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March 2, 2012

VIA EMAIL AND FEDERAL EXPRESS

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549

Re: File No. SR-Phlx-2012-12

Dear Ms. Murphy:

NYSE Euronext appreciates the opportunity to comment on the NASDAQ OMX Phlx Inc. ("Phlx") proposal SR-Phlx-2012-12 ("Proposal"), which would amend Phlx's rules on Openings in Options and Firm Quotations.[1] Phlx filed the Proposal for immediate effectiveness under Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"). As the operator of two options exchanges, NYSE Arca Inc. and NYSE Amex LLC, we generally applaud efforts to provide investors with improved tools to trade options. In this instance, however, we feel that the Phlx Proposal is detrimental to both individual investors and the options National Market System as a whole. Accordingly, we believe that the Securities and Exchange Commission ("Commission" or "SEC") should summarily suspend and subsequently disapprove the Proposal.

The Phlx Proposal

Phlx proposes to amend Phlx Rules 1017 and 1082 to describe the manner in which the Phlx XL® automated options trading system will disseminate quotations when (i) there is an ''Opening Imbalance'' in a particular series, and (ii) there is a "Quote Exhaust" quote condition present in a particular series.

As described in the Proposal, an Opening Imbalance occurs when all opening marketable size cannot be completely executed at or within an established Opening Quote Range ("OQR") for the affected series. Currently, the relevant provision in Phlx Rule 1017 states that any unexecuted contracts from the opening imbalance not traded or routed are displayed in the Phlx

[1] See Release No. 34-66314 (February 3, 2012), 77 FR 6828 (February 9, 2012). Capitalized terms not defined in this letter have the meaning in the Phlx Proposal.

quote at the opening price for a period not to exceed ten seconds. After such period, contracts that remain unexecuted are cancelled back to the entering participant, unless the member that submitted the original order has instructed the Phlx in writing to reenter the remaining size, in which case the remaining size will be automatically submitted as a new order. During this display time period, the Phlx XL system disseminates a bid price of $0.00, with a size of zero contracts if the imbalance is a sell imbalance, or an offer price of $0.00, with a size of zero contracts if the imbalance is a buy imbalance. The Phlx proposes to amend Rule 1017 to reflect the new manner in which the Phlx will disseminate quotations during the Opening Imbalance display period. Specifically, during this display time period, the Phlx XL system will disseminate, on the opposite side of the market from remaining unexecuted contracts: (i) A non-firm bid for the price and size of the next available bid(s) on the Phlx if the imbalance is a sell imbalance, or (ii) a non-firm offer for the price and size of the next available offer(s) on the Phlx if the imbalance is a buy imbalance.

The Proposal also describes a Quote Exhaust, which occurs when the market at a particular price level on the Phlx includes a quote, and such market is exhausted by an inbound contra-side quote or order ("initiating quote or order"), and following such exhaustion, contracts remain to be executed from the initiating quote or order. Rather than immediately executing at the next available price, the Phlx XL system employs a timer (a "Quote Exhaust Timer"), not to exceed one second, in order to allow Phlx participants to refresh their quotes. During the Quote Exhaust Timer, Phlx XL currently disseminates the "Reference Price" (the most recent execution price) for the remaining size, provided that such price does not lock an away market, in which case, the Phlx currently disseminates a bid and offer that is one Minimum Price Variation ("MPV") from the away market price. During the Quote Exhaust Timer, the Phlx disseminates, on the opposite side of the market from the remaining contracts: (i) a bid price of $0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of $0.00, with a size of zero contracts if the remaining size is a buyer. The Phlx proposes to amend Rule 1082 to reflect the new manner in which the Phlx will disseminate quotations during a Quote Exhaust condition. Specifically, during Quote Exhaust, the Phlx XL system will disseminate, on the opposite side of the market from remaining unexecuted contracts: (i) a non-firm bid for the price and size of the next available bid(s) on the Phlx if the remaining size is a seller, or (ii) a non-firm offer for the price and size of the next available offer(s) on the Phlx if the remaining size is a buyer.

The Phlx Proposal Disadvantages Customers by Making it Difficult for Broker-Dealers to Comply with their Best Execution Obligations

Disseminating non-firm quotes in the manner set forth in the Proposal will raise issues for "smart routers," which are generally programmed to route to the NBBO. Currently, many broker-dealers that are members of multiple options exchanges have developed smart routers to route options orders to markets at the NBBO to meet their best execution obligations to their customers. Smart routers generally check price first, then, where multiple exchanges are at the NBBO, other factors including size are considered. When Phlx disseminates a non-firm price that matches the NBBO, firms that employ smart routers will likely be required to choose from among several undesirable options, including (a) re-programming their systems to ignore such non-firm prices at Phlx, or (b) routing to Phlx (akin to a "blind ping") and running the risk that their customer order will go unfilled. Either of these scenarios could expose a broker-dealer to potential best execution violations. Specifically, in the first scenario, customers would be denied an opportunity for a fill at Phlx, which despite having a non-firm quote, would have trading interest at the quote price. In the second scenario, customers may be denied an opportunity for executions at the NBBO at the time the orders are received because the routers first checked Phlx prior to attempting to execute the orders at other market centers.

The Phlx Proposal is Detrimental to the Options National Market System

Market Makers on the NYSE Euronext options markets will be burdened by operational difficulties if they post a quotation that would lock the Phlx non-firm quote side. In particular, a Market Maker may post a quote that locks an away market if the Market Maker contemporaneously sends an order to clear the away market. If the Phlx non-firm bid or offer is at the NBBO, however, a Market Maker must choose to either ignore the non-firm quote, despite knowing there is trading interest at the displayed price, or route an order to Phlx without being able to gauge the likelihood of a fill. This uncertainly makes it difficult for market makers to post aggressive bids and offers at prices that would lock non-firm Phlx quotes.

For instance, suppose the Phlx best offer in a series is $1.16 for 10 contracts, and their next best offer is at $1.17 for 10 contracts, and all other exchanges are offered at $1.18. If Phlx receives a market order to buy 50 contracts, they will execute 10 contracts at $1.16; post a firm bid of $1.16 for 40 contracts, and disseminate a non-firm offer of $1.17 for 10 contracts.

A Market Maker on another exchange may observe the transactions and quotes on Phlx, and decide to bid $1.17 to set the NBBO. The true NBBO is now $1.17 bid at $1.17 offered, but the National Best Offer ("NBO") is non-firm. If the Market Maker tries to send an order to Phlx to trade against the non-firm offer, Phlx will presumably add the volume of that Market Maker's order to the disseminated "bid," rather than execute it against the displayed yet non-firm offer.[2] Thus, a willingness by non-Phlx members to pay a higher price to known available trading interest is disrupted to keep that trading interest available only to Phlx members.

Furthermore, many systems currently deployed by the market making community for purposes of quoting are designed to evaluate the aggregate liquidity in the marketplace. So, when Phlx is displaying a non-firm NBBO, Market Makers may not be able to quote as aggressively as possible, to the detriment of public customers who might otherwise receive a better price. For instance, assume the same facts as above, except that another exchange is offering 10 contracts at

[2] In this respect, the Proposal indicates that only Phlx members can trade with the non-firm offer. The proposed rules use the term "Phlx XL II participant," which does not appear to be a defined term in Phlx's rules. However, the term "Phlx XL participant" is defined several times in the Phlx's rule to only include Phlx members. See, e.g., Phlx Rule 1093(a).

$1.17, thus setting the NBO at $1.17 firm for 10, and Phlx is displaying a non-firm offer size of 100 contracts at $1.17. Many Market Maker quoting programs would evaluate the NBBO in the series, and decide to bid $1.17 against a displayed available size of 10 contracts, while sending an order to buy to the displaying market, but would not post such a bid and route orders if the Phlx offer were displayed as a firm quote. In this situation, the Phlx non-firm quote creates tremendous uncertainty in the market with respect to the true level of selling interest, which in turn subjects Market Makers to greater risk because of the lack of transparency at Phlx. This is of great concern and more applicable to the smaller market making firms that may not have the technological abilities to evaluate a one-sided, non-firm market, ultimately forcing them to simply wait for the non-firm market to move before posting a better bid or offer.[3] This seems to be an unnecessary burden on many market participants simply because Phlx desires to delay executions so as to retain market share rather than fill customer orders.[4]

The Phlx Proposal Creates Operational Issues for Exchanges and Other Market Participants

When the OPRA specification change to accommodate Phlx's one-sided, non-firm quote plan was being considered by the OPRA Management Committee at the end of 2010, representatives of NYSE Euronext expressed concern that the specification change was being determined at a time when technology budgets for 2011 had already been set.[5] The NYSE Euronext representatives also stated that the earliest that such changes could be programmed in the NYSE Euronext systems was late 2012, if and only if there was certainty about whether Phlx would go forward with its plan prior to the budgeting and scheduling of development work for 2012. With Phlx not providing any guidance on the status of its plan until November 2011, it will be difficult for NYSE Euronext to recognize one-sided, non-firm quotes until late in 2013.[6]

Moreover, in support of the Proposal, Phlx states that the OPRA specification change "presented the opportunity for OPRA and the participants to design, test, and deploy modifications to their systems."[7] We believe this statement is disingenuous, in that no technical details on how Phlx planned to modify their Market Exhaust and Quote Exhaust to disseminate a one-sided, non firm

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3 Such firms typically rely on non-proprietary market making technology.

4 Should the Proposal become effective, both NYSE Arca and NYSE Amex may seek no-action relief regarding those instances in which they can ignore the Phlx one sided, non-firm quote. NYSE Euronext may also seek clarity as to whether a Market Maker can satisfy its quoting obligations by locking a one-sided, non-firm quote that represents known trading interest.

5 See Release No. 34-63400 (November 30, 2010), 75 FR 76058 (December 7, 2010) (File No. SR-OPRA-2010-4).

6 See, e.g., Release No. 34-65670 (November 2, 2011), 76 FR 69308 (November 8, 2011) (SR-Phlx-2011-144).

7 See Proposal, 77 FR at 6829.

quote have been provided or filed with the Commission. Phlx's point also ignores the needs of options industry participants other than the exchanges to be able to reprogram their systems to accommodate one-sided, non-firm quotes in the manner set forth in the Proposal.

Conclusion

For the reasons discussed above, NYSE Euronext believes that the Phlx Proposal is inconsistent with the Exchange Act, including the requirement in Section 6(b)(5) that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Accordingly, NYSE Euronext believes that the Commission should summarily suspend and subsequently disapprove the Phlx Proposal.

We appreciate the Commission's consideration of our comments. If the Commission or its Staff has any questions on this letter, please feel free to contact Mr. Peter Armstrong, at (415) 393-4232.

Sincerely,

Janet McGinness