

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69829; File No. SR-Phlx-2013-65)

June 21, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to Which Complex Orders Can Initiate a Complex Order Live Auction

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 June 11, 2013, 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, II, and III 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1080.08(e) to provide that the Exchange can determine, based on origin type, which Complex Orders can initiate a Complex Order Live Auction (“COLA”), as described further below.

The text of the proposed rule change is below; proposed new language is italicized.

\* \* \* \* \*

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

(a) – (o) No change.

••• *Commentary:* -----

**.01- .07** No change.

---

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

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

**.08** Complex Orders on Phlx XL.

(a) – (d) No change.

(e) Process for Complex Order Live Auction ("COLA"). Complex Orders on the Complex Order Book ("CBOOK," as defined below) may be subject to an automated auction process.

(i) For purposes of paragraph (e):

(A) COLA is the automated Complex Order Live Auction process. A COLA may take place upon identification of the existence of a COLA-eligible order either:

(1) following a COOP, or (2) during normal trading if the Phlx XL system receives a Complex Order that improves the cPBBO.

(B) (1) A "COLA-eligible order" means a Complex Order (a) that is identified by way of a COOP, or (b) that, as determined by the Exchange, considering the Complex Order origin types (as defined in Rule 1080.08(b) above), upon receipt, improves the cPBBO respecting the specific Complex Order Strategy that is the subject of the Complex Order. If the Phlx XL system identifies the existence of a COLA-eligible order following a COOP or by way of receipt during normal trading of a Complex Order that improves the cPBBO, such COLA-eligible order will initiate a COLA, during which Phlx XL participants may bid and offer against the COLA-eligible order pursuant to this rule. COLA-eligible orders will be executed without consideration of any prices that might be available on other exchanges trading the same options contracts.

(2) Notwithstanding the foregoing, a Complex Order that would otherwise be a COLA-eligible order that is received in the Phlx XL system during the final seconds of any trading session shall not be COLA-eligible. The Exchange shall establish the number of seconds, not to exceed 10 seconds, in an Options Trader Alert.

(ii) - (ix) No change.

(f) – (i) No change.

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 proposal is to adopt the same flexibility as three other options exchanges regarding which complex orders can trigger an auction.<sup>3</sup> For example, CBOE’s rule provides:

(2) A "COA-eligible order" means a complex order that, **as determined by the Exchange** on a class-by-class basis, is eligible for a COA<sup>4</sup> considering the order's

---

<sup>3</sup> See CBOE Rule 6.53C(d)(i)(2), NYSE Arca Rule 6.91(c)(1) and NYSE MKT Rule 980NY(e)(1).

marketability (defined as a number of ticks away from the current market), size, complex order type (as defined in paragraphs (a) and (b) above) and **complex order origin types** (as defined in subparagraph (c)(i) above).<sup>5</sup> Complex orders processed through a COA may be executed without consideration to prices of the same complex orders that might be available on other exchanges...[emphasis added]

Although this CBOE rule permits the CBOE to determine more than just which complex order origin types are eligible for its COA,<sup>6</sup> the Exchange is only seeking this flexibility respecting complex order origin types.

The Exchange's Complex Order System is governed by Rule 1080.08 and offers a COLA for eligible orders. The COLA is an automated auction that is intended to seek additional liquidity and price improvement for Complex Orders.

The Exchange now proposes to provide that the Exchange can determine, based on origin type, which Complex Orders can initiate a COLA. The origin type (also known as origin code) refers to the participant types listed in Rule 1080.08(b) and Rule 1000(b)(14), which include non-broker-dealer customers and non-market-maker off-floor broker-dealers,<sup>7</sup> SQTs, RSQTs, non-SQT ROTs, specialists and non-Phlx market makers on another exchange (together, market makers),<sup>8</sup> Floor Brokers<sup>9</sup> and professional customers.<sup>10</sup>

---

<sup>4</sup> A COA is the automated complex order RFR auction process. See CBOE Rule 6.53C(d)(i)(1).

<sup>5</sup> This provision states that CBOE's complex order origin types are non-broker-dealer public customer, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange.

<sup>6</sup> Namely, the CBOE can determine which class, how many ticks away, size and complex order type trigger a COA.

<sup>7</sup> Rule 1080.08(b)(i).

<sup>8</sup> Rules 1014 and 1080.08(b)(ii).

<sup>9</sup> Rule 1080.08(b)(iii).

<sup>10</sup> Rule 1000(b)(14). The term "professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per

The Exchange proposes to determine which origin type can trigger a COLA. If the Exchange determines that certain origin codes cannot trigger a COLA, those Complex Orders would continue to be handled pursuant to Rule 1080.08. For example, paragraph (f) governs how Complex Orders are placed on the CBOOK and how they are executed.

The Exchange intends to permit some orders, based on origin type, to not trigger a COLA because it believes that some of its participants do not wish to have their Complex Orders subject to a COLA because it results in a delay, during which markets can change and other orders can trade. The Exchange has learned that the ability to provide, under this proposal, that certain orders do not trigger a COLA may attract more of those Complex Orders to the Exchange, which the Exchange seeks to do. For example, the Exchange believes that off-floor broker-dealers and professionals, which are treated like off-floor broker-dealer orders for purposes of Rule 1080.08, seek an immediate execution. The Exchange believes that such participants prefer the speed and certainty of execution over the possibility of price improvement for their Complex Orders. The Exchange seeks the ability to determine, for example, that off-floor broker-dealers and professionals will not trigger a COLA. The Exchange is not seeking to distinguish professionals from off-floor broker-dealers for purposes of who initiates a COLA, and, therefore, is referring to the participant origin codes in Rule 1080.08(b) only. The proposed text would therefore not permit the Exchange to determine that off-floor broker-dealers can initiate a COLA but not

---

day on average during a calendar month for its own beneficial account(s). A professional will be treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g)(except with respect to all-or-none orders, which will be treated like customer orders, except that orders submitted pursuant to Rule 1080(n) for the beneficial account(s) of professionals with an all-or-none designation will be treated in the same manner as off-floor broker-dealer orders), 1033(e), 1064.02 (except professional orders will be considered customer orders subject to facilitation), 1080(n) and 1080.08 as well as Options Floor Procedure Advices B-6, B-11 and F-5. Member organizations must indicate whether orders are for professionals.

professionals, because, pursuant to Rule 1000(b)14, professionals are treated the same as off-floor broker-dealers for purposes of all of Rule 1080.08.<sup>11</sup>

In addition to seeking flexibility, the Exchange is adopting this language partly to address the situation that, today, market maker orders do not trigger a COLA. The Exchange began permitting market maker orders to be entered as DAY orders recently.<sup>12</sup> Previously, they could only be entered as IOC orders and thereby never triggered a COLA. Accordingly, the Exchange determined not to permit market maker DAY orders to trigger a COLA, but did not change its rule to provide for this. Changing its rule to provide for flexibility as to which order triggers a COLA will address this situation. The Exchange continues to believe that, generally, market makers would prefer not to trigger a COLA, because it results in a delay. Of course, those market makers can enter their orders as DNA orders<sup>13</sup> or IOC orders<sup>14</sup> to avoid a COLA; however, both of these order types are cancelled if not immediately executed, thereby removing the opportunity for market makers to send an order that can both execute without delay and result in the remainder posting on the CBOOK.

Accordingly, the Exchange seeks the flexibility that other options exchanges have to determine which Complex Orders trigger an auction. If this flexibility is applied to prevent certain origin types from triggering a COLA, the Exchange does not believe that this will disadvantage them and may in fact be more consistent with their trading goals and style, based on informal input the Exchange has received.

---

<sup>11</sup> Consistent with Rule 1000(b)(14), the Exchange is not proposing to treat professionals differently than off-floor broker-dealers.

<sup>12</sup> See Securities Exchange Act Release No. 63777 (January 26, 2011), 76 FR 5630 (February 1, 2011) (SR-Phlx-2010-157).

<sup>13</sup> See Rule 1080.08(a)(viii).

<sup>14</sup> See Rule 1080.08(b).

The Exchange notes that it is common for certain functionality not to be available to all origin types. For example, as noted above, Complex Orders with certain time-in-force instructions are available only to certain origin types; today, market makers cannot enter Good-Til-Cancelled Complex Orders.<sup>15</sup> In addition, CBOE determines which participants can respond to its COA.<sup>16</sup>

The Exchange intends to implement these changes in July or August, pending final technological readiness, and will issue an Options Trader Alert (“OTA”) indicating when the changes become operative and which origin codes in which options can trigger a COLA.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>17</sup> in general, and with Section 6(b)(5) of the Act,<sup>18</sup> in particular, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the Exchange believes that adopting this provision, similar to other exchanges’, should attract additional Complex Orders to the Exchange. The Exchange believes that some market participants prefer an immediate execution over the benefits of an auction, such that they may choose to send their complex orders to another options exchange that has the ability under its rules not to trigger an auction. Accordingly, the proposal should help the Exchange garner more Complex Order business, which, in turn, should benefit the various Exchange participants who are interested in

---

<sup>15</sup> See Rule 1080.08(b)(ii).

<sup>16</sup> See CBOE Rule 6.53C(d)(iii).

<sup>17</sup> 15 U.S.C. 78f.

<sup>18</sup> 15 U.S.C. 78f(b)(5).

trading using Complex Orders. The Exchange does not believe that the proposal is unfairly discriminatory, because Complex Orders of the same origin type would be treated the same by the Exchange; although a particular origin type may not, under this proposal, trigger a COLA, this should not result in unfair discrimination respecting such origin type, because such participants may not, as the Exchange has learned, believe that a COLA is necessary or helpful. Such participants have expressed their preference for speed and certainty of execution, over the possibility of price improvement for their Complex Orders. As stated above, the Exchange offers a Do Not Auction order type,<sup>19</sup> which does not trigger an auction. However, that order type is cancelled if not immediately executed, so it is not necessarily useful to a participant who seeks to have a complex order go on the CBOOK. Of course, the Exchange could change that order type or develop a new one. Instead, the Exchange has determined for implementation reasons to seek the ability to determine which Complex Orders initiate a COLA, similar to other options exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition; even though it would enable the Exchange to determine that certain participants' orders would not trigger a COLA, the ability of those participants to compete amongst each other and with other market participants would be enhanced and not diminished, because they have requested this functionality for the reasons stated above.

Nor will the proposal impose a burden on competition among the options exchanges,

---

<sup>19</sup> See Rule 1080.08(a)(viii).



because, in addition to the vigorous competition for order flow among the options exchanges, the proposal is the same as three other exchanges that determine, with flexibility, which complex orders trigger an auction. To the extent that market participants disagree with the particular approach taken by the Exchange herein, market participants can easily and readily direct complex order flow to competing venues. In fact, the proposal is pro-competitive because it permits the Exchange to better compete with those exchanges.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-2013-65 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-2013-65. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2013-65, 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>20</sup>

Jill M. Peterson  
Assistant Secretary

---

<sup>20</sup> 17 CFR 200.30-3(a)(12).