

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64401; File No. SR-Phlx-2011-55)

May 4, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to In-Crowd Priority

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that, on April 27, 2011, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II 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 amend Exchange Rule 1014, Commentary .05(c), Non-Electronic Orders, to state that, respecting crossing, facilitation and solicited orders with a size of at least 500 contracts on each side that are represented and executed in open outcry, priority will continue to be afforded to in-crowd participants (including, for purposes of this rule only, Floor Brokers) over Remote Specialists,³ Remote Streaming Quote Traders (“RSQTs”)⁴ and out-of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Remote Specialist is a qualified RSQT approved by the Exchange to function as a specialist in one or more options if the Exchange determines that it cannot allocate such options to a floor based specialist. A Remote Specialist has all the rights and obligations of a specialist, unless Exchange rules provide otherwise. See Exchange Rules 501 and 1020. See also, Securities Exchange Act Release No. 63717 (January 14, 2011), 76 FR 4141 (January 24, 2011) (SR-Phlx-2010-145).

⁴ An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An

crowd Streaming Quote Traders (“SQTs”),⁵ but not over public customer orders. The Exchange proposes to amend the rule to state that in-crowd participants in such orders would also have priority over out-of-crowd broker-dealer limit orders on the limit order book.

The text of the proposed rule change is available on the Exchange’s website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend Commentary .05 of Rule 1014 to state that in-crowd participants will continue, as today, to have priority over Remote Specialists, RSQTs and out of crowd SQTs respecting crossing, facilitation and solicited orders with a size of at least 500 contracts on each side, and to state that, respecting such orders, in-crowd participants

RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

⁵ An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Exchange Rule 1014(b)(ii)(A).

will now be afforded priority over out-of-crowd broker-dealer limit orders on the limit order book. The proposal is also intended to provide that the term “in-crowd participants” includes, for purposes of this rule only, Floor Brokers representing such orders in open outcry in the trading crowd. In keeping with current Exchange practices and rules, public customer limit orders represented in the trading crowd and resting on the limit order book have, and will continue to have, priority over all other participants and accordingly must be executed up to the aggregate size of such orders before any in-crowd participant is entitled to priority.

Current Rule

Currently, Exchange Rule 1014, Commentary .05 states that respecting crossing, facilitation and solicited orders⁶ with a size of at least 500 contracts on each side that are represented and executed in open outcry, priority is afforded to in-crowd participants over Remote Specialists, RSQTs and out-of crowd SQTs. The current rule does not affirmatively afford priority to in-crowd participants over orders on the limit order book, whether such orders are for public customers or non-customers. Thus, Floor Brokers representing and executing crossing, facilitation and solicited orders in open outcry are required to execute against all marketable orders on the limit order book before executing against the crowd, because the marketable orders on the limit order book have time priority.

The Proposal

The proposed amendment to the rule would state that the rule also affords priority to in-crowd participants over out-of out-of-crowd broker-dealer limit orders on the limit order book. Public customer orders on the limit order book that are eligible for execution would still be required to be executed before the Floor Broker could execute its order in the crowd and/or with

⁶ See Exchange Rule 1064.

a contra-side order it holds. The proposed rule would also provide that the term “in-crowd participants” includes, for purposes of this rule only, Floor Brokers representing orders in open outcry in the trading crowd.

The Exchange believes that this should enable it to compete for order flow with other exchanges that have similar rules in place without limiting eligible order types.⁷ The instant proposal will not affect public customer priority. The Exchange will continue to execute public customer limit orders up to their aggregate size at a particular price point.

The proposed rule change is intended to replicate, in open outcry, the current electronic trade allocation algorithm applicable to trades executed and allocated electronically on the Exchange’s electronic trading platform for options, PHLX XL.⁸ Specifically, the Exchange notes that Exchange Rules 1014(g)(vii) and (viii) both provide that, if any contracts remain to be allocated after public customers and PHLX XL participants (including the specialist, SQTs, RSQTs and non-SQT ROTs with limit orders on the limit order book) that are bidding or offering at the execution price have received their respective allocations, off-floor broker-dealers that have placed limit orders on the limit order book which represent the Exchange's disseminated price are thereafter entitled to receive any remaining contracts. The instant

⁷ The Exchange notes that Chicago Board Options Exchange, Inc. (“CBOE”) Rule 6.74(d)(vi) affords priority to in-crowd participants over out-of-crowd participants, including non-public customer orders on the limit order book, in all open outcry situations after public customers on the limit order book have been executed. See Securities Exchange Act Release No. 54726 (November 8, 2006), 71 FR 66810 (November 16, 2006) (SR-CBOE-2006-89).

⁸ In May, 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as “Phlx XL II.” See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from “Phlx XL II” to “PHLX XL” for branding purposes.

proposal is intended to state that this is also the case respecting crossing, facilitation and solicited orders with a size of at least 500 contracts on each side that are represented in open outcry.

Non-Affiliated Floor Brokers

The Exchange represents that all of its Floor Brokers are currently independent business operations and are not affiliated with any other Exchange member. The Exchange recognizes that if a Floor Broker becomes affiliated with a member, an issue could arise under Section 11a of the Act⁹ concerning in-person trading on the Exchange floor. Floor brokers are able to achieve in-crowd priority in accordance with this proposal provided, however, that a Floor Broker who is affiliated with a PHLX member, and represents an order on behalf of such member, must ensure that the PHLX member qualifies for an exemption from Section 11(a)(1) of the Exchange Act or that the transaction satisfies the requirements of Exchange Act Rule 11a2-2(T), otherwise the Floor Broker must yield priority to orders for the accounts of non-members.

Conclusion

The Exchange believes that the proposed rule should provide incentive and liquidity for order flow providers that submit larger size crossing, facilitation and solicited orders for execution in open outcry to the Exchange, thus enabling the Exchange to compete with exchanges that have similar priority rules in effect.¹⁰

⁹ 15 U.S.C. 78k(11)(a).

¹⁰ See supra note 7.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² 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 adopting a rule that affords priority to in-crowd participants over out-of-crowd broker-dealer limit orders on the limit order book in certain crossing, facilitation and solicited orders represented and executed in open outcry.

The Exchange believes that the proposal promotes just and equitable principles of trade by retaining customer priority in all cases, and by affording priority to in-crowd participants who are required to meet minimum quoting requirements,¹³ and that the proposal removes impediments to and perfects the mechanism of a free and open market by improving Floor Brokers' ability to trade crossing, facilitation and solicited orders with at least 500 contracts on each side, all to the benefit of customers and the public interest.

Exchange Rule 1014 currently affords priority to in-crowd participants over Remote Specialists. A Remote Specialist is first required to be an RSQT, and the instant proposal would continue to afford priority to Remote Specialists in the same manner as it provides such priority over RSQTs. In January, 2011, the Commission approved the Exchange's proposal to amend Commentary .05(c)(i) of Rule 1014 to establish priority for Remote Specialists that is

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ See, e.g., Exchange Rule 1014(b)(ii)(D).

coextensive with the priority afforded in that rule to RSQTs and out-of-crowd SQTs.¹⁴ The Exchange believes this established priority that treats RSQTs and Remote Specialists equally is just and equitable, because neither a Remote Specialist nor an RSQT is required to respond to a Floor Broker entering the crowd and requesting a market, whereas in-crowd participants are required to verbalize a market in response to such a request.¹⁵

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.

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

Pursuant to Section 19(b)(3)(A)¹⁶ of the Act and Rule 19b-4(f)(6)¹⁷ thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of

¹⁴ See Securities Exchange Act Release No. 63717 (January 14, 2011), 76 FR 4141 (January 24, 2011) (SR-Phlx-2010-145).

¹⁵ See Exchange Rules 1014(c) and (d).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

filing of the proposed rule change, or such shorter time as designated by the Commission.¹⁸ The Exchange has satisfied this requirement.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-2011-55 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-2011-55. 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

¹⁸ 17 CFR 240.19b-4(f)(6).

comments on the Commission's Internet website (<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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2011-55 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.¹⁹

Elizabeth M. Murphy
Secretary

¹⁹ 17 CFR 200.30-3(a)(12).