

May 28, 2009

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-0609

Via email

Re: Response to Comments on File No. SR-Phlx-2009-32

Dear Ms. Murphy:

NASDAQ OMX PHLX, Inc. (“Phlx” or “Exchange”) appreciates the opportunity to respond to the issues raised by the Chicago Board Options Exchange, Inc. (“CBOE”) in its comment letter dated May 20, 2009. As set forth below, Phlx believes that the above-referenced proposed rule change concerning the new Phlx XL II system (the “Phlx proposal”) does not adversely impact fair and orderly trading in the options markets. Moreover, Phlx believes that Amendment No. 3 to the above-referenced filing is responsive to many of CBOE’s concerns, as well as all of the comments raised by NYSE Euronext in its letter dated May 14, 2009.

Market Exhaust Auction

CBOE questions the proposed order handling rules surrounding the Phlx “Market Exhaust Auction,” in which the Phlx XL II system will notify Phlx XL II participants that an auction will take place when the Phlx market is exhausted and there is no quote in the affected series from a Phlx specialist, Streaming Quote Trader (“SQT”) or Remote Streaming Quote Trader (“RSQT”). At the end of the auction, the Phlx XL II system will trade at the best price (within an established Auction Quote Range) the entire order can be executed.

The Phlx Market Exhaust Auction will function in the same manner as the Phlx opening, *i.e.*, resulting in a single price where the entire incoming order can be filled with normal National Best Bid/Offer (“NBBO”) protection. Contra-side bids or offers received during the auction at a better price than the execution price will not be “ignored,” as CBOE states in its letter, but will have price priority and will be executed at the single execution price.

If the PBBO includes marketable limit orders on the Phlx limit order book at the time the incoming order is received that are priced at or within the NBBO, they will be executed immediately by the Phlx XL II system before the auction begins. Limit orders that are not at the Phlx Best Bid/Offer (“PBBO”) and are at or within the NBBO will participate in the auction. The Phlx XL II system will not execute any trade at a price

through the NBBO unless it has routed contracts to the NBBO markets contemporaneously (consistent with the “trade and ship” concept).

The Market Exhaust Auction is designed to provide customers NBBO protection as well as an opportunity for price improvement rather than immediately trading at the NBBO. This NBBO protection and price improvement opportunity is a feature of the Phlx XL II system designed to benefit customers and to function as a safeguard against non-exempt trade-throughs. Phlx therefore believes that the Market Exhaust Auction, as proposed, is consistent with the customer protection provisions contained in the Exchange Act and the rules thereunder, and with the overarching Commission policies surrounding customer protection.

Entitlements

CBOE requests clarification on participation entitlements for specialists and Phlx XL II participants that receive Directed Orders in trade allocations stemming from trade executions following an exhaust auction. With respect to specialists who participate in such trades, the trade allocation algorithm set forth in Phlx Rule 1014(g)(vii) will apply. In order to receive their entitlement (60%, 40% or 30%, depending on the number of participants in the affected trade), the specialist must have submitted a quote at the execution price. The specialist is not entitled to receive a number of contracts that is greater than his or her disseminated size.

Respecting Directed Orders, the trade allocation algorithm set forth in Phlx Rule 1014(g)(viii) will apply. Phlx Rule 1080(l)(ii) provides,

“When the Exchange’s disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Specialist, SQT or RSQT is quoting at the Exchange’s disseminated price, the Directed Order shall be automatically executed and allocated in accordance with Rule 1014(g)(viii).”

Therefore, in order for a Directed Specialist, Directed SQT or Directed RSQT participant to receive their entitlement, they must be quoting at the Phlx disseminated price (which must be at the NBBO) *at the time of receipt of the Directed Order*. Therefore, if a Directed Specialist, Directed SQT or Directed RSQT does not submit a quotation at the NBBO execution price until the auction is initiated, they would not receive the entitlement described in Phlx Rule 1014(g)(viii).

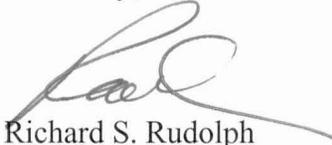
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Phlx appreciates the opportunity to respond to the issues raised in the comment letters. If you or any other Commission staff has any questions or comments, please feel free to call me at (215) 496-5074.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rudolph', with a long horizontal flourish extending to the right.

Richard S. Rudolph
Assistant General Counsel