agency Order trades 200 contracts at $0.55 against interest comprising the cPBBO;
- the Complex Agency Order trades 300 contracts at $0.60 against Public Customer;
- the Complex Agency Order trades 100 contracts at $0.60 against MM1;
- the Complex Agency Order trades 200 contracts at $0.60 against MM2; and
- the Complex Agency Order trades 100 contracts at $0.60 against the broker-dealer.

The Solicited Order and the residual unexecuted contracts of the broker-dealer Response are cancelled.

Solicitation Auction with Insufficient Improving Interest. Pursuant to proposed Rule 1081(ii)(E)(2), if there is not sufficient size (considering all resting orders, quotes and Responses) to execute the entire Agency Order at a price(s) better than the stop price, the Agency Order will be executed against the Solicited Order at the stop price.[19]

Example of Solicitation Auction with Insufficient Improving Interest. To illustrate a case where the Solicitation Auction has not yielded sufficient interest to improve the price for the entire Agency Order, assume the NBBO is $0.97 – $1.03, and a buy side Agency Order for 1000 contracts is submitted with a contra-side Solicited Order to stop the Agency Order at $1.00. During the Solicitation Auction, assume a Response is submitted to sell 100 contracts at $0.97 and another to sell 100 contracts at $0.99. At the end of the Solicitation Auction period, since there is not enough interest to execute the entire Agency Order at a price(s) better than the stop price, the Agency Order will be executed at $1.00 against the Solicited Order. The unexecuted Responses are then cancelled back to the sending participant. [20]

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[19] Rule 1081(ii)(E)(2) does not apply to Complex Solicitation Auctions. Rather, a parallel provision, Rule 1081(ii)(3), provides that in a Complex Solicitation Auction, if there is sufficient size (considering resting Complex Orders and Responses) to execute the entire Complex Agency Order at a price(s) better than the stop price, the Complex Agency Order will be executed against better priced Complex Orders, Responses, as well as quotes and orders which comprise the cPBBO at the end of the Complex Solicitation Auction. Such interest will be allocated at a given price in the following order: (i) to public customer Complex Orders and Responses in time priority; (ii) to SQT, RSQT, and non-SQT ROT Complex Orders and Responses on a size pro-rata basis; (iii) to non-market maker off-floor broker-dealer Complex Orders and Responses on a size pro-rata basis, and (iv) to quotes and orders which comprise the cPBBO at the end of the Complex Solicitation Auction with public customer interest being satisfied first in time priority, then to SQT, RSQT, and non-SQT ROT interest satisfied on a size pro-rata basis, and lastly to non-market maker off-floor broker-dealers on a size pro-rata basis.

[20] To illustrate a Complex Solicitation Auction that yields insufficient improving interest, assume a Complex Order to buy one of option A and sell one of option B,

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

Finally, Rule 1081(ii)(E)(7) provides that a Complex Agency Order consisting of a stock/ETF component will not execute against interest comprising the calculated Phlx Best Bid/Offer ("cPBBO") at the end of the Solicitation Auction.[21] Legging of a stock/ETF component would introduce the risk of a participant not receiving an execution on all components of the Complex order and is therefore not considered as a means of executing a Complex Order which includes a stock/ETF component.

<u>Miscellaneous Provisions</u>

Proposed Rule 1081(ii)(F) through (H) address the handling of the Agency Order and other orders, quotes and Responses when certain conditions are present. Specifically, pursuant to Rule 1081(ii)(F), if there are Responses that cross the then-existing NBBO

1000 times, with a cPBBO of $0.40 bid, $0.70 offer, is submitted with a stop price of $0.65. Assume that during the Complex Solicitation Auction, the following Responses and order interest are received:

- a market maker ("MM1") responds to sell the strategy 100 times at a price of $0.55;

- MM1 responds to sell the strategy 100 times at a price of $0.60;

- a broker-dealer responds to sell the strategy 300 times at a price of $0.60; and

- another market maker ("MM2") responds to sell the strategy 200 times at $0.60.

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

[21] This provision parallels PIXL Rule 1080(n)(ii)(E)(2)(g) and is being proposed for the same reasons explained in the Complex PIXL Filing.

(provided such NBBO is not crossed) at the time of the conclusion of the Solicitation Auction, such Responses will be executed, if possible, at their limit price(s).[22]

Rule 1081(ii)(G) provides that if the Solicitation Auction price when trading against non-Solicited interest (except if it is a Complex Solicitation Auction) would be the same as or cross the limit of an order on the limit order book on the same side of the market as the Agency Order, the Agency Order may only be executed at a price that is at least $0.01 better than the resting order's limit price provided such execution price is better than the stop price. If such execution price would be equal to or inferior to the stop price, the Agency Order will be executed $0.01 better than the stop price.[23] For example, assume the NBBO is $1.03 – $1.10 when an order is submitted into the Solicitation Auction, that the Agency Order is buying and that the order is stopped at $1.05. The $1.03 bid is an order on PHLX. During the Auction a Response arrives to sell at $1.03. At the end of the auction, if the Response to sell at $1.03 can fully satisfy the Agency Order, the Auction Price would be $1.03 but, since that price is the same as the price of a resting order on the book, the Agency Order will trade against the response at $1.04 ($0.01 better than the resting order) against the Agency Order. By contrast, assume a

[22] Similarly, if in the case of a Complex Solicitation Auction, if there are Responses that cross the then-existing cPBBO at the time of conclusion of the Complex Solicitation Auction, such Responses will be executed, if possible at their limit prices.

[23] Proposed Rule 1081(ii)(G) does not apply to Complex Solicitation Auctions. Rather, a parallel provision, Rule 1081(ii)(H), provides that if the Complex Solicitation Auction price when trading against non-Solicited interest would be the same as or cross the limit of that of a Complex Order on the Complex Order Book on the same side of the market as the Complex Agency Order, the Complex Agency Order may only be executed at a price that is at least $0.01 better than the resting order's limit price; provided such execution price is better than the stop price. If such execution price would be equal to or inferior to the stop price, the Agency Order will be executed $0.01 better than the stop price.

case where the NBBO is $1.03 – $1.10 and where during the Auction an unrelated order to pay $1.04 is received. This order rests on the book and the NBBO becomes $1.04 - $1.10. Assume the same stop price of $1.05 for an Agency Order to buy, and the receipt of a Response to sell at $1.04 which can fully satisfy the Agency order. At the end of the Auction, the Auction Price would be $1.04 which equals the resting order on the book. In this case, if the trade were executed at $0.01 better than the resting order (that is, if the trade were executed at $1.05) the execution would be at the stop price. However, because only the Solicited Order may trade against the Agency Order at the stop price, the execution price in this case ($1.04) will $0.01 better than the stop price.

Complex Agency Orders with Stock/ETF Components

Rule 1081(ii)(J) deals with Complex Agency Orders with stock or ETF components. Specifically, Rule 1081(ii)(J)(1) states that member organizations may only submit Complex Agency Orders, Complex Solicited Orders, and/or Responses with a stock/ETF component if such orders/Responses comply with the Qualified Contingent Trade Exemption from Rule 611(a) of Regulation NMS pursuant to the Act. Member organizations submitting such orders with a stock/ETF component represent that such orders comply with the Qualified Contingent Trade Exemption. Members of FINRA or the NASDAQ Stock Market (“NASDAQ”) are required to have a Uniform Service Bureau/Executing Broker Agreement (“AGU”) with Nasdaq Options Services LLC 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 Nasdaq Options Services LLC (“NOS”) in order to trade orders containing a stock/ETF component.

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

Finally, new Rule 1081(ii)(J)(3) states that when the short sale price test in Rule 201 of Regulation SHO[24] is triggered for a covered security, NOS will not execute a short sale order in the underlying covered security component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response if the price is equal to or below the current national best bid.[25] However, NOS will 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 is marked "short exempt," regardless of whether it is at a price that is equal to or below the current national bid.[26] If short sale

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[24] 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 http://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm.

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

[26] The Exchange notes that a broker or dealer may mark a sell order "short exempt" only if the provisions of Rule 201(c) or (d) are met. 17 CFR 242.200(g)(2). Since NOS and the Exchange do not display the stock or ETF portion of a complex order, however, a broker-dealer should not be in a position to 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").

restrictions of Rule 201 are in effect at the end of the Solicitation Auction and either the Complex Agency Order or the Complex Solicited Order consists of a stock/ETF component which is a short sale, NOS will execute the short sale order in the underlying covered security component if such order is able to be executed at a price which is above than the national best bid at the time of execution. If NOS cannot execute the underlying covered security component of a Complex Agency Order, Complex Solicited Order Complex Order or Response in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex Agency Order, Complex Solicited Order, Complex Order or Response to the entering member organization. Similarly, if short sale restrictions of Rule 201 are in effect at the end of the Solicitation Auction and there exist Complex Orders or Responses which consist of a stock/ETF component which is a short sale, NOS will execute the short sale order in the underlying covered security component if such order is able to be executed at a price which is above the national best bid at the time of execution. If NOS cannot execute the underlying covered security component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex Agency Order, Complex Solicited Order, Complex Order or Response to the entering member organization. For purposes of this paragraph, the term "covered security" has the same meaning as in Rule 201(a)(1) of Regulation SHO.

Regulatory Issues

The proposed rule change contains two paragraphs describing prohibited practices when participants use the solicitation mechanism. These new provisions track similar provisions in the PIXL rule.[27]

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

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

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

In addition to adopting Rule 1081, the Exchange is amending Rule 1000(b)(14). In 2010 the Exchange amended its priority rules to give certain non-broker-dealer orders the same priority as broker-dealer orders. In so doing, the Exchange adopted a new defined term, the "professional," for certain persons or entities.[28] 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

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

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

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(E)(1) refers. However, Rule 1000(b)(14) currently states that all-or-none professional orders will be treated like customer orders.

Agency Orders submitted pursuant to proposed Rule 1081 will be required to be designated as all-or-none orders. The Exchange proposes to amend Rule 1000(b)(14) by: (i) specifying that orders submitted pursuant to Rule 1081 for the beneficial accounts of professionals with an all-or-none designation will be treated in the same manner as off floor broker-dealer orders for purposes of Rule 1014(g), and (ii) adding proposed Rule 1081 to the list of rules for the purpose of which a professional will be treated in the same manner as an off floor broker dealer. The effect of these changes to Rule 1014(b)(14) is that professionals will not receive the same priority afforded to public customers in a Solicitation Auction under new Rule 1081, and instead will be treated as broker-dealers in this regard.

Deployment

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

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[29] in general, and furthers the objectives of Section 6(b)(5) of the Act[30] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by providing new functionality that offers the potential for price improvement. Specifically, the new functionality may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that already offer an electronic solicitation mechanism, while providing an opportunity for price improvement for Agency Orders.

The proposed solicitation mechanism on Phlx is modeled in part on similar mechanisms on other exchanges. The Commission previously has found such mechanisms consistent with the Act, stating that they should allow for greater flexibility in pricing large-sized orders and may provide a greater opportunity for price improvement.[31] Phlx has made certain modifications to its solicitation auction and believes that these changes are also consistent with the Act.

The first modification relates to the Agency Order's stop price. Unlike the BOX, ISE and CBOE solicitation mechanism rules, Phlx Rule 1081(i)(B) requires the stop price

29 15 U.S.C. 78f(b).

30 15 U.S.C. 78f(b)(5).

31 See Securities Exchange Act Release Nos. 49141 (January 28, 2004), 69 FR 5625 (February 5, 2004) (SR-ISE-2001-22) (approval of ISE Solicited Order Mechanism), 57610 (April 3, 2008), 73 FR 19535 (April 10, 2008) (SR-CBOE-2008-14) (approval of CBOE Solicitation Auction Mechanism), and 65387 (September 23, 2011), 76 FR 60569 (September 29, 2011) (approval of ISE Solicitation Auction Mechanism).

to be at or between the NBBO when the Agency Order is submitted and consequently permits the Agency Order to be executed outside the NBBO consistent with Phlx Rule 1084(b)(x).[32]

Phlx Rule 1084, approved by the Commission on August 20, 2009, was adopted to implement the Options Order Protection and Locked/Crossed Market Plan (the "Plan").[33] As discussed in the Commission's order approving Rule 1084, the Plan incorporates a number of exceptions to trade-through liability and Rule 1084, with one exception relating to systems issues, contains exceptions which are substantively identical to the parallel exceptions under Section 5(b) of the Plan. While Rule 1084(a) prohibits Exchange members from effecting Trade-Throughs[34] unless an exception

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[32] Rule 1084(b)(x) provides in part:

> (a) Avoidance of Trade-Throughs. Except as provided in paragraphs (b) and (c) below, Members shall not effect Trade-Throughs.
>
> (b) Exceptions to Trade-Through Liability. The provisions of paragraph (a) pertaining to the satisfaction of Trade-Throughs shall not apply under the following circumstances: …(x) The transaction that constituted the Trade-Through was the execution of an order that was stopped at a price that did not Trade-Through an Eligible Exchange at the time of the stop…"

[33] See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (Order Approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Markets Submitted by the Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, the NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX Inc., NYSE Amex LLC and NYSE Arca, Inc.) The Plan requires each Participating Option Exchange ("Participant") to establish, maintain and enforce written policies and procedures reasonably designed to prevent Trade-Throughs (as defined in the Plan) in that Participant's market in Eligible Options Classes that do not fall within an exception.

[34] Rule 1083(q) defines Trade-Through as a transaction in an option series at a price that is lower than a Protected Bid or higher than a Protected Offer. Rule 1083(o) defines Protected Bid and Protected Offer as a Bid or Offer in an options series, respectively, that: (i) is disseminated pursuant to the OPRA Plan; and (ii) is the Best Bid or Best

applies, Rule 1084(b)(x) provides that the prohibition does not apply if the transaction that constituted the Trade-Through was the execution of an order that was stopped at a price that did not Trade-Through an Eligible Exchange at the time of the stop. In its order approving the Plan the Commission noted that the parallel Plan provision, Section 5(b)((x) of the Plan, allows a Participant to seek price improvement for an order, even if the market moves in the interim, and the transaction ultimately is effected at a price that would trade through the then currently-displayed market. The Commission noted that exchanges' price improvement mechanisms offer price improvement to orders received by the exchange during an auction period during which the NBBO could move from where it was when the order was received. The exception allows a Participant to seek price improvement for an order, even if the market moves in the interim, with the transaction ultimately effected at a price that would trade through the then currently-displayed market. The Commission stated that by allowing this exception, the Commission expects that Participants would be able to continue to use price improvement mechanisms thereby offering market participants potentially better priced executions. The Commission found the exception to be in the public interest, appropriate for the protection of investors and the maintenance of fair and orderly markets. The Plan's approval order also stated that the Commission believes that the exception assures

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Offer, respectively, displayed by an Eligible Exchange. Rule 1083(g) defines Eligible Exchange as a national securities exchange registered with the SEC in accordance with Section 6(a) of the Exchange Act that: (i) is a Participant Exchange in OCC (as that term is defined in Section VII of the OCC by-laws); (ii) is a party to the OPRA Plan (as that term is described in Section I of the OPRA Plan); and (iii) if the national securities exchange is not a party to the Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection.

fair competition among exchange markets, consistent with Section 11A(a)(1)(C) of the Act.[35]

The second modification proposed by Phlx provides both the Agency Order and the Solicited Order with increased execution possibilities. The ISE, CBOE and BOX rules provide for the cancellation of the Solicited Order in the event of insufficient improving interest, if Priority Customer Orders (in the case of ISE), Book Priority Customer Orders (in the case of BOX) or public customer orders (in the case of CBOE) are resting in the book on the opposite side of the Agency Order and there is sufficient size available to execute the Agency Order. The Agency Order is also cancelled if these customer orders are resting in the book on the opposite side of the Agency Order, but there is not sufficient size to execute the Agency Order. PHLX does not propose to cancel the Solicited Order or the Agency Order in these circumstances. The Exchange believes that by restricting the stop price of an Agency Order to be better than any public customer non-contingent limit order on the book, it has ensured that resting customer interest will maintain priority over the Solicited Order. If however, a public customer order is received during the Solicitation Auction and rests on the limit order book, such public customer order is not entitled to priority over an Agency Order which was already stopped at such price and therefore is considered for execution against the Agency Order but will not cause the Agency Order and Solicited Order to be cancelled. In addition, the Exchange believes that allowing Solicited Orders and Agency Orders to execute against each other in these circumstances should encourage greater use of its solicitation

[35] 15 U.S.C. 78k-1(a)(1)(C).

mechanism, thus providing additional opportunities for price improvement of Agency Orders.

As the third modification, pursuant to Exchange Rule 1081(ii)(a)(3) the Request for Response will specify only the option details and Solicitation Auction start time, and not the side, size or stop price of the Agency Order.[36] The Exchange believes that by omitting the side, size and stop price of the Agency Order from the Request for Response, it will encourage Responses at the best possible size and price at which the participant is willing to participate on both sides of the market. This, in turn, should result in better execution prices, which is the "price improvement" that the solicitation mechanism functionality offers. Stated otherwise, the Exchange wishes to encourage aggressive price competition for the benefit of market participants by not disclosing side, size and stop price. Because Agency Orders are entered with a stop price and a guarantee (in the form of a stop) of a reasonable execution price, they are already assured of a quality execution. By excluding the side, size and stop price from the Request for Responses, participants sending Responses should be incentivized to compete based on price and size and to make an independent decision, rather than merely improving the price minimally. The Exchange believes that this aspect of the proposal should therefore lead to more price competition and an improved price improvement process, such that participants will use the solicitation mechanism to increase the number of customer orders that are provided with the opportunity to receive price improvement. As a result,

[36] By contrast, CBOE Rule 6.74B(b)(1)(B) provides that a Request for Responses message indicating the price and size will be sent to all Trading Permit Holders that have elected to receive such message. The ISE and BOX rules do not specify the content of the broadcast messages that are sent to request responses.

customers will benefit as will the market as a whole. Further, the Exchange believes that the proposed modifications will promote and foster competition among the options exchanges by offering a different solicitation mechanism model which market participants may choose for their Agency Orders seeking price improvement.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposal is pro-competitive. The proposal would diminish the potential for foregone market opportunities on the Exchange by allowing Agency Orders to be entered into the solicitation mechanism by all members. The solicitation mechanism is similar to electronic solicitation mechanism functionality that is allowed on other options exchanges. The Exchange believes that the new solicitation mechanism functionality should help it compete with these other exchanges.

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

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2013-132 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2013-132. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2013-132, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Kevin M. O'Neill
Deputy Secretary

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[37] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Proposed new text is underlined. Deleted text is [bracketed].

Rules of the Exchange

Options Rules

* * * * *

Rule 1000. Applicability, Definitions and References

(a) No change.

(b) 1. – 13. No change.

14. The term "professional" means any 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 will be treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g)(except with respect to all-or-none orders, which will be treated like customer orders, except that orders submitted pursuant to Rule 1080(n) and Agency Orders and Solicited Orders (as defined in Rule 1081) submitted pursuant to Rule 1081 for the beneficial account(s) of professionals with an all-or-none designation will be treated in the same manner as off-floor broker-dealer orders), 1033(e), 1064.02 (except professional orders will be considered customer orders subject to facilitation), 1080(n), 1081 and 1080.08 as well as Options Floor Procedure Advices B-6, B- 11 and F-5. Member organizations must indicate whether orders are for professionals.

15. – 44. No change.

(c) – (e) No change.

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Rule 1081 Solicitation Mechanism

A member that represents agency limit orders on behalf of a public customer, broker-dealer, or any other entity ("Agency Order") may electronically execute those orders against solicited limit orders of a public customer, broker-dealer, or any other entity (“Solicited Orders”), provided it submits the Agency Order and the Solicited Order in a single order message for electronic execution into the solicitation mechanism (the

"Solicitation Auction") pursuant to this Rule. If a public customer order is submitted, it will be treated as the agency order. If a member enters an Agency Order for the account of a public customer paired with a Solicited Order for the account of a public customer, such paired orders will be automatically executed without a Solicitation Auction in the same manner as a PIXL order pursuant to Rule 1080(n)(vi).

(i) *Solicitation Auction Eligibility Requirements.* All options traded on the Exchange are eligible for the Solicitation Auction. A member (the "Initiating Member") may initiate a Solicitation Auction provided all of the following are met:

(A) The Agency Order and the Solicited Order must each be limit orders for at least 500 contracts, including orders in mini options, and be designated as all-or none. The orders must match in size, and the limit prices of the Agency Order and the Solicited Order must match or cross in price. If the orders cross in price, the price at which the Agency Order and the Solicited Order may be considered for submission pursuant to (B) and (C) below shall be the limit price of the Solicited Order. The orders may not be stop or stop limit orders, must be marked with a time in force of day, good till cancelled or immediate or cancel, and will not be routed regardless of routing strategy indicated on the order.

(B) Unless the Agency Order is a Complex Order, the Initiating Member must stop the entire Agency Order at a price (the "stop price") that is equal to or better than the NBBO, provided that such price must be at least $0.01 better than any public customer non-contingent limit order on the Phlx order book and must be equal to or better than the Agency Order's limit price. Stop prices may be submitted in $0.01 increments, regardless of the applicable minimum increment.

(C) If the Agency Order is a Complex Order (a "Complex Agency Order") and of a conforming ratio, as defined in Commentary.08(a)(ix) to Rule 1080, the Initiating Member must stop the entire 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"), provided in either case that such price is equal to or better than the Complex Agency Order's limit price. Stop prices may be submitted in $0.01 increments, regardless of MPV. Contingent orders on the book will not be considered when checking the acceptability of the stop price.

(D) Orders that do not comply with the requirements of sub-paragraphs (A), (B) and (C) above are not eligible to initiate a Solicitation Auction and will be rejected.

(E) Orders that are submitted at or before the opening of trading or that are received while another auction involving the same option or Complex Order Strategy is in progress are not eligible to initiate a Solicitation Auction and will be rejected.

(F) Orders submitted during a specified period of time, as determined by the Exchange and communicated to Exchange membership on the Exchange's website, prior to the end of the trading session in the affected series are not eligible to initiate a Solicitation Auction and will be rejected.

(G) The 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.

(ii) *Solicitation Auction Process.* Only one Solicitation Auction may be conducted at a time in any given series or strategy. Once commenced, a Solicitation Auction may not be cancelled and shall proceed as follows:

(A) *Solicitation Auction Period and Request for Responses*.

(1) To initiate the Solicitation Auction, except in the case of a Complex Agency Order and a Solicited Order which is a Complex Order (a "Complex Solicited Order"), the Initiating Member must mark the Agency Order and the Solicited Order for Solicitation Auction processing, and specify the price ("stop price") at which it seeks to cross the Agency Order with the Solicited Order. Once the Initiating Member has submitted an Agency Order and Solicited Order for processing pursuant to this subparagraph, such Agency Order and Solicited Order may not be modified or cancelled (except that the stop price may be improved to the benefit of the Agency Order).

(2) To initiate a Solicitation Auction in the case of a Complex Agency Order and Complex Solicited Order (a "Complex Solicitation Auction"), the Initiating Member must mark the orders for Solicitation Auction processing, and specify the price ("stop price") at which it seeks to cross the Complex Agency Order with the Complex Solicited Order. Once the Initiating Member has submitted the orders for processing pursuant to this subparagraph, they may not be modified or cancelled (except that the stop price may be improved to the benefit of the Complex Agency Order).

(3) When the Exchange receives an order marked for Solicitation Auction processing, a Request for Response with option details and Solicitation Auction start time (but not the side, size or stop price) will be sent over the Exchange's PHLX Orders data feed and Specialized Quote Feed.

(4) The Solicitation Auction will last for a period of no more than one second, as determined by the Exchange and communicated to Exchange membership on the Exchange's website. For the avoidance of doubt, Rule 1080(c)(ii)(C)(2) shall not apply to this Rule 1081.

(5) Any person or entity may submit responses ("Responses") to the Request for Response, provided such Response is properly marked specifying price, size and side of the market.

(6) Responses will not be visible to any participants, and will not be disseminated to the Option Price Reporting Authority ("OPRA").

(7) The minimum price increment for Responses shall be $0.01.

(8) Responses may be for any size.

(9) A Response (except if it is a Complex Order) must be equal to or better than the NBBO at the time of receipt of the Response. A Complex Order Response must be equal to or better than the cPBBO, as defined in Commentary .08(a)(iv) of Rule 1080 at the time of receipt of the Response. Responses may be modified or cancelled during the Solicitation Auction. A Response (except if it is a Complex Order) submitted with a price that is outside the NBBO will be rejected. A Complex Order Response submitted with a price that is outside the cPBBO will be rejected.

(10) Multiple Responses from the same member may be submitted during the Solicitation Auction.

(B) *Conclusion of Solicitation Auction.* The Solicitation Auction shall conclude at the earlier to occur of (1) through (4) below, with the Agency Order executing pursuant to paragraph (C) or (E) below.

(1) The end of the Solicitation Auction period;

(2) For a Solicitation Auction other than a Complex Solicitation Auction, any time the PBBO crosses the stop price on the same side of the market as the Agency Order;

(3) For a Complex Solicitation Auction, any time the cPBBO or the Complex Order book crosses the stop price on the same side of the market as the Complex Agency Order; or

(4) Any time there is a trading halt on the Exchange in an affected series.

(C) If the situations described in sub-paragraphs (B)(1), (2), or (3) above occur, the entire Agency Order will be executed using the allocation algorithm in sub-paragraph (E). If the situation described in subparagraph (B)(4) occurs, the entire Agency Order will be executed solely against the Solicited Order at the stop price. In all instances, any unexecuted Responses will be cancelled.

(D) An unrelated market or limit order (marketable against the PBBO or the NBBO) on the opposite side of the market from the Agency Order received during the Solicitation Auction will not cause the Solicitation Auction to end early and will execute against interest outside of the Solicitation Auction (in the case of an order marketable against the PBBO) or will post to the book and then route if eligible for routing (in the case of an order marketable against the NBBO but not against the PBBO). 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 Complex Order received during the Complex Solicitation Auction will not cause the Complex Solicitation Auction to end early and will execute against interest outside of the Complex Solicitation Auction. If contracts remain from such unrelated order at the time the Solicitation Auction (or Complex Solicitation Auction) ends, they will be considered for participation in the order allocation process described in sub-paragraph (E) below.

(E) *Order Allocation.* At the conclusion of the Solicitation Auction, the Agency Order will be allocated at the best price(s) as follows:

(1) Except in a Complex Solicitation Auction, if there is sufficient size (considering all resting orders, quotes, and Responses) to execute the entire Agency Order at a price(s) better than the stop price, the Agency order will be executed against such better priced interest with public customers having priority at each price level. After public customer interest at a particular price level has been satisfied, remaining contracts will be allocated among all

Exchange quotes, orders and Responses in accordance with Rule 1014(g)(vii)(B)(1)(b) and (d) and the Solicited Order will be cancelled.

(2) Except in a Complex Solicitation Auction, if there is not sufficient size (considering all resting orders, quotes and Responses) to execute the entire Agency Order at a price(s) better than the stop price, the Agency Order will be executed against the Solicited Order at the stop price.

(3) In a Complex Solicitation Auction, if there is sufficient size(considering resting Complex Orders and Responses) to execute the entire Complex Agency Order at a price(s) better than the stop price, the Complex Agency Order will be executed against better priced Complex Orders, Responses, as well as quotes and orders which comprise the cPBBO at the end of the Complex Solicitation Auction. Such interest will be allocated at a given price in the following order: (i) to public customer Complex Orders and Responses in time priority; (ii) to SQT, RSQT, and non-SQT ROT Complex Orders and Responses on a size pro-rata basis; (iii) to non-market maker off-floor broker-dealer Complex Orders and Responses on a size pro-rata basis, and (iv) to quotes and orders which comprise the cPBBO at the end of the Complex Solicitation Auction with public customer interest being satisfied first in time priority, then to SQT, RSQT, and non-SQT ROT interest satisfied on a size pro-rata basis, and lastly to non-market maker off-floor broker-dealers on a size pro-rata basis. When determining if there is sufficient size to execute the entire Complex Agency Order at a price(s) better than the stop price, if the short sale price test in rule 201 of Regulation SHO is triggered for a covered security, Complex Orders and Responses which are marked "short" will not be considered. However, if there is sufficient size to execute the entire Complex Agency Order at a price(s) better than the stop price irrespective of any covered securities for which the price test is triggered that may be present, then all Complex Orders and Responses which are marked "short" will be considered for allocation in accordance with Section (J)(3) of this rule, below.

(4) In a Complex Solicitation Auction, if there is not sufficient size (considering resting Complex Orders and Responses) to execute the entire Complex Agency Order at a price(s) better than the stop price, the Complex Agency Order will be executed against the Solicited Order at the stop price.

(5) When determining if there is sufficient size to execute the entire Agency or Complex Agency Order at a price(s) better than the stop price, all-or-none interest will not be considered. However, if it is determined that there is sufficient size to execute the entire Agency or Complex Agency Order at a price(s) better than the stop price irrespective of any all-or-none interest that may be present, then all-or-none interest will be considered for trade and executed if possible. If an execution is not possible which can adhere to the all-or-none contingency, such all-or-none interest will be ignored and remain on the order book or cancelled if such interest is an immediate or cancel order or a Response to the Solicitation Auction.

(6) A single quote, order or Response shall not be allocated a number of contracts that is greater than its size.

(7) A Complex Agency Order consisting of a stock/ETF component will not execute against interest comprising the cPBBO at the end of the Complex Solicitation Auction.

(F) If there are Responses (except in the case of a Complex Solicitation Auction) that cross the then-existing NBBO or Responses (in the case of a Complex Solicitation Auction) that cross the then-existing cPBBO at the time of the conclusion of the Solicitation Auction, such Responses will be executed, if possible, at their limit price(s).

(G) If the Solicitation Auction price when trading against non-Solicited interest (except if it is a Complex Solicitation Auction) would be the same as or cross the limit of an order on the limit order book on the same side of the market as the Agency Order, the Agency Order may only be executed at a price that is at least $0.01 better than the resting order's limit price provided such execution price is better than the stop price. If such execution price would be equal to or inferior to the stop price, the Agency Order will be executed $0.01 better than the stop price.

(H) If the Complex Solicitation Auction price when trading against non-Solicited interest would be the same as that of a Complex Order on the Complex Order Book on the same side of the market as the Complex Agency Order, the Complex Agency Order may only be executed at a price that is at least $0 .01 better than the resting order's limit price; provided such execution price is better than the stop price. If such execution price would be equal to or inferior to the stop price, the Agency Order will be executed $0.01 better than the stop price.

(I) Any unexecuted Responses and/or Solicited Orders will be cancelled.

<u>(J) Complex Agency Orders with stock/ETF components.</u>

<u>(1) Member organizations may only submit Complex Agency Orders, Complex Solicited Orders, and/or Responses with a stock/ETF component if such orders/responses comply with the Qualified Contingent Trade Exemption from Rule 611(a) of Regulation NMS. Member organizations submitting such orders with a stock/ETF component represent that such orders comply with the Qualified Contingent Trade Exemption. Members of FINRA or the NASDAQ Stock Market ("NASDAQ") are required to have a Uniform Service Bureau/Executing Broker Agreement ("AGU") with Nasdaq Options Services LLC 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 Nasdaq Options Services LLC ("NOS") in order to trade orders containing a stock/ETF component.</u>

<u>(2) Where one component of a Complex Agency Order, Complex Solicited Order or Response is the underlying security, the Exchange shall electronically communicate the underlying security component of the Complex Agency Order (together with the Complex Solicited Order, Complex Order or Response, as applicable) to NOS, its designated broker-dealer, for immediate execution. Such execution and reporting will occur otherwise than on the Exchange and will be handled by NOS pursuant to applicable rules regarding equity trading.</u>

<u>(3) When the short sale price test in Rule 201 of Regulation SHO is triggered for a covered security, NOS will not execute a short sale order in the underlying covered security component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response if the price is equal to or below the current national best bid. However, NOS will 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 is marked "short exempt," regardless of whether it is at a price that is equal to or below the current national best bid. If NOS cannot execute the underlying covered security component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex Agency Order, Complex Solicited Order, Complex Order or Response to the entering member organization. For purposes of this paragraph, the term "covered security" shall have the same meaning as in Rule 201(a)(1) of Regulation SHO.</u>

(iii) The Solicitation Auction may be used only where there is a genuine intention to execute a bona fide transaction. It will be considered a violation of this Rule 1081 and will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 707 if an Initiating Member submits an Agency Order (initiating a Solicitation Auction) and also submits its own Response in the same Solicitation Auction.

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

* * * * *