

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72027; File No. SR-Phlx-2014-25)

April 25, 2014

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rules 1064 and 1080

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 16, 2014, 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 Rules 1064 and 1080 to more specifically address the number and size of contra-parties to a Qualified Contingent Cross Order (“QCC Order”).

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

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**Rule 1064. Crossing, Facilitation and Solicited Orders**

(a) – (d) No change.

(e) A Floor Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 contracts in the case of Mini Options, that is identified as

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

being part of a qualified contingent trade, as that term is defined in subsection (3) below, coupled with a contra-side order or orders totaling [to buy or sell] an equal number of contracts.

(1) - (3) No change.

### **Commentary**

.01 - .04 No change.

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### **Rule 1080. Phlx XL and Phlx XL II**

(a) – (n) No change.

#### **(o) Qualified Contingent Cross Order.**

A Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 contracts in the case of Mini Options, that is identified as being part of a qualified contingent trade, as that term is defined in subsection (3) below, coupled with a contra-side order or orders totaling [to buy or sell] an equal number of contracts.

(1) - (3) No change.

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## **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 the Statutory Basis for, the Proposed Rule Change**

## 1. Purpose

The purpose of the proposal is to expand the availability of QCC orders by permitting multiple contra-parties on a QCC order. Under the proposal, multiple contra-parties would be allowed on one side (the contra-side), so long as they total the originating QCC Order, which would be a single order from a single party for at least 1,000 contracts (in addition to meeting the other requirements of a QCC Order).

The Exchange currently permits two types of QCC Orders. Pursuant to Rule 1064(e), A Floor Qualified Contingent Cross Order (“Floor QCC Order”) is comprised of an order to buy or sell at least 1,000 contracts<sup>3</sup> that is identified as being part of a qualified contingent trade,<sup>4</sup> coupled with a contra-side order to buy or sell an equal number of contracts. Floor QCC Orders are immediately executed upon entry into the System by an Options Floor Broker provided that (i) no Customer Orders are at the same price on the Exchange's limit order book and (ii) the price is at or between the National Best Bid/Offer (“NBBO”). Floor QCC Orders are submitted into the System by Floor Brokers on the Floor via the Floor Broker Management System. Floor QCC Orders are automatically rejected if they cannot be executed.

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<sup>3</sup> In the case of Mini Options, the minimum size is 10,000 contracts.

<sup>4</sup> A “qualified contingent trade” is a transaction consisting of two or more component orders, executed as agent or principal, where: (a) At least one component is an NMS Stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (b) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (c) the execution of one component is contingent upon the execution of all other components at or near the same time; (d) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined by the time the contingent order is placed; (e) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (f) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade.

In addition to Floor QCC Orders, Phlx offers automated Qualified Contingent Cross Orders (“Automated QCC Order”). Pursuant to Rule 1080(o), an Automated QCC Order is very similar to a Floor QCC Order, in that it must be comprised of an order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side order to buy or sell an equal number of contracts. Automated QCC Orders shall only be submitted electronically from off the Floor to the Phlx System. Automated QCC Orders are immediately executed upon entry into the System by an Order Entry Firm provided that (i) no Customer Orders are at the same price on the Exchange's limit order book and (ii) the price is at or between the NBBO. Automated QCC Orders will be automatically rejected if they cannot be executed.

Each definition of a QCC Order is currently framed in the singular (...coupled with a contra-side order...), therefore, the Exchange would like to amend its rule to permit its members and other participants to submit a QCC Order consisting of a single order from a single party for at least 1,000 contracts on the originating or agency side and a single order or multiple orders on the opposite, contra-side (generally known as the solicited side). Multiple contra-parties are only permitted on one side, the contra-side, and are not permitted on the originating side. Currently, the contra-side to a QCC Order is entered into the Phlx system as a single order, even if that order consists of multiple contra-parties who are allocated their portion in a post-trade allocation. Therefore, the Exchange now proposes to modify its rules to provide that a QCC Order must involve a single order for a single party for at least 1,000 contracts on the originating side, but that it may consist of a single or multiple orders on the opposite, contra-side, so long as it totals the number of contracts on the originating side.

Furthermore, the Exchange proposes to permit single or multiple contra-side orders on a QCC Order with a total number of contracts equaling the originating order size without any size restriction for such contra-side orders. The Exchange believes that permitting multiple contra-parties to QCC Orders that total the number of contracts on the originating side may increase liquidity and, potentially, improve the prices at which QCC Orders get executed. The ability for market participants to provide liquidity in response to large sized orders is directly proportional to the size and associated risk of the resulting position. As a result, smaller sized trades are often done at a better price than larger sized trades, which convey more risk. The ability to pool together multiple market participants to participate on the contra-side of a trade for any size has a direct and positive impact on the ability of those market participants to provide the best price as they compete to participate in the order without being compelled to provide liquidity with a large minimum quantity. This concept is not unique to large crosses. It is well understood and observed that any product with multiple market participants providing liquidity offers the tightest and most liquid market and the same applies to the larger orders negotiated away from the exchanges.

For instance, a 5,000 contract originating QCC Order to buy could, under this proposal, be coupled with two orders to sell 2,500 contracts each. Similarly, a 5,000 contract originating QCC Order to buy could, under this proposal, be coupled with two contra-side orders to sell, one for 4,500 contracts and one for 500 contracts. In the above examples, the total of all sell (contra-side) orders equals the size of the originating order and the originating order is for at least 1,000 contracts.

An area of concern has been the protection of smaller orders, which is why the QCC Order is limited to the 1,000 contract minimum. It is important to note that the concern has

always been and should continue to be for the originating order or unsolicited part of the order that is seeking liquidity and not the professional responders and providers of liquidity. Allowing smaller orders to participate on the other side (i.e., contra-side) of QCC Orders not only provides the best price and opportunity for a trade to occur in a tight and liquid market, but ensures that the highest possible number of liquidity providers are able to participate. Accordingly, the proposal would benefit both sides of a QCC trade by ensuring a trade at the best possible price without favoring larger participants on the solicited side of the trade.

Under this proposal, the QCC Order must continue to satisfy all other requirements of a QCC Order under the Exchange's rules.

The Exchange will track and monitor QCC Orders to determine which is the originating/agency side of the order and which is the contra-side(s) of the order to ensure that Members are complying with the minimum 1,000 contract size limitation on the originating/agency side of the QCC Order. The Exchange will check to see if Members are aggregating multiple orders to meet the 1,000 contract minimum on the originating/agency side of the trade in violation of the requirements of the rule. The rule requires that the originating/agency side of the trade consist of one party who is submitting a QCC Order for at least 1,000 contracts. The Exchange represents that it will enforce compliance with this portion of the rule by checking to see if a Member breaks up the originating/agency side of the order in a post trade allocation to different clearing firms, allocating less than 1,000 contracts to a party or multiple parties. For example, a Member enters a QCC Order into the system for 1,500 contracts and receives an execution. Subsequent to the execution, the Member allocates the originating/agency side of the order to two different clearing firms on a post trade allocation basis, thereby allocating 500 contracts to one clearing firm and 1,000 contracts to another

clearing firm. This type of transaction would not meet the requirements of a QCC Order under the current and proposed rule.

With regard to order entry, a Member will have to mark the originating/agency side as the first order in the system and the contra-side(s) as the second. The Exchange will monitor order entries to ensure that Members are properly entering QCC Orders into the system.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> 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 amending the rule text to expand a QCC Order. Specifically, because the proposal states that multiple parties are permitted on the contra-side, it should provide members and participants with certainty as to what is allowed and, therefore, provide more opportunity to participate in QCC trades, consistent with the key principles behind the QCC Order. Furthermore, because the proposal permits a single or multiple contra-parties without any contract size requirement so long as they total the originating size, it should also increase liquidity and improve the prices at which QCC Orders get executed and, therefore, provide more opportunity to participate in QCC trades, consistent with the key principles behind the QCC Order.

In approving QCC Orders, the Commission has stated that "...qualified contingent trades are of benefit to the market as a whole and a contribution to the efficient functioning of the

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<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

securities markets and the price discovery process.”<sup>7</sup> The Commission “also has recognized that contingent trades can be useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuer, convertible securities, and equity derivatives such as options [emphasis added].”<sup>8</sup> In light of these benefits, the Exchange believes that the proposal should improve the usefulness of the QCC Order without raising novel regulatory issues, because the proposal does not impact the fundamental aspects of this order type - it merely permits multiple contra-parties, regardless of size, on the contra-side, while preserving the 1,000 contract minimum on the originating order.

Consistent with Section 6(b)(8) of the Act, the Exchange seeks to compete with other options exchanges for QCC Orders involving multiple parties, including where there are multiple contra-parties. The Exchange believes that this will be beneficial to participants because allowing single or multiple contra-parties of any size on the contra-side should foster competition for filling the contra-side of a QCC Order and thereby result in potentially better prices.

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. In fact, the proposal is intended to relieve a burden on competition, which results from different exchanges interpreting their rules differently. Among the options exchanges, the Exchange believes that the proposal to allow, on the contra-side, a single or multiple contra-parties without any contract size

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<sup>7</sup> QCC Approval Order [sic] at text accompanying footnote 115.

<sup>8</sup> QCC Approval Order [sic] at Section III.A. citing Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (Original QCT Exemption).



restriction so long as they total the originating size should foster competition for filling the contra-side of a QCC order and thereby result in potentially better prices for such orders.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and rule 19b-4(f)(6) thereunder.<sup>10</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6) (iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will help eliminate investor confusion and promote competition among the option exchanges.<sup>14</sup> Therefore, the Commission designates the proposed rule change to be operative upon filing.

The Commission notes that, given the differing requirements as between the originating side and contra-side for QCC Orders, it is essential that the Exchange be able to clearly identify and monitor – throughout the life of a QCC Order, beginning at time of order entry on the Exchange through the post-trade allocation process – each side of the QCC Order and ensure that the requirements of the order type are being satisfied including, importantly, those relating to the originating side. The Commission believes this to be critical so that the Exchange can ensure that market participants are not able to circumvent the requirements of the QCC Order (as amended by this proposed rule change), each of which the Commission continues to believe are critical to ensuring that the QCC Order is narrowly drawn.<sup>15</sup> Further, the Commission notes that the Exchange has made certain representations regarding its enforcement and surveillance of its Members' use of QCC Orders, including, for example, not only at the time of order entry, but through the post-trade allocation process as well.

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<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>15</sup> The Commission expects the Exchange to have the capability to enable it to surveil that such requirements are being met. Though the Exchange has stated its ability to do so, if the Exchange is not able to have such monitoring at any point in time, the Commission would expect the Exchange to take other steps to ensure that the QCC Order cannot be improperly used. For example, if the Exchange were not able to identify and monitor which side of a QCC Order is the originating order, the Commission would expect that it would require that both sides of the QCC Order meet the more stringent requirements of the originating side, i.e., that it be for a single order for at least 1,000 contracts.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2014-25 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-Phlx-2014-25. 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 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-2014-25, 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.<sup>16</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).