SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71891; File No. SR-Phlx-2013-113)

April 7, 2014

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Request for Comment and Notice of Designation of Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Offer a Customer Rebate

On October 31, 2013, NASDAQ OMX PHLX LLC ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the Customer Rebate Program in Section B of the Exchange's Pricing Schedule to increase Customer rebates available to certain market participants that transact Customer orders on Phlx. The proposed rule change was published for comment in the Federal Register on November 19, 2013.[3] On November 25, 2013, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.[4]

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 70866 (November 13, 2013), 78 FR 69472 ("Notice").

4 See Securities Exchange Act Release No. 70940 (November 25, 2013), 78 FR 71700 (November 29, 2013) ("Order Instituting Proceedings").

The Commission has received six comment letters on the proposal[5] and one rebuttal letter from Phlx.[6]

Section 19(b)(2) of the Act[7] provides that, after instituting proceedings to determine whether to approve or disapprove a proposed rule change, within 180 days of the publication of notice of the filing of a proposed rule change, the Commission shall either approve the proposed rule change or disapprove the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The 180th day for this filing is May 18, 2014.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to review comment letters submitted in response to the Order Instituting Proceedings, to review the Exchange's response to such comments, and to consider and take action on the Exchange's proposed rule change.

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5 See letters to Elizabeth M. Murphy, Secretary, Commission, from: Michael J. Simon, Secretary, International Securities Exchange, LLC, dated November 11, 2013; William O'Brien, Chief Executive Officer, Direct Edge Holdings LLC, dated November 13, 2013; Brian O'Neill, Vice President and Senior Counsel, Miami International Securities Exchange, LLC, dated November 27, 2013; John C. Nagel, Managing Director and General Counsel, Citadel Securities, dated December 18, 2013; Angelo Evangelou, Associate General Counsel, Chicago Board Options Exchange, Inc., dated December 20, 2013; and Michael J. Simon, Secretary, International Securities Exchange, LLC, dated December 20, 2013.

6 See letter to Elizabeth M. Murphy, Secretary, Commission, from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ OMX PHLX LLC, dated January 24, 2014 ("Phlx Response Letter").

7 15 U.S.C. 78s(b)(2).

The Commission also seeks additional comment to help further inform its analysis of the proposed rule change. Specifically, the Commission invites interested persons to submit data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. In particular, the Commission seeks comment on the following.

Phlx states in its January 24, 2014 response to comments "…if an exchange believes that it would be attractive to customers to have a choice between multiple affiliated exchanges, it may create such exchanges as some self-regulatory exchanges –including commenters CBOE and ISE – have already done."[8] Phlx further states that "[t]here are no significant barriers to SROs creating additional options exchanges."[9] Phlx's response suggests that, if the proposal were approved, there is a potential for entities to create new options exchanges in order to compete with Phlx.[10]

The Commission has previously stated that its task has been to facilitate an appropriately balanced market structure that promotes competition among markets, while minimizing the potentially adverse effects of fragmentation on efficiency, price transparency, best execution of investor orders, and order interaction.[11] In that Concept Release, the Commission discussed the impact of competition among trading venues and market fragmentation.[12] The Commission also stated that when many trading centers compete for order flow in the same security, however,

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8 See Phlx Response Letter, supra note 6, at 7.

9 Id.

10 Id.

11 See Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3593, 3597 (Jan. 21, 2010) ("Concept Release").

12 Id.

such competition can lead to the fragmentation of order flow in that security.[13] The Commission further stated that fragmentation can inhibit the interaction of investor orders and thereby impair certain efficiencies and the best execution of investors' orders.[14] On the other hand, the Commission stated that mandating the consolidation of order flow in a single venue would create a monopoly and thereby lose the important benefits of completion among markets.[15] The Commission stated that the benefits of such competition include incentives for trading centers to create new products, provide high quality trading services that meet the needs of investors, and keep trading fees low.[16]

As a result, the Commission has stated that such market fragmentation concerns have presented challenges to the Commission's objective to protect investors and maintain fair and orderly markets.[17]

1. What are commenters' views on the impact that Phlx's proposal would have on the current options market structure? Please explain. What would the impact be, if any, on the current equity market structure? Please explain.

2. What are commenters' views on the impact the proposal would have, if any, on the trading of options orders across multiple options exchanges? Please explain. Specifically, what are commenters' views as to the impact, if any, on order interaction, quote competition, liquidity (both top of book and depth of book) on each options exchange or across all options exchanges, and/or short-term and long-term volatility? Please explain. What are commenters' views on the

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13 Id.

14 Id.

15 Id.

16 See Concept Release, supra note 11, at 3597.

17 Id.

impact the proposal would have, if any, on the best execution of investor orders, including the implicit costs of executing their orders (such as spreads and price impact)? Please explain.

3. What are commenters' views on the impact the proposal would have, if any, on the current total number of options exchanges? Please explain. Do commenters believe that the total number of exchanges that list and trade standardized options would likely increase, decrease, or remain unchanged? Please explain.

4. What are commenters' views on how the proposal would impact the incentives for existing exchanges or new entities to create multiple exchanges under one group? What are commenters' views on how, if any, the proposal would impact the incentives for: (1) entities that currently operate multiple options exchanges under common ownership ("exchange group") to create additional options exchanges under their existing exchange group; (2) stand-alone options exchanges to create new options exchanges under an exchange group; or (3) stand-alone exchanges and/or exchange groups to consolidate and form new options exchange groups. Please elaborate.

5. What are commenters' views on the potential explicit costs (e.g., connectivity costs, routing costs) or benefits of increasing or decreasing the total number of options exchanges? Please identify such potential costs or benefits and explain why they would change.

6. Commenters are requested to provide empirical data and other factual support for their views.

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-2013-113 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-2013-113. 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-2013-113 and should be submitted on or before [insert date 14 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 28 days from publication in the Federal Register].

Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act and for the reasons stated above, the Commission designates July 17, 2014, as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR-Phlx-2013-113).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill
Deputy Secretary

[18] 17 CFR 200.30-3(a)(57).