

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63027; File No. SR-Phlx-2010-108)

October 1, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval to a Proposed Rule Change Relating to a Proposed Price Improvement System, Price Improvement XL

I. Introduction

On July 30, 2010, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”), 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> a proposed rule change to establish Price Improvement XL (“PIXL”). The proposed rule change was published for comment in the Federal Register on August 16, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

In its filing, Phlx proposes to establish a price-improvement mechanism in which a member (an “Initiating Member”) may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (this initial order is referred to as the “PIXL Order”) against principal interest or against any other order it represents as agent (this matching order is referred to as the “Initiating Order”) provided it submits the PIXL Order for electronic execution into the PIXL Auction (“Auction”) pursuant to the proposed Rule.<sup>4</sup> In addition, Phlx proposes to provide for the automatic execution, under certain

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

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

<sup>3</sup> See Securities Exchange Act Release No. 62678 (August 10, 2010), 75 FR 50021 (“Notice”).

<sup>4</sup> For a more detailed discussion of the purpose of the proposal and examples, see Notice.

conditions, of a crossing transaction where there is a public customer order in the same options series on each side.

### III. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule change to establish rules for the implementation of the PIXL auction is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, in particular, the requirements of Section 6 of the Act.<sup>6</sup> Specifically, as discussed further below, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>7</sup> which requires, in part, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and 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. Section 6(b)(5) of the Act also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers. The Commission believes that approving the Exchange's proposal to establish PIXL should increase competition among those options exchanges that offer similar functionality. For the reasons discussed below, the Commission finds that the Exchange's proposal is consistent with the Act.

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<sup>5</sup> In approving this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

A. Auction Eligibility

Proposed Rule 1080(n)(i) describes the circumstances under which an Initiating Member may initiate a PIXL Auction. Notably, the proposal draws a distinction between orders for less than 50 contracts and those for 50 contracts or more, and affords slightly different treatment based on that distinction. The specific treatment of public customer and non-public customer orders for above and below 50 contracts is described directly below.<sup>8</sup>

For public customer orders, if the PIXL Order is for 50 contracts or more, the Initiating Member must stop the entire PIXL Order at a price that is equal to or better than the National Best Bid/Offer (“NBBO”) on the opposite side of the market from the PIXL Order, provided that such price must be at least one minimum price improvement increment (as determined by the Exchange but not smaller than one cent) better than any limit order on the limit order book on the same side of the market as the PIXL Order. If the PIXL Order is for a size of less than 50 contracts, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) the PBBO price on the opposite side of the market from the PIXL Order improved by at least one minimum price improvement increment, or (ii) the PIXL Order’s limit price (if the order is a limit order), provided in either case that such price is better than the NBBO, and at least one minimum price improvement increment better than any limit order on the book on the same side of the market as the PIXL Order.

For non-public customer orders (i.e., where the order is for the account of a broker-dealer or any other person or entity that is not a public customer), if the order is for 50 contracts or more, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) the PBBO price improved by at least one minimum price improvement increment on the same

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<sup>8</sup> In addition, the Notice contains an example that illustrates the application of these specific provisions. See Notice, supra note 3, at 75 FR 50022.

side of the market as the PIXL Order, or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO. If the PIXL Order is for less than 50 contracts, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) the PBBO price improved by at least one minimum price improvement increment on the same side of the market as the PIXL Order, or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO and at least one minimum improvement increment better than the PBBO on the opposite side of the market from the PIXL Order.

The Commission finds that the Exchange's proposed rule with respect to auction eligibility requirements for PIXL is consistent with the Act. The Commission notes that the PIXL Order will be guaranteed an execution price of at least the NBBO in all cases and will be given an opportunity for execution at a price better than the NBBO.<sup>9</sup> Further, for public customer orders of less than 50 contracts, the Commission notes that minimum stop price must be one minimum increment better than the NBBO. In addition, the proposal seeks to protect the

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<sup>9</sup> The Boston Options Exchange ("BOX"), a trading facility of NASDAQ OMX BX, Inc., operates an auction known as the PIP, see Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (Order approving SR-BSE-2002-15 to establish trading rules for the BOX facility ("PIP Order")), the International Securities Exchange, LLC. ("ISE") operates an auction known as the PIM, see Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (Order approving SR-ISE-2003-06 to adopt rules for the PIM ("PIM Order")), and the Chicago Board Stock Exchange, Incorporated ("CBOE") operates an auction known as the AIM, see Securities Exchange Act Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (Order approving SR-CBOE 2005-60 to adopt rules for the AIM ("AIM Order")). The PIP and PIM also require a member to enter an order into the auction at a price that is at least equal to the NBBO. See BOX Rules, Chapter V, Section 18(e) and ISE Rule 723(b)(1). The CBOE requires an agency order that is for 50 contracts or more to be entered into the AIM at a price that is the better of the NBBO or the agency order's limit price, and an agency order that is less than 50 contracts at a price that is the better of the NBBO price improved by one minimum price improvement increment or the agency order's limit price. See CBOE Rule 6.74A(a).

priority of resting limit orders on the Exchange book. The Commission notes that proposed Rule 1080(n)(i)(A)(2) and (n)(i)(B)(2), concerning orders that are submitted with a size of less than 50 contracts, will be effective on a pilot basis expiring August 31, 2011. The Exchange has agreed to provide the Commission with detailed information each month during the pilot period to assist the Commission, as well as the Exchange, in ascertaining the level of price improvement attained for smaller-sized orders during the pilot period.

B. Initiating the Auction

An Initiating Member may initiate a PIXL Auction by submitting a PIXL Order in one of three ways: (1) single stop price, (2) auto-match price, or (3) not-worse-than price.

Under the first option, the Initiating Member could submit a PIXL Order specifying a single “stop” price at which it seeks to execute the PIXL Order. Under the second option, an Initiating Member could submit a PIXL Order specifying that it is willing to automatically match (“auto-match”) as principal or as agent on behalf of an Initiating Order the price and size of all trading interest<sup>10</sup> and responses to the PIXL Auction Notification (“PAN,” as described below), in which case the PIXL Order would be stopped at the NBBO on the Initiating Order side of the market (if 50 contracts or greater) or, if less than 50 contracts, the better of: (i) the PBBO price on the opposite side of the market from the PIXL Order improved by at least one minimum price improvement increment, or (ii) the PIXL Order’s limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO and at least one increment better than the limit of an order on the book on the same side as the PIXL Order.

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<sup>10</sup> “Trading interest” refers to unrelated orders received during the Auction, booked orders, and quotes that are considered for execution and allocation against the PIXL Order following the Auction.

Under the third and final option, an Initiating Member could submit a PIXL Order specifying that it is willing to either: (i) stop the entire order at a single stop price and auto-match PAN responses, as described below, together with trading interest, at a price or prices that improve the stop price to a specified price above or below which the Initiating Member will not trade (a “Not Worse Than” or “NWT” price); (ii) stop the entire order at a single stop price and auto-match all PAN responses and trading interest at or better than the stop price; or (iii) stop the entire order at the NBBO on the Initiating Order side (if 50 contracts or greater) or the better of: (A) the PBBO price on the opposite side of the market from the PIXL Order improved by one minimum price improvement increment, or (B) the PIXL Order’s limit price (if the order is a limit order) on the Initiating Order side (if for less than 50 contracts), and auto-match PAN responses and trading interest at a price or prices that improve the stop price up to the NWT price. In all cases, if the PBBO on the same side of the market as the PIXL Order represents a limit order on the book, the stop price must be at least one minimum price improvement increment better than the booked limit order’s limit price.

Once the Initiating Member has submitted a PIXL Order for processing, the PIXL Order may not be cancelled. The Initiating Member may improve the stop price or NWT price of its Initiating Order, however such price may be improved only to the benefit of the PIXL Order during the Auction, and the order may not be cancelled.

The Commission notes that the proposed PIXL procedures regarding the submission of a PIXL Order using the auto-match and NWT prices are similar to the rules of the CBOE, BOX, and ISE.<sup>11</sup> One notable difference is that the BOX and ISE Rules prohibit a member from

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<sup>11</sup> See BOX Rules, Ch. V, Section 18(e), CBOE Rule 6.74A(b)(1)(A), and ISE Rule 716(d)(iii).

cancelling or modifying the auto-match price during the price improvement auction<sup>12</sup> whereas the Phlx proposal would allow a member to modify the stop or NWT price, but such price may only be improved to the benefit of the PIXL Order during the Auction and the order may not be cancelled after it is entered. The Commission notes that when the Initiating Member selects the auto-match or NWT price prior to the start of the auction, competitive final pricing would be out of the Initiating Member's control. The Commission believes that permitting the Initiating Member to improve the NWT price during the PIXL Auction could allow members to quickly react to an improving market and thereby provide additional opportunity for the member to offer price improvement to the PIXL Order.

In addition, the Exchange has undertaken to provide the Commission with the following data on a monthly basis, which the Commission and the Exchange can use to evaluate the proposed auto-match functionality: the percentage of all Phlx trades effected through the PIXL Auction in which the Initiating Member has chosen the auto-match feature, and the average amount of price improvement provided to the PIXL Order when the Initiating Member has chosen the auto-match feature versus the average amount of price improvement provided to the PIXL Order when the Initiating Member has chosen a stop price submission.

C. PIXL Auction Notification ("PAN")

When the Exchange receives a PIXL Order for Auction processing, a PAN detailing the side, size, and the stop price of the PIXL Order will be sent over the Exchange's TOPO Plus Orders data feed.<sup>13</sup> An updated PAN message will be sent over the Exchange's TOPO Plus

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<sup>12</sup> See BOX Rules, Ch. V, Section 18(e) and ISE Rule 716(d)(iii).

<sup>13</sup> For a description of TOPO Plus Orders, see Securities Exchange Act Release No. 60877 (October 26, 2009), 74 FR 56255 (October 30, 2009) (SR-Phlx-2009-92). See also Securities Exchange Act Release No. 62194 (May 28, 2010), 75 FR 31830 (June 4, 2010) (SR-Phlx-2010-48) (Order approving market data fees for TOPO Plus Orders) ("TOPO

Orders data feed when the Initiating Member improves the stop price of the PIXL Order. The updated PAN will include the side, size, and improved stop price of the PIXL Order. Messages concerning updates to the stop price by the Initiating Member would be used by PAN respondents to improve a previously-submitted price when they are alerted that a stop price has been improved. Any person or entity may submit PAN responses, provided such response is properly marked specifying price, size, and side of the market. The Commission believes that access to the PIXL auction for those who may wish to compete for a PIXL Order should be sufficient to provide opportunities for a meaningful, competitive auction.<sup>14</sup>

D. PIXL Auction

A PIXL Auction would last for one second,<sup>15</sup> unless it is concluded early as the result of any of the circumstances described below. PAN responses will not be visible to Auction participants, and will not be disseminated to the Options Price Reporting Authority (“OPRA”).<sup>16</sup> A PAN response must be equal to or better than the NBBO at the time of receipt of the PAN response. A PAN response with a price that is outside the NBBO would be rejected. PAN responses may be modified or cancelled during the Auction.<sup>17</sup> PAN responses on the same side

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Plus Approval Order”). Members who are “Professional Subscribers” to the TOPO Plus Orders data feed are subject to lower fees than the “External Distributors” from whom they receive TOPO Plus Orders.

<sup>14</sup> See TOPO Plus Approval Order, supra note 13 (approving market data fees for TOPO Plus Orders as consistent with Sections 6(b)(4) and 6(b)(5) of the Act).

<sup>15</sup> The PIP, AIM, and PIM also are one-second auctions. See BOX Rules, Chapter V, Section 18(e)(i), CBOE Rule 6.74A(b)(1)(C), and ISE Rule 723(c)(1).

<sup>16</sup> CBOE’s AIM also provides that responses to the auction will not be visible to other participants and will not be disseminated to OPRA. See CBOE Rule 6.74A(b)(1)(F).

<sup>17</sup> See also CBOE Rule 6.74A(b)(1)(I).



of the market as the PIXL Order are considered invalid and will be rejected.<sup>18</sup> Multiple PAN responses from the same member may be submitted during the Auction. Multiple orders at a particular price level submitted by a member in response to a PAN may not exceed, in the aggregate, the size of the PIXL Order.<sup>19</sup>

E. Conclusion of the PIXL Auction

An Auction could conclude early any time: (i) the PBBO crosses the PIXL Order stop price on the same side of the market as the PIXL Order (since further price improvement will be unlikely and any responses offering improvement are likely to be cancelled), or (ii) there is a trading halt on the Exchange in the affected series. The proposed rules concerning the early conclusion of an Auction will be effective for a pilot period scheduled to expire August 31, 2011. The Exchange has undertaken to provide the Commission with detailed information each month during the pilot period to assist the Commission, as well as the Exchange, in ascertaining the effect of early Auction conclusions during the pilot period.

If the Auction concludes before the expiration of one second as the result of the PBBO crossing the stop price, the entire PIXL Order will be executed at the best response price(s) or, if the stop price is the best price in the Auction, at the stop price, unless the best response price is equal to the price of a limit order resting on the Phlx book on the same side of the market as the PIXL Order, in which case the PIXL Order will be executed against that response, but at a price that is at least one minimum price improvement increment better than the price of such limit

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<sup>18</sup> The Exchange stated in its proposal that any PAN response on the same side of the market as the PIXL Order would be the result of an error, and therefore Phlx would reject such response.

<sup>19</sup> A pattern or practice of submitting multiple orders in response to a PAN at a particular price point that exceed, in the aggregate, the size of the PIXL Order, will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Phlx Rule 707. See Phlx Rule 1080(n)(iv).

order at the time of the conclusion of the Auction. The Commission notes that Phlx Rule 1080(n)(v) states that a pattern or practice of submitting unrelated orders or quotes that cross the stop price, causing a PIXL Auction to conclude before the end of the PIXL Auction period will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Phlx Rule 707.

If the Auction concludes early as the result of a trading halt on the Exchange in the affected series, the entire PIXL Order would execute against the Initiating Order at the stop price, since the Initiating Member had guaranteed that an execution would occur at the stop price (or better) prior to the initiation of the trading halt.

An unrelated market or marketable limit order on the opposite side of the market from the PIXL Order received during the Auction will not cause the Auction to end early. Such order would execute against interest outside of the Auction. If contracts remain from such unrelated order at the time the Auction ends, however, they would participate in the PIXL order allocation process. This provision would be effective for a pilot period scheduled to expire on August 31, 2011. The Commission believes that allowing the PIXL auction to continue for the full auction period despite receipt of unrelated orders outside the Auction would allow the auction to run its full course and, in so doing, will provide a full opportunity for price improvement to the PIXL Order. Further, the unrelated order would be available to participate in the PIXL order allocation.

The Commission believes that approval of these provisions on a pilot basis is appropriate and will afford both the Exchange and the Commission an opportunity to analyze the impact of early terminations and unrelated orders on the PIXL process, as well as the Exchange's

surveillance procedures with respect to PIXL.<sup>20</sup> In particular, the Exchange has agreed to provide the Commission with data on a monthly basis to assist the Commission, and the Exchange, in evaluating the operation of the PIXL Auction and the provisions for early termination of an Auction. In addition, the Exchange has agreed to provide information on (1) the number of times an unrelated market or marketable limit order (against the PBBO) on the opposite side of the PIXL Order is received during the Auction Period and (2) the price(s) at which an unrelated market or marketable limit order (against the PBBO) on the opposite side of the PIXL Order that is received during the Auction Period is executed, compared to the execution price of the PIXL Order. The Commission expects to be able to use this information to consider the impact of the proposed rule on the PIXL Order as well as the unrelated order.

F. Order Allocation

At the conclusion of the Auction, the PIXL Order would be allocated at the best price(s), which may include non-Auction quotes and orders that may be present at each price level. Public customer orders would have priority at each price level, after which contracts would be allocated among all Exchange quotes, orders, and PAN responses.<sup>21</sup> Any unexecuted PAN responses would be cancelled.

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<sup>20</sup> The Exchange's surveillance plan and procedures are subject to inspection by the Commission, to ensure that the Exchange adequately monitors its market and its members, and enforces its rules and the federal securities laws, including the anti-fraud provisions.

<sup>21</sup> Proposed Rules 1080(n)(ii)(F) through (H) address the handling of the PIXL Order and other orders, quotes and PAN responses when certain conditions are present. Specifically, if there are PAN responses that cross the then-existing NBBO (provided such NBBO is not crossed) at the time of the conclusion of the Auction, such PAN responses will be executed, if possible, at their limit price(s). If the final PIXL Auction price is the same as an order on the limit order book on the same side of the market as the PIXL Order, the PIXL Order may only be executed at a price that is at least one minimum price improvement increment better than the resting order's limit price or, if such resting order's limit price crosses the stop price, then the entire PIXL Order will

1. Single Price Submission Option

Under the single stop price option, allocations would be made first at prices that improve the stop price, and then at the stop price with up to 40% of the remaining contracts after public customer interest is satisfied being allocated to the Initiating Member at the stop price.<sup>22</sup>

Remaining contracts would be allocated among remaining quotes, orders, and PAN responses at the stop price, and then to the Initiating Member.<sup>23</sup>

2. Auto-Match Option

Under the auto-match option, the Initiating Member would be allocated an equal number of contracts as the aggregate size of all other quotes, orders, and PAN responses at each price point until a price point is reached where the balance of the order can be fully executed, except that the Initiating Member would receive up to 40% of the contracts remaining at the final price point (including situations where the final price point is the stop price).

3. Stop and NWT Option

Under the NWT option, after public customer interest is satisfied, contracts would be allocated first to quotes, orders, and PAN responses at prices better than the NWT price (if any), beginning with the best price. Next, contracts would be allocated among quotes, orders, and PAN responses at prices equal to the Initiating Member's NWT price and better than the Initiating Member's stop price, beginning with the NWT price. The Initiating Member would receive an equal number of contracts as the aggregate size of all other quotes, orders, and PAN

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trade at the stop price with all better priced interest being considered for execution at the stop price.

<sup>22</sup> However, if only one specialist, SQT or RSQT matches the stop price, then the Initiating Member may be allocated up to 50% of the contracts executed at such price. This allocation is consistent with CBOE Rule 6.74A(b)(3)(F).

<sup>23</sup> Under the proposed Rule, the specialist would not be entitled to receive orders for 5 contracts or fewer.

responses at each price point, except that the Initiating Member would be entitled to receive up to 40% of the contracts remaining at the final price point (including situations where the final price point is the stop price).

The Commission believes that the proposed PIXL rules should promote price competition within a PIXL auction by providing Phlx members with a reasonable opportunity to compete for a significant percentage of the PIXL order and, therefore, should protect investors and the public interest. The Commission continues to believe that a 40% allocation is consistent with the statutory standards for competition and free and open markets.<sup>24</sup>

#### G. Professionals

Phlx Rule 1000(b)(14) defines the term “professional” and provides that professional orders will be treated in the same manner as orders for an off-floor broker-dealer for the purposes of certain rules.<sup>25</sup> The definition provides an exception for professional all-or-none orders, which are treated like customer orders. Phlx proposes to amend this definition to provide that professional orders will be treated in the same manner as orders for an off-floor broker-dealers for the purposes of PIXL and to also provide that PIXL orders for the beneficial accounts of professionals with an all-or-none designation<sup>26</sup> will be treated in the same manner as off-floor broker-dealer orders (*i.e.*, not treated like customer orders). The Commission notes that this is consistent with the ISE’s

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<sup>24</sup> See PIP Order, *supra* note 9, at 2789-2790 and PIM Order, *supra* note 9, at 75097-75098.

<sup>25</sup> See Securities Exchange Act Release No. 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010)(SR-Phlx-2010-05) (adopting the term “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)).

<sup>26</sup> According to the Exchange, PIXL Orders are inherently all-or-none orders because the Initiating Member guarantees that the PIXL Order will be filled in its entirety.

PIM, where ISE Priority Customer interest is executed in full before Professional Orders and market maker quotes.<sup>27</sup>

#### H. Crossing Public Customer Orders On PIXL

Proposed Rule 1080(n)(v) 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, an Initiating Member would be able to enter a PIXL Order for the account of a public customer paired with an order for the account of another public customer and such paired orders would be automatically executed without the need to commence a PIXL Auction. The execution price would be required to be expressed in the minimum quoting increment applicable to the series (e.g., a penny where the series trades in penny increments). An execution may not trade through the NBBO or at the same price as any resting customer order. The Commission believes that these specifications are designed to protect resting limit orders on the book, and would ensure that this mechanism could not be used to trade in increments that would not otherwise be available for trading outside the PIXL context.

Phlx Rule 1080(c)(ii)(C) prevents an Order Entry Firm from executing agency orders to increase its economic gain from trading against the order without first giving other trading interests on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the member was already bidding or offering on the book. However, the Exchange recognizes that it may be possible for a firm to establish a relationship with a customer or other person to deny agency orders the opportunity to interact on the Exchange and to realize similar economic benefits as it would achieve by executing agency orders as principal. The proposed rule would provide that it would be a violation of Rule 1080(c)(ii)(C) for a firm to

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<sup>27</sup> See ISE Rule 723(d)(1).

circumvent Rule 1080(c)(ii)(C) by providing an opportunity for (i) a customer affiliated with the firm, or (ii) a customer with whom the firm has an arrangement that allows the firm to realize similar economic benefits from the transaction as the firm would achieve by executing agency orders as principal, to regularly execute against agency orders handled by the firm immediately upon their entry as PIXL customer-to-customer immediate crosses. These provisions are substantially similar to those of CBOE.<sup>28</sup>

I. No Minimum Size Requirement for PIXL

Like the BOX's PIP auction, the ISE's PIM auction, and the CBOE's AIM auction, the PIXL auction would be available for orders of fewer than 50 contracts. Under the Exchange's proposal, there would be no minimum size requirement for orders entered into the PIXL for a pilot period expiring on August 31, 2011.

The Commission believes that the Exchange's proposal should provide small customer orders with the opportunity for price improvement in a manner that is consistent with the Act. The Commission will evaluate the PIXL auction during the Pilot Period to determine whether it would be beneficial to customers and to the options market as a whole to approve any proposal requesting permanent approval to permit orders of fewer than 50 contracts to be submitted to the PIXL auction. In addition, the Commission will examine the data submitted by the Exchange with respect to situations in which the PIXL auction is terminated prematurely by an unrelated order. To aid the Commission in its evaluation, the Exchange represents that it will provide the following information each month:

Regarding the early conclusion of an Auction due to the PBBO crossing the PIXL Order stop price on the same side of the market as the PIXL order, or due to a trading halt, the

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<sup>28</sup> See CBOE Rule 6.74A.09.

Exchange has undertaken to provide the following information on a monthly basis during the pilot period:

(1) The number of times that the PBBO crossed the PIXL Order stop price on the same side of the market as the PIXL Order and prematurely ended the PIXL Auction, and at what time the PIXL Auction ended;

(2) The number of times that a trading halt prematurely ended the PIXL auction and at what time the trading halt ended the PIXL Auction;

(3) Of the Auctions terminated early due to the PBBO crossing the PIXL order stop price, the number that resulted in price improvement over the PIXL Order stop price, and the average amount of price improvement provided to the PIXL Order;

(4) In the Auctions terminated early due to the PBBO crossing the PIXL order stop price, the percentage of contracts that received price improvement over the PIXL order stop price;

(5) Of the Auctions terminated early due to a trading halt, the number that resulted in price improvement over the PIXL Order stop price, and the average amount of price improvement provided to the PIXL Order;

(6) In the auctions terminated early due to a trading halt, the percentage of contracts that received price improvement over the PIXL order stop price; and

(7) The average amount of price improvement provided to the PIXL Order when the PIXL Auction is not terminated early (i.e., runs the full one second).

(8) The number of times an unrelated market or marketable limit order (against the PBBO) on the opposite side of the PIXL Order is received during the Auction Period; and



(9) The price(s) at which an unrelated market or marketable limit order (against the PBBO) on the opposite side of the PIXL Order that is received during the Auction Period is executed, compared to the execution price of the PIXL Order.

Regarding PIXL Orders of fewer than 50 contracts, the Exchange has undertaken to provide the following information on a monthly basis during the pilot period:

- (1) The number of orders of fewer than 50 contracts entered into the PIXL Auction;
- (2) The percentage of all orders of fewer than 50 contracts sent to Phlx that are entered into the PIXL Auction;
- (3) The percentage of all Phlx trades represented by orders of fewer than 50 contracts;
- (4) The percentage of all Phlx trades effected through the PIXL Auction represented by orders of fewer than 50 contracts;
- (5) The percentage of all contracts traded on Phlx represented by orders of fewer than 50 contracts;
- (6) The percentage of all contracts effected through the PIXL Auction represented by orders of fewer than 50 contracts;
- (7) The spread in the option, at the time an order of fewer than 50 contracts is submitted to the PIXL Auction;
- (8) The number of orders of 50 contracts or greater entered into the PIXL Auction;
- (9) The percentage of all orders of 50 contracts or greater sent to Phlx that are entered into the PIXL Auction;
- (10) The spread in the option, at the time an order of 50 contracts or greater is submitted to the PIXL Auction;

(11) Of PIXL trades where the PIXL Order is for the account of a public customer, and is for a size of fewer than 50 contracts, the percentage done at the NBBO plus \$.01, plus \$.02, plus \$.03, etc.;

(12) Of PIXL trades where the PIXL Order is for the account of a public customer, and is for a size of 50 contracts or greater, the percentage done at the NBBO plus \$.01, plus \$.02, plus \$.03, etc.; and

(13) Of PIXL trades where the PIXL Order is for the account of a broker dealer or any other person or entity that is not a public customer, and is for a size of fewer than 50 contracts, the percentage done at the NBBO plus \$.01, plus \$.02, plus \$.03, etc.

(14) Of PIXL trades where the PIXL Order is for the account of a broker dealer or any other person or entity that is not a public customer, and is for a size of 50 contracts or greater, the percentage done at the NBBO plus \$.01, plus \$.02, plus \$.03, etc.; and

(15) The number of orders submitted by Initiating Members when the spread was \$.05, \$.10, \$.15, etc. For each spread, specify the percentage of contracts in orders of fewer than 50 contracts submitted to the PIXL Auction that were traded by: (a) the Initiating Member that submitted the order to the PIXL; (b) Phlx Market Makers assigned to the class; (c) other Phlx members; (d) Public Customer Orders; and (e) unrelated orders (orders in standard increments entered during the PIXL Auction). For each spread, also specify the percentage of contracts in orders of 50 contracts or greater submitted to the PIXL Auction that were traded by: (a) the Initiating Member that submitted the order to the PIXL Auction; (b) Phlx market makers assigned to the class; (c) other Phlx members; (d) Public Customer Orders; and (e) unrelated orders (orders in standard increments entered during the PIXL Auction).

Regarding PIXL auto-match, the Exchange has undertaken to provide the following information on a monthly basis during the pilot period:

(1) The percentage of all Phlx trades effected through the PIXL Auction in which the Initiating Member has chosen the auto-match feature, and the average amount of price improvement provided to the PIXL Order when the Initiating Member has chosen the auto-match feature vs. the average amount of price improvement provided to the PIXL Order when the Initiating Member has chosen a stop price submission.

Regarding competition, the Exchange has undertaken to provide the following information on a monthly basis during the pilot period:

(1) For the first Wednesday of each month: (a) the total number of PIXL auctions on that date; (b) the number of PIXL auctions where the order submitted to the PIXL was fewer than 50 contracts; (c) the number of PIXL auctions where the order submitted to the PIXL was 50 contracts or greater; (d) the number of PIXL auctions (for orders of fewer than 50 contracts) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc., and (e) the number of PIXL auctions (for orders of 50 contracts or greater) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc.; and

(2) For the third Wednesday of each month: (a) the total number of PIXL auctions on that date; (b) the number of PIXL auctions where the order submitted to the PIXL was fewer than 50 contracts; (c) the number of PIXL auctions where the order submitted to the PIXL was 50

contracts or greater; (d) the number of PIXL auctions (for orders of fewer than 50 contracts) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc., and (e) the number of PIXL auctions (for orders of 50 contracts or greater) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc.

J. Section 11(a) of the Act

Section 11(a)(1) of the Act<sup>29</sup> prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, “covered accounts”) unless an exception applies. Rule 11a2-2(T) under the Act,<sup>30</sup> known as the “effect versus execute” rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2-2(T)’s conditions, a member: (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;<sup>31</sup> (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the

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<sup>29</sup> 15 U.S.C. 78k(a)(1).

<sup>30</sup> 17 CFR 240.11a2-2(T).

<sup>31</sup> The member may, however, participate in clearing and settling the transaction.

member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission, the Exchange requests that the Commission concur with Phlx's conclusion that members who enter orders into the Auction satisfy the requirements of Rule 11a2-2(T).<sup>32</sup> For the reasons set forth below, the Commission believes that Exchange members entering orders into the Auction would satisfy the conditions of the Rule.

The Rule's first condition is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.<sup>33</sup> Phlx has represented that only specialists and on-floor Streaming Quote Traders ("SQTs")<sup>34</sup> have the ability to submit orders

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<sup>32</sup> See Letter from Richard S. Rudolph, Associate General Counsel, Phlx, to Elizabeth M. Murphy, Secretary, Commission, dated October 1, 2010 ("Phlx 11(a) Letter").

<sup>33</sup> See, e.g., Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR-NYSE-90-52 and SR-NYSE-90-53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) ("1979 Release").

<sup>34</sup> An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible 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).

into the Auction from on the floor of the Exchange.<sup>35</sup> These members, however, would be subject to the “market maker” exception to Section 11(a) of the Act and Rule 11a2-2(T)(a)(1) thereunder.<sup>36</sup> Remote Streaming Quote Traders (“RSQTs”) may only submit orders into the Auction from off the floor of the Exchange.<sup>37</sup> Phlx has also represented that, while Floor Brokers have the ability to submit orders they represent as agent to the electronic limit order book through the Exchange’s Options Floor Broker Management System (“FBMS”), there is no mechanism by which such Floor Brokers can directly submit orders to the Auction or send orders to off-floor broker-dealers through FBMS for indirect submission into the Auction.<sup>38</sup> Because no Exchange members, other than specialists and SQTs, may submit orders into the Auction from on the floor of the Exchange, the Commission believes that PIXL satisfies the off-floor transmission requirement.

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<sup>35</sup> See Phlx 11(a) Letter, supra note 32, at note 21 and accompanying text. Also, the Exchange represented that SQTs and RSQTs are market makers on the Exchange. See Phlx 11(a) Letter, supra note 32.

<sup>36</sup> See 15 U.S.C. Section 78k(a)(1)(A); 17 CFR 240.11a2-2(T)(a)(1). According to the Exchange, there are no other on-floor members, other than Exchange specialists and SQTs, who have the ability to submit orders into the Auction.

<sup>37</sup> See Phlx 11(a) Letter, supra note 32, at note 18 and accompanying text. An RSQT is an ROT that is a member or member organization with no physical trading floor presence and who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

The Commission notes that, while RSQTs may only submit orders into the Auction from off the Exchange floor, RSQTs also would be subject to the “market maker” exception to Section 11(a) of the Act and Rule 11a2-2(T)(a)(1) thereunder.

<sup>38</sup> The Exchange represented that because FBMS does not have the coding required to enter orders into the Auction, and, as a result, it is impossible for such Floor Brokers to submit orders into the Auction. See Phlx 11(a) Letter, supra note 32, at note 20 and accompanying text.

Second, the Rule requires that the member not participate in the execution of its order. Phlx has represented that at no time following the submission of an order is a member organization able to acquire control or influence over the result or timing of an order's execution.<sup>39</sup> According to the Exchange, the execution of a member's order is determined by what other orders are present in the Auction and the priority of those orders.<sup>40</sup> Accordingly, the Commission believes that a member does not participate in the execution of an order submitted to the Auction.

Third, Rule 11a2-2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated systems, such as PIXL, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.<sup>41</sup> Phlx has represented that the design of the Auction ensures that no member organization has any special or unique trading

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<sup>39</sup> See Phlx 11(a) Letter, supra note 32.

<sup>40</sup> See id. A member may cancel or modify the order, or modify the instruction for executing the order, but only from off the floor. The Commission has stated that the non-participation requirement is satisfied under such circumstances, so long as such modifications or cancellations are also transmitted from off the floor. See Securities Exchange Act Release No. 14713 (April 27, 1978), 43 FR 18557 (May 1, 1978) ("1978 Release") (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

<sup>41</sup> In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release, supra note 33.

advantage in the handling of its orders after transmitting its orders to the Auction.<sup>42</sup> Based on the Exchange's representation, the Commission believes that PIXL satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.<sup>43</sup> Phlx represents that member organizations relying on Rule 11a2-2(T) for transactions effected through PIXL must comply with this condition of the Rule.<sup>44</sup>

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<sup>42</sup> See Phlx 11(a) Letter, supra note 32.

<sup>43</sup> See 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, supra note 40 (stating “[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests”).

<sup>44</sup> See Phlx 11(a) Letter, supra note 32.



#### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.<sup>45</sup>

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>46</sup> that the proposed rule change (SR-Phlx-2010-108) is approved, except that (1) paragraphs (n)(i)(A)(2), (n)(i)(B)(2), (n)(ii)(B)(4), and (n)(ii)(D) of Phlx Rule 1080 are approved on a pilot basis until August 31, 2011; and (2) there shall be no minimum size requirement for orders entered into the PIXL for a pilot period expiring on August 31, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>47</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>45</sup> 15 U.S.C. 78f(b)(5). In connection with the issuance of this approval order, neither the Commission nor its staff is granting any exemptive or no-action relief from the requirements of Rule 10b-10 under the Act. 17 CFR 240.10b-10. Accordingly, a broker-dealer executing a customer order through the PIXL auction will need to comply with all applicable requirements of that Rule.

<sup>46</sup> 15 U.S.C. 78s(b)(2).

<sup>47</sup> 17 CFR 200.30-3(a)(12).