SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76742; File No. SR-Phlx-2015-49)

December 22, 2015

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Amend and Correct Phlx Rule 1080.07

I.   Introduction

On June 5, 2015, 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 and correct several provisions of Phlx Rule 1080.07, "Complex Orders on Phlx XL," which governs the handling of Complex Orders submitted to the Phlx's electronic Complex Order System ("System"). The proposed rule change was published for comment in the Federal Register on June 23, 2015.[3] On July 30, 2015, the Commission extended the time period for Commission action to September 21, 2015.[4] On September 17, 2015, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] The Phlx filed Amendment Nos. 1 and 2 to the proposal on November 4, 2015, and December 3, 2015, respectively.[6] On December 15, 2015, the Commission extended the time period for

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

2   17 CFR 240.19b-4.

3   See Securities Exchange Act Release No. 75189 (June 17, 2015), 80 FR 35997 ("Notice").

4   See Securities Exchange Act Release No. 75570, 80 FR 46619 (August 5, 2015).

5   See Securities Exchange Act Release No. 75942, 80 FR 57406 (September 23, 2015).

6   As described more fully in Section II(H) below, Amendment No. 1 revises the proposal to further clarify or add detail to several rules, provide additional rationale for certain proposed changes, and specify the time when the Phlx plans to begin accepting all-or-none Complex Orders. Amendment No. 2 revises several rules to clarify the manner in

Commission action to February 18, 2016.[7] The Commission received no comments regarding the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment Nos. 1 and 2 and is approving the proposed rule change, as amended, on an accelerated basis.

II.   Description of the Proposal

The Phlx proposes to amend and correct inconsistencies in several provisions of Phlx Rule 1080.07, which governs the handling of Complex Orders submitted to the System. The System currently includes a Complex Order Opening Process ("COOP"); the Complex Order Live Auction ("COLA"), an automated auction for seeking liquidity and price improvement for Complex Orders; and a Complex Limit Order Book ("CBOOK"). In addition, the proposal revises Phlx Rule 1080.07 to describe the acceptance and treatment of all-or-none Complex Orders.

A.   Amendments to the COOP Rules

The Phlx proposes several changes to Phlx Rule 1080.07(d) to accurately describe the operation of the COOP for Complex Order Strategies and to provide additional details regarding the COOP.[8] Currently, Phlx Rule 1080.07(d)(ii) provides that upon receipt of a single COLA-eligible order, the System initiates the opening process. The Phlx proposes to revise Phlx Rule 1080.07(d)(ii) to indicate that, instead, the COOP operates in a manner similar to a traditional

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which participants may participate in auctions and in the opening process. When the Phlx filed Amendment Nos. 1 and 2 with the Commission, it also posted the amendments on the Phlx's website and submitted them as a comment letters to the file, which the Commission posted on its website and placed in the public comment file for SR-Phlx-2015-49.

[7]   See Securities Exchange Act Release No. 76648, 80 FR 79385 (December 21, 2015).

[8]   A Complex Order Strategy is a particular combination of components of a Complex Order and their ratios to one another. See Phlx Rule 1080.07(a)(ii).

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opening process for single leg orders, taking into account all trading interest in a particular

Complex Order Strategy (rather than auctioning a single order), to determine the price at which

the maximum number of contracts may trade, and calculating any imbalance.[9] The Phlx states

that the opening process maximizes price discovery and seeks to execute as much interest as

possible at the best possible price(s).[10]

Phlx Rule 1080.07(d)(ii), as amended, provides that the Phlx will conduct a COOP for

any Complex Order Strategy for which the Phlx has received an order prior to the opening,

unless the Complex Order Strategy is already open as a result of another electronic auction

process or another electronic auction involving the same Complex Order Strategy is in

progress.[11] Following a trading halt, the System will conduct a COOP for any Complex Order

Strategy that has a Complex Order present or that had previously opened prior to the trading

halt.[12] The System will initiate the COOP once trading in each option component of a Complex

Order Strategy has opened (or re-opened following a trading halt) for a certain configurable time

not to exceed 60 seconds.[13] This opening delay timer is intended to allow options prices to

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[9]   See Notice, 80 FR at 35997. Phlx states that it currently operates the COOP as proposed. Id.

[10]   See Notice, 80 FR at 36004.

[11]   Phlx Rule 1080.07(d)(ii) currently indicates that the System will conduct a COOP if a Complex Order is pending at the opening or re-opening following a trading halt. The Phlx is revising the rule to indicate that the receipt of an order will trigger a COOP, regardless of whether the order is still pending. For example, an order that was no longer pending because the sender has canceled the order will nonetheless trigger a COOP. See Notice, 80 FR at 35997.

[12]   See Phlx Rule 1080.07(d)(ii).

[13]   See id. The proposal deletes provisions in Phlx Rule 1080.07(d)(ii)(A)(2) which states that the System will not engage the COOP Timer upon re-opening Complex Order trading when either: (a) the Exchange's automated execution system was disengaged and subsequently re-engaged, or (b) the Phlx XL Risk Monitor Mechanism was engaged and subsequently disengaged. These provisions are incorrect because the Exchange cannot disengage its automatic execution system and because the operation of the Risk Monitor

stabilize after the options opening before permitting Complex Orders to become available for trading.[14] COOPs for different Complex Order Strategies may occur at the same time.[15]

The COOP is comprised of two phases, the COOP Timer and the COOP Evaluation.[16] During the COOP Timer, the Phlx will send a broadcast message indicating that a COOP has been initiated for a Complex Order Strategy ("Complex Order Opening Auction Notification").[17] The Complex Order Opening Auction Notification, which is intended to attract interest to the opening process and encourage the opening of a Complex Order Strategy, will identify the Complex Order Strategy, the opening price (based on the maximum number of contracts that can be executed at one particular price, except if there is no price at which any orders may be executed), and the imbalance side and volume, if any.[18] The Complex Order Opening Notification starts the COOP Timer, during which Phlx XL Participants may submit responses to the Complex Order Opening Auction Notification.[19] Complex Orders received prior to the COOP Timer and Complex Orders received during the COOP Timer that are not marked as a

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Mechanism does not impact the COOP Timer. See Notice, 80 FR at 35998. The proposal also deletes the references to Phlx Rule 1080.07(d)(ii)(A)(2) in Phlx Rules 1080.07(c)(ii) and (d)(ii)(A)(1). In addition, the proposal deletes the provision in Phlx Rule 1080.07(c)(ii)(D) indicating that Complex Orders will not trade on Phlx XL when the Phlx's automated execution system is disengaged for any options component of a Complex Order. See Amendment No. 1.

[14] See Notice, 80 FR at 36004.

[15] See Notice, 80 FR at 35998.

[16] See Phlx Rule 1080.07(d)(ii).

[17] See Phlx Rule 1080.07(d)(ii)(A)(1). The Complex Order Opening Auction Notification is sent over an order feed, Phlx Orders, which contains Complex Order information, as well as over the Specialized Quote Feed. See Notice, 80 FR at 35998.

[18] See Phlx Rule 1080.07(d)(ii)(A)(1) and Notice, 80 FR at 36004.

[19] See Phlx Rule 1080.07(d)(ii)(A)(1).

response to the Complex Order Opening Auction Notification will be visible to Phlx XL participants upon receipt.[20]

New subparagraphs (1), (2), and (3), of Phlx Rule 1080.07(d)(ii)(B) describe the manner in which market participants may respond to a Complex Order Opening Auction Notification. Phlx XL participants[21] may bid and/or offer on either or both side(s) of the market during the COOP Timer by submitting one or more Complex Orders in $0.01 increments (a "Complex Order Response").[22] A Complex Order Response that is marked as a response will not be visible to Phlx XL participants.[23]

In addition to submitting Complex Order Responses, Phlx XL market makers[24] may bid and/or offer on either or both side(s) of the market during the COOP Timer by submitting one or more bids/offers known as COOP Sweeps.[25] A Phlx XL market maker may submit multiple COOP Sweeps at different prices in increments of $0.01 in response to a Complex Order Opening Auction Notification, regardless of the minimum trading increment applicable to the specific series.[26] A Phlx XL market maker may change the size of a previously submitted COOP

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[20]   See Phlx Rule 1080.07(d)(ii)(A)(4).

[21]   Under Phlx Rule 1080.07(a)(vii), as proposed to be amended, "Phlx XL participant" "means SQTs, RSQTs, non-SQT ROTs, specialist and non-Phlx market makers on another exchange; non-broker-dealer customers, Firms and non-market maker off-floor broker-dealers; and Floor Brokers using the Options Floor Broker Management System.

[22]   See Phlx Rule 1080.07(d((ii)(B) and Amendment No. 2.

[23]   See Phlx Rule 1080.07(d)(ii)(B)(3). In contrast, a Complex Order submitted during the COOP Timer that is not marked as a response will be visible to Phlx XL participants upon receipt. See Phlx Rule 1080.07(d((ii)(A)(4).

[24]   Under Phlx Rule 1080.07(a)(vii), as proposed to be amended, a Phlx XL market maker is an SQT, RSQT, or a specialist.

[25]   See Phlx Rule 1080.07(d)(ii)(B). A COOP Sweep is a one-sided electronic quotation at a particular price submitted for execution against opening trading interest in a particular Complex Order Strategy. See id.

[26]   See Phlx Rule 1080.07(d)(ii)(B)(1).

Sweep during the COOP Timer.[27] Phlx XL market makers are the only participants that may submit COOP Sweeps.[28] According to the Phlx, the Exchange developed COOP Sweeps to allow Phlx XL market makers to be able to expeditiously submit one-sided responsive interest without having to enter an order, which involves a different protocol and method of entry.[29] The Phlx states that COOP Sweeps were intended to encourage Phlx XL market makers to submit responsive interest while managing risk, utilizing a single protocol.[30] The Phlx notes that the ability to enter two-sided quotes also is available only to Phlx XL market makers.[31] The Phlx represents that there is no advantage to submitting a COOP Sweep rather than a Complex Order, and that market participants who are not Phlx XL market makers are not disadvantaged by their inability to submit COOP Sweeps, much as they are not disadvantaged by their inability to submit quotes or sweeps for non-Complex Orders.[32] In this regard, the Phlx states that Phlx XL participants who are not market makers may submit Immediate-or-Cancel ("IOC") orders, which behave in the same manner as a sweep.[33]

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[27] See Phlx Rule 1080.07(d)(ii)(B)(2). The System uses a Phlx XL market maker's most recently submitted COOP Sweep at each price level as the market maker's response at that price level, unless the COOP Sweep has a size of zero. A COOP Sweep with a size of zero will remove a Phlx XL market maker's COOP Sweep from that COOP at that price level. See id.

[28] See Notice, 80 FR at 35999. Similarly, as discussed more fully below, Phlx XL market makers are the only participants that may submit sweeps of non-Complex Orders, COLA Sweeps, and CBOOK Sweeps. See id. and Amendment No. 1.

[29] See id. The Phlx states that Phlx XL market makers use a particular quoting protocol to submit quotes and sweeps to the Phlx. See Notice, 80 FR at 36004.

[30] See id.

[31] See Notice, 80 FR at 36004.

[32] See id. In addition, the Phlx notes that some Phlx XL market makers choose to submit their interest in the form of a Complex Order. See Notice, 80 FR at 35999.

[33] See Notice, 80 FR at 36004.

COOP Sweeps and Complex Order Responses will not be visible to any participant and will not be disseminated by the Exchange.[34] The Phlx believes that this information would not be useful due to the temporary, quick nature of the COOP.[35] COOP Sweeps and Complex Order Responses that remain unexecuted at the end of the COOP Timer after all executions have been completed will expire.[36] A Complex Order submitted during the COOP Timer that is not marked as a response will be available to be traded after the opening of the Complex Order Strategy unless it is marked IOC.[37] Such a Complex Order will be placed on the CBOOK if it is not executed during the opening.[38]

Upon expiration of the COOP Timer, the COOP Evaluation begins.[39] During the COOP Evaluation, the System determines, for a Complex Order Strategy, the price at which the maximum number of contracts may trade, taking into account Complex Orders marked all-or-none (which will be executed if possible), unless the maximum number of contracts may trade only without including all-or-none orders.[40] The Phlx will open the Complex Order Strategy at that price, executing marketable trading interest in the following order: first, non-broker-dealer customers in time priority; next, Phlx XL market makers on a pro rata basis; and, lastly, all other

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[34]   See Phlx Rule 1080.07(d)(ii)(B)(3).

[35]   See Notice, 80 FR at 36004.

[36]   See id.

[37]   See id.

[38]   See Amendment No. 2.

[39]   See Phlx Rule 1080.07(d)(ii)(C).

[40]   See id. and Amendment No. 1. See Notice, 80 FR at 35999, for examples illustrating the handling of all-or-none orders at the opening. The Phlx notes that an all-or-none Complex Order will be executed if the price and size of the all-or-none order meets the criterion of executing the maximum number of contracts possible to establish the COOP Evaluation price. See Amendment No. 1.

participants on a pro rata basis.[41] The imbalance of Complex Orders that are unexecutable at that

price will be placed on the CBOOK.[42]

If the System determines at the end of the COOP Timer that no trade is possible (i.e.,

there are no market or marketable limit Complex Orders or COOP Sweeps, Complex Orders or

COOP Sweeps that are equal to or improve the cPBBO,[43] and/or Complex Orders or COOP

Sweeps that cross within the cPBBO in the System), all Complex Orders received during the

COOP Timer will be placed on the CBOOK.[44] If the System determines that a trade is possible

(i.e., there are market or marketable limit Complex Orders or COOP Sweeps, Complex Orders or

COOP Sweeps that are equal to or improve the cPBBO, and/or Complex Orders or COOP

Sweeps that cross within the cPBBO in the System), Phlx Rule 1080.07(d)(ii)(C)(2) describes

the executions that will occur.[45] The Phlx notes that the opening price logic maximizes the

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41   See Phlx Rule 1080.07(d)(ii)(C).

42   See id.

43   The cPBBO is the best net debit or credit price for a Complex Order Strategy based on
      the Phlx best bid and/or offer ("PBBO") for the individual options components of the
      Complex Order Strategy and, where the underlying security is a component of the
      Complex Order Strategy, the national best bid and/or offer for the underlying security.
      The cPBBO is a calculated number and does not include orders on the CBOOK or
      interest on other exchanges. See Notice, 80 FR at 35999-36000, and Phlx Rule
      1080.07(a)(iv).

44   See Phlx Rule 1080.07(d)(ii)(C)(1).

45   If a trade is possible based on interest in the System, the System will do the following: if
      such interest crosses and does not match in size, the execution price is based on the
      highest (lowest) executable offer (bid) price when the larger sized interest is offering
      (bidding), provided, however, that if there is more than one price at which the interest
      may execute, the execution price when the larger sized interest is offering (bidding) is the
      midpoint of the highest (lowest) executable offer (bid) price and the next available
      executable offer (bid) price rounded, if necessary, down (up) to the closest minimum
      trading increment. If the crossing interest is equal in size, the execution price is the
      midpoint of lowest executable bid price and the highest executable offer price, rounded,
      if necessary, up to the closest minimum trading increment. Executable bids/offers
      include any interest which could be executed at the net price without trading through
      residual interest or the cPBBO, or without trading at the cPBBO where there is non-

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number of contracts executed during the opening process and ensures that residual contracts of partially executed orders or quotes are at a price equal to or inferior to the opening price.[46] The logic ensures that there is no remaining unexecuted interest available at a price that crosses the opening price.[47] If multiple prices exist that ensure that there is no remaining unexecuted interest available through such price(s), the opening logic chooses the midpoint of such price points.[48] A Complex Order Strategy will be open after the COOP even if no executions occur.[49] Thus, a Complex Order Strategy will be open based on the fact that interest was received, regardless of whether the response interest results in an execution.[50]

The proposal revises the rules describing the operation of the COLA to indicate that the System uses the process set forth in Phlx Rule 1080.07(d)(ii)(C)(2) not only to determine executions at the conclusion of the COOP, but also to determine executions against a COLA-eligible order at the conclusion of the COLA.[51] The Phlx believes that the correction of Phlx Rule 1080.07(e)(viii)(C)(3) and the level of detail provided in the revised rule will help Phlx

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broker-dealer customer interest at the best bid or offer for any leg, consistent with Rule 1080.07(c)(iii). if there is any remaining interest after complex interest has traded against other complex interest, there is no component that consists of the underlying security, and the order is not marked all-or-none, such interest may "leg" whereby each options component may trade at the PBBO with existing quotes and/or limit orders on the limit order book for the individual components of the Complex Order; provided that remaining interest may execute against any eligible Complex Orders received before legging occurs. If the remaining interest has a component that consists of the underlying security or is an all-or-none Complex Order, such Complex Order will be placed on the CBOOK. See Phlx Rule 1080.07(d)(ii)(C)(2). Examples illustrating the execution of orders pursuant to Phlx Rule 1080.07(d)(ii)(C)(2) appear in the Notice, 80 FR at 36000-36001.

[46] See Notice, 80 FR at 36000.

[47] See id.

[48] See id.

[49] See Phlx Rule 1080.07(d)(ii)(C)(3).

[50] See Notice, 80 FR at 36004.

[51] See Phlx Rule 1080.07(e)(viii)(C)(3) and Notice, 80 FR at 36003.

participants understand how their execution price is determined, and that the method is fair and orderly, based on both size and midpoint, which reflect the totality of the remaining interest.[52] In addition, the Phlx believes that this execution process is consistent with just and equitable principles of trade because it is based on the price of the larger sized interest, which affects more options contracts and is likely to result in more executions than the current rule would provide.[53] The Phlx further notes that the provision in Phlx Rules 1080.07(d)(ii)(C)(2) and 1080.07(e)(viii)(C)(3) allowing certain remaining interest to "leg" by trading at the PBBO with existing quotes and/or limit orders on the limit order book may provide any opportunity for additional Complex Orders to trade.[54]

B.   IOC Orders and Do Not Auction ("DNA") Orders

The proposal revises the Phlx's rules to describe the handling of IOC and DNA Orders at the opening. Complex Orders marked as IOC or DNA that are received before the COOP is initiated will be cancelled and will not participate in the COOP, although a COOP will occur in that Complex Order Strategy.[55] The Phlx believes that it is appropriate for the COOP to occur even if the IOC or DNA order that triggered the COOP has been cancelled because the opening process is intended to open key strategies in which participants are interested.[56]

IOC Complex Orders received during a COOP will join the COOP and will be treated like any other Complex Order, except that they will be cancelled at the end of the COOP Timer

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[52]   See Notice, 80 FR at 36003.

[53]   See id. at 36005.

[54]   See id.

[55]   See Phlx Rule1080.07(d)(ii)(A)(5). In such cases, a Complex Order Opening Auction Notification is sent with a price and size of zero, and a buy side. See Notice, 80 FR at 35998. The Phlx notes that non-Complex Orders marked IOC that are received prior to the opening of the option also are cancelled upon receipt. See Notice, 80 FR at 36004.

[56]   See Notice, 80 FR at 35998.

if they are not executed.[57] DNA Complex Orders received during a COOP will be cancelled and will not participate in the COOP because allowing them to join the COOP would involve a delay.[58]

The proposal also revises Phlx Rule 1080.07(b)(iii) to state that Floor Brokers using the Options Floor Broker Management System may enter Complex Orders as IOC only on behalf of "SQTs, RSQTs, non-SQT ROTs, specialists, non-Phlx market makers on another exchange, and Firms," rather than on behalf of "broker-dealers or affiliates of broker-dealers." The Phlx states that this revision merely replaces vague terms (broker-dealers or affiliates of broker-dealers) with more precise terms that are linked to definitions in the rule.[59]

C.   Amendments to the COLA Rules

The proposal makes several changes to the rules governing the operation of the COLA. First, the proposal amends and corrects Phlx Rule 1080.07(e)(iv) to add a definition of COLA Sweep and to indicate that only Phlx XL market makers, rather than Phlx XL participants, may submit COLA Sweeps.[60] Any COLA Sweeps that remain unexecuted at the end of the COLA Timer once all executions are complete will expire.[61] Phlx XL participants may bid and/or offer on either or both side(s) of the market during the COLA timer by submitting one or more

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[57]   See Notice, 80 FR at 35998. The Phlx notes that this is intended to try to execute the order, because the order may be responding to the Complex Order Opening Auction Notification. See id.

[58]   See Phlx Rule 1080.07(d)(ii)(A)(5) and Notice, 80 FR at 35998.

[59]   See id. at 36005.

[60]   A COLA Sweep in is a one-sided electronic quotation submitted for execution against other trading interest in a particular Complex Order Strategy. See Phlx Rule 1080.07(e)(iv).

[61]   See id.

Complex Orders in $0.01 increments.[62] A Complex Order marked as a response will not be visible to any participant and will not be disseminated by the Phlx.[63] A Complex Order marked as a response will expire if it is unexecuted at the end of the COLA Timer.[64] A Complex Order not marked as a response that is not executed during the COLA will be available to be placed on the CBOOK, unless the order is marked IOC.[65]

Second, the proposal revises the specialist allocation provisions in Phlx Rule 1080.07(e)(vi)(C). Phlx Rule 1080.07(e)(vi)(C) currently provides that, after customer marketable Complex Orders have been executed against a COLA-eligible order, a specialist that submits a COLA Sweep for the same price as other COLA Sweeps that are eligible for execution against the COLA-eligible order will be entitled to receive the greater of: (1) the proportion of the aggregate size at the cPBBO associated with such specialist's COLA Sweep, SQT and RSQT COLA Sweeps, and non-SQT ROT Complex Orders on the CBOOK; (2) the Enhanced Specialist Participation as described in Phlx Rule 1014(g)(ii) (which provides a specialist with an enhanced participation of 30% of the remainder of an order under certain circumstances); or (3) 40% of the remainder of the order. The proposal eliminates Phlx Rule 1080.07(e)(vi)(C)(3), which would provide the specialist with 40% of the remainder of a COLA-eligible order.[66] The Phlx states that this provision, which does not currently operate, may have been an error because, given the "greater of" language in the rule, the 30% Enhanced Specialist Participation

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[62]   See Amendment No. 2.

[63]   See id.

[64]   See id.

[65]   See id.

[66]   See Notice, 80 FR at 36001.

contemplated under Phlx Rule 1080.07(e)(vi)(C)(2) would never have operated.[67] The proposal

also corrects Phlx Rule 1080.07(e)(vi)(C)(1) by deleting language that limits the specialist's

entitlement to the proportion of the aggregate size "at the cPBBO" associated with the

specialist's COLA Sweep, SQT and RSQT Sweeps, and non-SQT ROT Complex Orders on the

CBOOK. The Phlx states that the System instead looks at all of a specialist's COLA Sweeps at a

particular price, not just at the cPBBO, and compares them to all other Phlx XL market maker

interest at that price.[68] The revised rule will take into account all expressed interest at each price,

instead of interest only at the cPBBO, which should maximize the number of contracts

executed.[69] Thus, under Phlx Rule 1080.07(e)(vi)(C), as amended, a specialist would be entitled

to receive the greater of: (1) the proportion of the aggregate size associated with the specialist's

COOA Sweep, SQT and RSQT COLA Sweeps, and non-SQT ROT Complex Orders on the

CBOOK; or the 60/40/30% Enhanced Specialist Participation described in Rule 1014(g)(ii). The

Phlx notes that this is the same enhanced pro-rata specialist allocation that applies to non-

Complex Orders.[70]

Third, the proposal revises Phlx Rule 1080.07(e)(vii) to indicate that COLA Sweeps that

exceed the size of a COLA-eligible order are eligible to trade with other incoming COLA-

eligible orders, COLA Sweeps, and any other interest received during the COLA Timer after the

initial COLA-eligible order has been executed "to the fullest extent possible," rather than "in its

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[67]   See Notice, 80 FR at 36001.

[68]   See id.

[69]   See Notice, 80 FR at 36005.

[70]   See Notice, 80 FR at 36001.

entirety."[71] The Phlx notes that a COLA-eligible order need not be executed in its entirety for other interest to be executed.[72] The Phlx states that permitting executions of responsive interest at a different price, after the COLA-eligible order has been executed to the fullest extent possible, benefits the responsive interest.[73] The Phlx further notes that fewer contracts would have been executed if the System operated as described in the current rule text, because fewer contracts would have been available for execution against the COLA-eligible order and other responsive interest.[74]

Fourth, the proposal deletes from Phlx Rule 1080.07(e)(vi)(B) a provision stating that, for allocation purposes, the size of a COLA Sweep or responsive Complex Order received during the COLA Timer will be limited to the size of the COLA-eligible order.[75] The Phlx accepts size in excess of the COLA-eligible order size, which can be executed against remaining interest after the COLA-eligible order has been executed to the fullest extent possible.[76] This change will reflect the Phlx's current practice and permit the full size of responding interest to trade against

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[71] The Phlx also proposes to make this change in Phlx Rules 1080.07(e)(vii), (e)(viii)(B), (e)(viii)(C)(1), (e)(viii)(C)(1)(e), (e)(viii)(C)(2), (e)(viii)(C)(2)(e) and (e)(viii)(C)(3). See Notice, 80 FR at 36001.

[72] See Notice, 80 FR at 36002. For example, where a COLA-eligible order is bidding $2.00 for 20 contracts, and other interest consists of a $2.10 bid for 10 contracts, a $2.10 offer for 10 contracts, and a $2.00 offer for 10 contracts, the buy and sell orders at $2.10 can execute against each other even though the COLA-eligible order was not fully executed. See id.

[73] See Notice, 80 FR at 36002.

[74] See Notice, 80 FR at 36002.

[75] The proposal also revises Phlx Rule 1080.07(e)(vi)(B) to refer to "Complex Orders and COLA Sweeps," that are eligible for execution against the COLA-eligible order at the same price, rather than Complex Orders, COLA Sweeps, Phlx XL participant Complex Orders, and/or non-customer off-floor broker-dealer Complex Orders that are eligible for execution against the COLA-eligible order at the same price.

[76] The remaining interest consists of any potential interest that has been received, including orders, quotes, COLA Sweeps, and individual leg market interest. See Notice, 80 FR at 36001.

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non-COLA-eligible interest.[77] The Phlx believes that permitting the trading of interest in excess of the COLA-eligible volume benefits market participants because it helps to ensure that as many contracts as possible are executed.[78]

D.   Amendments Concerning Firms and Non-Market Maker Off-Floor Broker-Dealers

The proposal adds a new defined term, "Firm," that will distinguish Firms from other non-market maker off-floor broker-dealers.[79] The proposal amends Phlx Rule 1080.07(e)(i)(B)(1) to indicate that orders from Firms are not COLA-eligible and therefore will not trigger a COLA.[80] In contrast, orders from non-market maker off-floor broker-dealers that are not Firms will be eligible to start a COLA.[81] The proposal amends Phlx Rule 1080.07(e)(viii)(C)(2) to indicate that orders from Firms (like orders from Phlx and non-Phlx market makers) will be treated as non-customer orders for purposes of determining the execution price that their orders receive when executing against COLA-eligible orders.[82] In addition, the

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77   See Notice, 80 FR at 36002.

78   See id.

79   Phlx Rule 1080.07(a)(x) defines "Firm" to mean "a broker-dealer trading for its own (proprietary) account that is: a member of The Options Clearing Corporation ("OCC") or maintains a Joint Back Office ("JBO") arrangement with an OCC member. Unless otherwise specified, Firms are included in the category of non-market-maker off-floor broker-dealer."

80   The proposal also deletes from Phlx 1080.07(e)(i)(B)(1) the requirement that a COLA-eligible Complex Order improve the cPBBO for the specific Complex Order Strategy, because this requirement is already stated in Phlx Rule 1080.07(e)(i)(A).

81   See Notice, 80 FR at 36003.

82   See Amendment No. 1. Phlx Rule 1080.07(e)(viii)(C)(2) (2), as amended, provides, in relevant part, that: Incoming non-customer (Phlx market makers, Firms and non-Phlx market makers) Complex Orders that are received during the COLA Timer on the opposite side of the market from the COLA-eligible order with a price equal to or better than the best priced Complex Order or COLA Sweep will be executed against the COLA eligible order (which will be executed in its entirety first as described in subparagraph (B) above) or other Complex Orders or COLA Sweeps as follows:

proposal amends Phlx Rule 1080.07(e)(viii)(C)(2)(d) to indicate that the System executes non-customer (i.e., Phlx market maker, Firm, and non-Phlx market maker) Complex Orders not in the order in which they were received, as the rule currently indicates, but on a pro-rata basis among Phlx market maker interest and then, again on a pro-rata basis, among Phlx XL participants at each price level, as described in Phlx Rule 1080.07(vi)(B).[83]

According to the Phlx, the trading style and needs of Firms are more like market makers.[84] The Phlx notes that Firms are large, well-capitalized broker-dealers that trade for their own account and generally submit large orders, including orders that facilitate their clients' orders or offset large positions taken to accommodate their customers.[85] Thus, the Phlx states that Firms, in general, are commonly viewed as providers of liquidity, much like market makers.[86] In addition, the Phlx believes that Firms do not expect or need their Complex Orders to trigger a COLA, because this is a feature more commonly associated with customers than with liquidity providers.[87] The Phlx also states that if Firms' orders were able to start a COLA, this

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(a) If such incoming non-customer Complex Order is a limit order at the same price as the best priced Complex Order or COLA Sweep, the incoming non-customer Complex Order will be executed at such price, subject to the provisions set forth sub-paragraph (e) above.

(b) If such incoming non-customer Complex Order is a limit order that improved the best priced Complex Order or COLA Sweep, the incoming non-customer Complex Order will be executed at the limit order price.

(c) If such incoming non-customer Complex Order is a market order or a limit order that crosses the cPBBO, the incoming non-customer Complex Order will be executed at a price of $0.01 better than the cPBBO on the same side of the market as the COLA-eligible order.

[83]   See Notice, 80 FR at 36002.

[84]   See id.

[85]   See id. at 36003-36004.

[86]   See id. at 36004.

[87]   See id. at 36005.

could impede the ability of other Complex Orders to begin a COLA.[88] Finally, the Phlx states

that it could impede the submission of competitive responses and/or quoting if market makers are

hesitant to provide an aggressive price for a COLA that may have been initiated by a Firm.[89]

Third, the proposal amends Phlx Rule 1080.07(e)(viii)(C)(1) to indicate that orders from

non-market maker off-floor broker-dealers that are not Firms will be treated like non-broker-

dealer customer orders for purposes of determining the execution price their orders will receive

when executing against a COLA-eligible order.[90] For purposes of this rule, the Phlx treats orders

from both non-broker-dealer customers and non-market maker off-floor broker-dealers (other

than Firms) as customer orders because non-market maker off-floor broker-dealers seek liquidity

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[88] See Amendment No. 1.

[89] See id.

[90] Phlx Rule 1080.07(e)(viii)(C)(1), as amended, defines incoming customer Complex Orders to mean orders from non-broker-dealer customers and non-market-maker off-floor broker-dealers, other than Firms. See Amendment No. 1. Phlx Rule 1080.07(e)(viii)(C)(1), as amended, provides, in relevant part, that (1) Incoming customer (non-broker-dealer customer and non-market maker off-floor broker-dealer (other than Firms)) Complex Orders that are received during the COLA Timer on the opposite side of the market from the COLA-eligible order with a price equal to or better than the best priced Complex Order or COLA Sweep will be executed against the COLA eligible order (which will be executed to the fullest extent possible first as described in sub-paragraph (B) above) or other Complex Orders or COLA Sweeps as follows:

(a) If such incoming customer Complex Order is a limit order at the same price as the best priced Complex Order or COLA Sweep, the incoming Complex Order will be executed at such price.

(b) If such incoming Complex Order is a limit order that improved the best priced Complex Order or COLA Sweep, the incoming customer Complex Order will be executed at the mid-point of the best priced Complex Order or COLA Sweep and the limit order price, rounded, if necessary, to the closest minimum trading increment to the benefit of the COLA-eligible order.

(c) If such incoming customer Complex Order is a market order or a limit order that crosses the cPBBO, the incoming Complex Order will be executed at the mid-point of the cPBBO on the same side of the market as the COLA-eligible order and the best priced Complex Order or COLA Sweep, rounded, if necessary, to the closest minimum trading increment to the benefit of the COLA-eligible order.

and are therefore more like customers than other participants, which generally provide liquidity.[91] In addition, the proposal amends Phlx Rule 1080.07(e)(viii)(C)(1)(d) to specify that, rather than executing all customer Complex Orders in the order in which they were received, as the rule currently provides, non-broker-dealer customer orders at the same price are executed in time priority, while non-market-maker off-floor broker-dealer orders at the same price are executed on a pro-rata basis. The Phlx states that the pro rata allocation for non-market maker off-floor broker-dealers is consistent with the priority rules applicable in other aspects of the execution of Complex Orders and simple orders.[92]

       E.   Amendment to the CBOOK Rules

Phlx Rule 1080.07(f)(i)(F) currently provides that a Complex Order received during the final 10 seconds of the trading session is placed on the CBOOK.[93] The proposal amends this provision to indicate that the System will place a Complex Order on the CBOOK if the Complex Order is received during the final configurable number of seconds of the trading session after any marketable portion of the Complex Order is executed. The Phlx believes that 10 seconds may be too long and could prevent executions from occurring, and that a COLA may be triggered and completed in less than three seconds.[94] Thus, the Phlx believes that a time period of less than 10 seconds would be appropriate to maximize executions.[95] The Phlx will notify participants on its

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91   See Notice, 80 FR at 36002. See also Amendment No. 1 (clarifying that the non-market maker off-floor broker-dealers referenced in this rule do not include Firms).

92   See Notice, 80 FR at 36002, and Phlx Rules 1080.07(e)(vi)(B) and 1014(g)(vii).

93   The Phlx notes that the System recently operated such that a Complex Order received during the final three seconds of the trading session, rather than the final 10 seconds of the trading session, was placed on the CBOOK. Accordingly, the Phlx states that more Complex Orders may have started a COLA than the rule provides for and may have been executed, rather than resting on the CBOOK. See Notice, 80 FR at 36002.

94   See id.

95   See id.

website in advance of a change to the number of seconds.[96] The proposal also revises this rule to indicate that a Complex Order will be placed on the CBOOK after the execution of any marketable portion of the Complex Order because the System seeks to execute any portion of any order that can be traded before placing the remainder of the order on the CBOOK.[97]

In addition, the proposal revises Phlx Rule 1080.07(f)(ii) to indicate that Phlx XL market makers may submit one or more CBOOK Sweeps to execute against Complex Order interest on the CBOOK.[98] A CBOOK Sweep, which is similar to a COOP Sweep or a COLA Sweep, will expire if it is not executed immediately.[99] The Phlx notes that a non-Phlx XL market maker participant that wanted to submit interest that would expire if it is not executed immediately would be able to submit an IOC order.[100]

F.   All-or-None Orders

In the current proposal, the Phlx proposes to accept all-or-none Complex Orders and specify how they are handled.[101] In particular, the proposal revises Phlx Rule 1080.07(d)(ii)(C) to indicate that, during a COOP Evaluation, the System will determine the price at which the

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[96]   See id.

[97]   See id. at 36002-36003.

[98]   See Amendment No.1. A CBOOK Sweep is a one-sided electronic quotation at a particular price submitted for execution against existing interest in a particular Complex Order Strategy on the CBOOK. See id.

[99]   See id.

[100]   See id.

[101]   See Notice, 80 FR at 35999 and 36004. The Phlx previously noted that it stopped accepting all-or-none orders on March 17, 2014, to align the System with its rules. See Notice, 80 FR at 36004. The Phlx then adopted a definition of all-or-none orders in June 2014. See Securities Exchange Act Release No. 72351 (June 9, 2014), 79 FR 33977 (June 13, 2014) (notice of filing and immediate effectiveness of File No. SR-Phlx-2014-39). Phlx Rule 1080.07 provides that an all-or-none order is an order that is "to be executed in its entirety or not at all. These orders can only be submitted for non-broker-dealer customers." The Phlx proposes to begin accepting all-or-none Complex Orders within 60 days after approval of the proposal. See Amendment No. 1.

maximum number of contracts may trade, taking into account Complex Orders marked all-or-none (which will be executed if possible), unless the maximum number of contracts can only trade without including all-or-none orders.[102] In addition, the proposal amends Phlx Rule 1080.07(e)(vi)(A)(1) to indicate that an all-or-none Complex Order will not leg (i.e., execute against quotes or orders for the individual components comprising the Complex Order) during a COLA, and that an all-or-none Complex Order that is not executed during the COLA will be placed on the CBOOK.[103] Similarly, the proposal amends Phlx Rule 1080.07(f)(iii)(A) to provide that an all-or-none Complex Order on the CBOOK will not execute against quotes or orders on the limit order book for the individual components of the Complex Order.

The Phlx notes that all-or-none orders are commonly available for non-Complex Orders, and that this order type would allow market participants to obtain a certain minimum size.[104] The Phlx believes that this contingency is particularly appropriate for Complex Orders because of the complexity of the strategies employed by users; the size of the order could be relevant to the strategy.[105] The Phlx further believes that not legging all-or-none Complex Orders promotes just and equitable principles of trade because the all-or-none contingency complicates the expeditious execution of such orders against the individual components of the Complex Order.[106] The Phlx does not believe that market participants would expect Complex Orders to leg because all-or-none orders are often treated differently because of the nature of the contingency.[107]

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[102] See Amendment No. 1. See Section II(A), supra, for a discussion of the treatment of all-or-none orders in the COOP.

[103] See id.

[104] See id.

[105] See id.

[106] See Notice, 80 FR at 36005.

[107] See id.

G.   Amendments to the Spread Priority Rule

The proposal revises the Phlx Rule 1080.07(c)(iii) to make clear that a Complex Order has priority over established bids or offers in the marketplace for the individual legs that comprise the Complex Order unless the established bid or offer for at least one leg of the Complex Order is a non-broker-dealer customer order.[108] If the established bid or offer for at least one leg of the Complex Order is a non-broker-dealer customer order, then at least one leg of the Complex Order must be executed at a better price than the established bid or offer for that contract by the minimum trading increment.[109] Thus, a Complex Order may not be executed at the cPBBO if there is non-broker-dealer customer interest at the cPBBO.[110] For example, with respect to a Complex Order with four legs, if the established best bid or offer in the individual leg market for one component of the Complex Order is a non-broker-dealer customer order, and

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[108]   See Amendment No. 1. Phlx Rule 1080.07(c)(iii), as amended, provides: (A) Complex Orders consisting of a conforming ratio may be executed at a total credit or debit price without giving priority to individual bids or offers established in the marketplace that are not better than the bids or offers comprising such total credit or debit, provided that if any of the bids or offers established in the marketplace consist of a non-broker-dealer customer order, at least one option leg is executed at a better price than the established bid or offer for that option contract by the minimum trading increment and no option leg is executed at a price outside of the established bid or offer for that option contract.

(B) Where a Complex Order in a conforming ratio consists of the underlying security (stock or ETF) and one options leg has priority over bids or offers established in the marketplace, except over bids or offers established by non-broker-dealer customer orders. However, where a Complex Order in a conforming ratio consists of the underlying stock or ETF and more than one options leg, the options legs have priority over bids and offers established in the marketplace, including non-broker-dealer customer orders, if at least one options leg improves the existing market for that option.

[109]   See Phlx Rule 1080.07(c)(iii).

[110]   See Amendment No. 1. See also Phlx Rule 1080.07(d)(ii)(C)(2) (stating that executable bids/offers at the conclusion of the COOP include any interest that could be executed at the net price without trading through residual interest or the cPBBO or without trading at the cPBBO where there is non-broker-dealer customer interest at the best bid or offer for any leg, consistent with Phlx Rule 1080.07(c)(iii)).

the best bids or offers in the individual leg market for the remaining three component legs of the Complex Order are market maker quotes, the Complex Order would be required to trade at a price that is better than the cPBBO.[111] The Phlx believes that the changes to Phlx Rule 1080.07(c)(iii) clarify the rule and preserve customer priority.[112] The Phlx notes that the ability to achieve spread priority over non-customers is common among the options exchanges.[113]

H.   Amendment Nos. 1 and 2

In Amendment No.1, the Phlx proposes to further clarify or add detail to several rules, provide additional rationale for certain proposed changes, and specify the time when the Phlx plans to begin accepting all-or-none Complex Orders. Specifically, Amendment No. 1 revises Phlx Rule 1080.07(d)(ii)(C) to indicate that all-or-none Complex Orders received during the COOP will be executed if possible, i.e., when the price and size of the all-or-none order meets the criterion of executing the maximum number of contracts possible to establish a COOP Evaluation price. Amendment No. 1 revises Phlx Rule 1080.07(e)(vi)(A)(1) to indicate that an all-or-none order that is not executed during a COLA will be placed on the CBOOK. In addition, Amendment No. 1 indicates that the Phlx proposes to begin accepting all-or-none Complex Orders within 60 days after approval of the proposal.

Amendment No. 1 revises Phlx Rule 1080.07(e)(viii)(C)(1) to clarify that, for purposes of that rule, the term "incoming customer orders" refers to orders from non-broker-dealer customers and non-market maker off-floor broker-dealers other than Firms. The Phlx notes that it is necessary to exclude from this definition Firms, which otherwise would fall within the definition of non-market maker off-floor broker-dealers. Amendment No. 1 also provides additional

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111   See id.

112   See id.

113   See id.

analysis to support the statutory basis for this proposed change, stating that it is consistent with just and equitable principles of trade to treat both non-broker-dealer customers and non-market-maker, non-Firm off-floor broker-dealers as "customers" for purposes of determining the execution price of their orders when executing against a COLA-eligible order because both non-broker-dealer customers and non-market maker, non-Firm off-floor broker-dealers seek liquidity in the marketplace.

Amendment No. 1 revises Phlx Rule 1080.07(e)(viii)(C)(2) to specify that "non-customer orders" for purposes of that rule, refers to orders from Phlx market makers, Firms, and non-Phlx market makers.

Amendment No. 1 revises the text of Phlx Rule 1080.07(c)(iii), the Phlx's spread priority rule, to make clear that a Complex Order has priority over established bids or offers in the marketplace for the individual legs of the order unless the established bid or offer for at least one leg is a non-broker-dealer customer order. In addition, Amendment No. 1 explains that if the established bid or offer for at least one leg of the order is a non-broker-dealer customer order, then at least one leg of the Complex Order must be executed at a better price than the established bid or offer for that leg. Thus, a Complex Order cannot be executed at the cPBBO if there is non-broker-dealer customer interest at the cPBBO. For example, with respect to a Complex Order with four legs, if the established best bid or offer in the individual leg market for one component of the Complex Order is a non-broker-dealer customer order, and the best bids or offers in the individual leg market for the remaining three component legs of the Complex Order are market maker quotes, the Complex Order would be required to trade at a price that is better

than the cPBBO.[114] Amendment No. 1 notes that the ability to achieve spread priority over non-customers is common among the options exchanges.

Amendment No. 1 deletes the provision in Phlx Rule 1080.07(c)(ii)(D) indicating that Complex Orders will not trade on Phlx XL when the Phlx's automated execution system is disengaged for any options component of a Complex Order. As noted above and in Amendment No. 1, the Phlx cannot disengage its automatic execution system.[115]

Amendment No. 1 revises Phlx Rule 1080.07(f)(ii) to provide for the submission of CBOOK Sweeps. Specifically, Amendment No. 1 revises the rule to indicate that Phlx XL market makers may submit one or more CBOOK Sweeps to execute against Complex Order interest on the CBOOK. A CBOOK Sweep, which is similar to a COOP Sweep or a COLA Sweep, will expire if it is not executed immediately. The Phlx notes that a non-Phlx XL market maker participant that wanted to submit interest that would expire if it is not executed immediately would be able to submit an IOC order.

Finally, Amendment No. 1 provides additional rationale for the proposal to prevent Firm orders from triggering a COLA. Specifically, Amendment No. 1 states that the Phlx believes that if Firm orders were able to start a COLA, this could impede the ability of other Complex Orders to start a COLA. In addition, the Phlx believes that it could impede the submission of competitive responses and/or quoting if market makers are hesitant to provide an aggressive price for COLAs that may have been initiated by Firms.

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[114] Amendment No. 1 makes a related technical correction to Phlx Rule 1080.07(d)(ii)(C)(2) to indicate that executable bids/offers during the COOP include any interest that could be executed "at the net price" without trading through residual interest or the cPBBO or without trading at the cPBBO where there is broker-dealer customer interest at the best bid or offer for any leg, consistent with Phlx Rule 1080.07(c)(iii).

[115] See note 13, supra.

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The Phlx believes that it would be consistent with the Act to approve Amendment No. 1 on an accelerated basis because the changes proposed in Amendment No. 1 provide additional details or clarifications to the proposal, without adding new requirements, or provide additional rationale or analysis to support the proposed changes. As noted above, Amendment No. 1 also specifies that the Phlx proposes to begin accepting all-or-none Complex Orders within 60 days after approval of the proposal.

Amendment No. 2 revises Phlx Rule 1080.07(e)(iv) to indicate that Phlx XL participants may bid and or offer on either or both side(s) of the market during a COLA Timer by submitting one or more Complex Orders in $0.01 increments. Amendment No. 2 further provides that a Complex Order marked as a response will expire if it is unexecuted at the end of the COLA Timer. A Complex Order not marked as a response will be placed on the CBOOK if it is not executed during the COLA, unless the order is marked IOC. Amendment No. 2 indicates that Complex Orders marked as a response will not be visible to any participant and will not be disseminated by the Phlx. The Phlx believes that these changes should be approved on an accelerated basis because they provide additional detail to the rule and clarify the responsive process for a COLA. The Phlx also notes that these COLA provisions parallel the provisions in Phlx Rule 1080.07(d)(ii)(B) related to the COOP.

In addition, Amendment No. 2 revises Phlx Rule 1080.07(d)(ii)(B) to indicate that Phlx XL participants may respond to a Complex Order Opening Auction Notification by submitting Complex Orders in increments of $0.01. Amendment No. 2 also indicates that a Complex Order that is not marked as a response to a Complex Order Opening Auction Notification will be placed on the CBOOK if it is not executed during the opening. The Phlx believes that these

changes should be approved on an accelerated basis because they provide additional detail to the rule.

III.   Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[116] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[117] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

The Commission believes that the COOP rules, as amended, are designed to facilitate an orderly opening for Complex Orders, or an orderly re-opening following a trading halt. The Phlx states that the COOP, which operates in a manner similar to an opening process for single leg orders, is designed to facilitate price discovery and to execute as much trading interest as possible at the best possible price(s).[118] As described more fully above, the Phlx will conduct a COOP for any Complex Order Strategy for which the Phlx received a Complex Order prior to the opening, unless that Complex Order Strategy is already open.[119] Upon the initiation of a

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[116]   In approving the proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[117]   15 U.S.C. 78f(b)(5).

[118]   See Notice, 80 FR at 36004.

[119]   See Phlx Rule 1080.07(d)(ii).   Following a trading halt, the Phlx will conduct a COOP for any Complex Order Strategy that has a Complex Order present or that had previously opened prior to the trading halt. See id.

COOP for a Complex Order Strategy, the Phlx will send a broadcast message, the Complex Order Opening Auction Notification, that is intended to attract interest to the opening process.[120] The Commission notes that all Phlx XL participants may participate in a COOP by submitting one or more Complex Orders on either or both side(s) of the market in $0.01 increments in response to a Complex Order Opening Auction Notification.[121] The Commission believes that the ability of all Phlx XL participants to participate in a COOP potentially could lead to more competitive opening auctions, to the benefit of investors.

At the conclusion of the COOP Timer, the System conducts a COOP Evaluation to determine the maximum number of contracts that can trade, taking into account Complex Orders marked all-or-none (which will be executed if possible), unless the maximum number of contracts can only trade without including all-or-none orders.[122] The Phlx will open the Complex Order Strategy at that price, executing marketable trading interest in the following order: first, to non-broker-dealer customers in time priority; next, to Phlx XL market makers on a pro rata basis; and then to all other participants on a pro-rata basis.[123] The Commission notes that this allocation methodology is consistent with existing Phlx rules.[124]

The Phlx states that the opening price logic in Phlx Rule 1080.07(d)(ii)(C), as amended, which determines the execution price of crossing interest in the COOP, maximizes the number of contracts executed during the opening process and ensures that residual contracts of partially

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[120]   See Notice, 80 FR at 36004, and Phlx Rule 1080.07(d)(ii)(A)(1).

[121]   See Phlx Rule 1080.07(d)(ii)(B) and Amendment No. 2.

[122]   See Phlx Rule 1080.07(d)(ii)(C) and Amendment No. 1.

[123]   See Phlx Rule 1080.07(d)(ii)(C).

[124]   See, e.g., Phlx Rule 1080.07(vi)(B).

executed orders or quotes are at a price equal to or inferior to the opening price.[125] Thus, the logic ensures that there is no remaining unexecuted interest available at a price that crosses the opening price.[126] The proposal also applies this execution process to the COLA.[127] The Commission believes that these execution processes should benefit investors by helping to assure the execution of as many contracts as possible during the COOP and the COLA.

In addition to submitting Complex Orders to respond to a Complex Order Opening Auction Notification, Phlx XL market makers may respond by submitting one or more COOP Sweeps.[128] Only Phlx XL market makers may submit COOP Sweeps.[129] Similarly, only Phlx XL market makers may submit COLA Sweeps and CBOOK Sweeps to trade with, respectively, a COLA-eligible order or interest resting on the CBOOK.[130] The Phlx represents that Phlx XL participants that are not Phlx XL market makers are not disadvantaged by their inability to submit Sweeps, just as they are not disadvantaged by their inability to submit quotes or Sweeps for non-Complex Orders.[131] The Phlx notes that Phlx XL participants that are not Phlx XL market makers may submit IOC orders, which behave in the same manner as a Sweep.[132] The

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[125] See Notice, 80 FR at 36000.

[126] See id. If multiple prices exist that ensure that there is no remaining unexecuted interest available through such price(s), the opening logic chooses the midpoint of such price points. See id.

[127] See Phlx Rule 1080.07(e)(viii)(C)(3).

[128] See id. Although Phlx XL market makers may submit either a Complex Order or a COOP Sweep, the Phlx notes that some market makers choose to submit their interest in the form of a Complex Order. See Notice, 80 FR at 35999.

[129] See Phlx Rule 1080.07(d)(ii)(B).

[130] See Phlx Rules 1080.07(e)(iv) and 1080.07(f)(ii).

[131] See Notice, 80 FR at 36004. See also Notice, 80 FR at 35999.

[132] See Notice, 80 FR at 36004. Like Sweeps, IOC orders expire if they are not executed immediately. See also Amendment No. 1 (stating that a non-Phlx XL market maker participant seeking to submit interest that would expire if it was not executed

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Phlx states that the Exchange developed Sweeps to enable Phlx XL market makers to expeditiously submit one-sided responsive interest without having to enter an order, which involves a different protocol and method of entry than that used for submitting quotes and Sweeps; according to the Phlx, Sweeps were intended to encourage Phlx XL market makers to submit responsive interest while managing risk, utilizing a single protocol.[133] Based on the Phlx's representations that Phlx XL participants that are not Phlx XL market makers are not disadvantaged by their inability to submit COOP Sweeps, COLA Sweeps, or CBOOK Sweeps, and by the Phlx's representation that such non-Phlx XL market maker participants may submit IOC orders that behave in the same manner as a Sweep, the Commission believes that it is consistent with the Act for the Phlx to make COOP Sweeps, COLA Sweeps, and CBOOK Sweeps available only to Phlx XL market makers, rather than to all Phlx XL participants.[134] In addition, to the extent that the availability of Sweeps succeeds in encouraging Phlx XL market makers to submit trading interest, Sweeps potentially could result in the availability of additional liquidity in the marketplace, to the benefit of investors.

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immediately would be able to submit an IOC order, and, therefore, that such a participant would not be disadvantaged by its inability to submit CBOOK Sweeps).

[133] See Notice, 80 FR at 35999.

[134] The Commission notes that Complex Orders submitted in response to a COOP or a COLA function in the same manner as COOP Sweeps and COLA Sweeps in several respects. Like COOP Sweeps and COLA Sweeps, Complex Orders submitted in response to a COOP or a COLA will not be visible to Phlx XL participants or disseminated by the Phlx. See Phlx Rules 1080.07(d)(ii)(B)(3) and 1080.07(e)(iv)(C) and Amendment No. 2. In addition, Complex Orders submitted in response to a COOP or a COLA, like COOP Sweeps and COLA Sweeps, may be submitted in $0.01 increments on either or both sides of the market. See Phlx Rules 1080.07(d)(ii)(B) and 1080.07(e)(iv) and Amendment No. 2.

As discussed above, the proposal also describes the handling of IOC and DNA orders during the opening process.[135] The Commission believes that the handling of these orders during the opening will provide market participants with flexibility to determine the manner in which they will trade at the opening.[136] IOC and DNA orders received prior to the initiation of the COOP will be cancelled, although a COOP will occur in the Complex Order Strategy of the IOC or DNA order.[137] The Commission believes that conducting a COOP for a Complex Order Strategy represented by the cancelled IOC or DNA order could benefit investors by allowing the opening of a Complex Order Strategy that investors had indicated an interest in trading.

Under the proposal, orders from Firms are treated like orders from market makers for purposes of triggering a COLA and for purposes of determining the execution price that their orders will receive when trading against a COLA-eligible order. Specifically, under Phlx Rule 1080.07(e)(i)(B)(1), as amended, proprietary orders from Firms, like orders from market makers, will not be COLA-eligible and therefore will not trigger a COLA. In contrast, orders from non-market maker off-floor broker-dealers that are not Firms will be COLA-eligible.[138] The Phlx believes that the ability of Firm proprietary orders to start a COLA could impede the ability of other orders to initiate a COLA.[139] In addition, the Phlx believes that it could impede the submission of competitive responses or quoting if market makers were hesitant to provide

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[135] See Phlx Rule 1080.07(d)(ii)(A)(5).

[136] Under Phlx Rule 1080.07(d)(ii)(A)(5), IOC orders received during the COOP will join the COOP but will be cancelled at the end of the COOP Timer if they are not executed. DNA orders received during the COOP will be cancelled and will not participate in the COOP.

[137] See Phlx Rule 1080.07(d)(ii)(A)(5).

[138] See Notice, 80 FR at 36003.

[139] See Amendment No. 1.

aggressive prices for COLAs that may have been initiated by Firms.[140] The Commission notes

that other options exchanges have flexibility in determining the orders that may initiate a

complex order auction.[141]

Phlx Rule 1080.07(e)(viii)(C)(2), as amended, treats Firm orders like market maker

orders for purposes of determining the execution price that their orders will receive when

executing against a COLA-eligible order.[142] The Phlx notes that Firms are large, well-

capitalized broker-dealers that generally submit large orders, including orders that facilitate their

clients' orders or offset often large positions taken to accommodate their customers.[143] The Phlx

states that Firms, like market makers, are commonly viewed as providers of liquidity.[144] The

proposal also revises Phlx Rule 1080.07(e)(viii)(C)(2) to indicate that the System executes non-

customer orders not in time priority, but on a pro-rata basis among Phlx market-maker interest

and then among remaining Firm and non-Phlx market maker interest at each price level. The

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[140]   See id.

[141]   See, e.g., CBOE Rule 6.53C(d)(i)(2) (defining a Complex Order Auction ("COA")-
         eligible order as a complex order that, as determined by the CBOE on a class-by-class
         basis, is eligible for a COA considering, among other things, the complex order origin
         type (i.e., non-broker-dealer public customer, broker-dealers that are not market makers
         or specialists on another options exchange, and/or market makers or specialists on
         another options exchange); and NYSE Arca Rule 6,91(c)(1) (defining a COA-eligible
         order to mean an Electronic Complex Order that, as determined by NYSE Arca on a
         class-by-class basis, is eligible for a COA, considering, among other things, the order
         origin type (i.e., Customers, broker-dealers that are not Market Makers or specialists on
         an options exchange, and/or Market Makers or specialists on an options exchange).

[142]   In contrast, Phlx Rule 1080.07(e)(viii)(C)(1), as amended, treats non-market maker off-
         floor broker-dealers that are not Firms like non-broker-dealer customers for purposes of
         determining the execution price that their orders will receive when executing against a
         COLA-eligible order. The Phlx states that non-market maker off-floor broker-dealers
         that are not Firms seek liquidity and are therefore more like customers than other
         participants, which generally provide liquidity. See Notice, 80 FR at 36002.

[143]   See Notice, 80 FR at 36003-36004.

[144]   See Notice, 80 FR at 36004.

Commission notes that this allocation methodology is consistent with existing Phlx Rule 1080.07(e)(vi)(B). The proposal amends Phlx Rule 1080.07(e)(viii)(C)(1)(d) to indicate that non-broker-dealer customer orders at the same price will be executed in time priority, while non-Firm, non-market maker off-floor broker-dealer orders at the same price will be executed on a pro-rata basis at each price level. The Commission notes that this allocation methodology also is consistent with existing Phlx rules.[145]

The proposal revises Phlx Rule 1080.07(f)(i)(F) to indicate that a Complex Order received during the final configurable number of seconds of the trading session, rather than during the final 10 seconds of the trading session, will be placed on the CBOOK after any marketable portion of the Complex Order is executed. The Phlx states that a COLA auction may be triggered and completed in less than 10 seconds, and thus that the 10-second time period is too long and could prevent executions from occurring.[146] The Commission believes that the revised rule will provide the Phlx with flexibility to reduce the time period at the end of the trading session during which an order will be placed on the CBOOK, which could permit more COLAs to occur and potentially result in a greater number of order executions, to the benefit of investors. The Commission notes that the Phlx will notify participants on its website in advance of a change in the number of seconds at the end of a trading session during which an order will be placed on the CBOOK.[147]

The Commission believes that the proposed changes to the spread priority provisions in Phlx Rule 1080.07(c)(iii) will benefit market participants by clarifying the operation of the rule. Among other things, the proposed changes make clear that a Complex Order may not be

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[145]   See, e.g., Phlx Rule 1080.07(e)(vi)(B).

[146]   See Notice, 80 FR at 36002.

[147]   See id.

executed at the cPBBO if there is non-broker-dealer customer interest at the cPBBO and that, if any of the bids or offers established in the marketplace consist of a non-broker-dealer customer order, than at least one leg of the Complex Order must be executed at a price better than the established price for that leg by the minimum trading increment.[148]

The Commission believes that the proposal to revise Phlx Rule 1080.07(b)(iii) to state that Floor Brokers using the Options Floor Broker Management System may enter Complex Orders as IOC only on behalf of "SQTs, RSQTs, non-SQT ROTs, specialists, non-Phlx market makers on another exchange, and Firms," rather than on behalf of "broker-dealers or affiliates of broker-dealers" will clarify the rule by using more precise terms that are defined in Phlx Rule 1080.07.

The proposal also deletes two provisions that refer, incorrectly, to the disengagement of the Phlx's automated execution system.[149] The Phlx notes that the Exchange does not and cannot disengage its automatic execution system, which is a fundamental aspect of the System.[150] The Commission believes that correcting these inaccuracies will benefit investors by helping to assure that the Phlx's rules correctly describe the operation of the System.

Finally, the proposal establishes rules governing the trading of all-or-none Complex Orders, including provisions that describe the treatment of all-or-none Complex Orders at the opening and indicate that all-or-none Complex Orders will not execute against interest in the

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[148]   See Amendment No. 1. See also Phlx Rules 1080.07(d)(ii)(C)(2) and 1080.07(e)(viii)(C)(3) (stating that executable interest in the COOP and the COLA, respectively, includes any interest that could be executed without trading through residual Complex Order interest or the cPBBO, or without trading at the cPBBO where there is non-broker-dealer customer interest).

[149]   See Phlx Rules 1080.07(d)(ii)(A)(2) and 1080.07(c)(ii)(D). See also Amendment No. 1.

[150]   See Notice, 80 FR at 35998.

individual leg market.[151] The Phlx states that the all-or-none contingency is particularly appropriate for Complex Orders because the size of the order may be relevant to a market participant's strategy.[152] The Commission believes that rules governing the trading of all-or-none Complex Orders should provide for the orderly trading of all-or-none Complex Orders on the System. The Commission also believes that all-or-none Complex Orders could provide investors and other market participants with additional flexibility to effectuate their investment strategies. The Commission notes that other options exchanges also provide for the trading of all-or-none complex orders.[153]

IV.   Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the 30th day after the date of publication of notice of Amendment Nos. 1 and 2 in the Federal Register. In Amendment Nos. 1 and 2, the Phlx revised the proposal to make the changes discussed in detail above. Notably, in Amendment No. 1 the Phlx provides additional rationale for its proposal to prevent Firm orders from triggering a COLA, adds a provision describing the operation of CBOOK Sweeps, clarifies the spread priority provisions in Phlx Rule 1080.07(c)(iii), and establishes an implementation period for all-or-none Complex Orders. Amendment No. 1 also added clarifying details to several rules. The Commission believes that Amendment No. 1 does not raise any novel regulatory issues and instead provides additional clarity to the rule text, along with additional analysis of how the

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[151]   See Phlx Rules 1080.07(d)(ii)(C), 1080.07(e)(vi)(A)(1), and 1080.07(f)(iii)(A). The Phlx states that all-or-none Complex Orders do not execute against individual leg market interest because the all-or-none contingency complicates the expeditious execution of these orders against individual leg market interest. See Notice, 80 FR at 36005.

[152]   See Notice, 80 FR at 36005.

[153]   See, e.g., NYSE Arca Rule 6.91(b)(2) and NYSE MKT Rule 980NY(d)(2).

proposal is consistent with the Act, thus facilitating the Commission's ability to make the findings set forth above to approve the proposal. Amendment No. 2 revises Phlx Rule 1080.07(e)(iv) to indicate that Phlx XL participants may respond to a COLA auction by submitting Complex Orders in $0.01 increments. Amendment No. 2 also describes the treatment of Complex Orders submitted during a COLA and provides additional details regarding Complex Orders submitted during the COOP. The Commission believes that Amendment No. 2 does not raise any novel regulatory issues and provides clarity regarding the manner in which Phlx XL participants may participate in the COLA and the COOP. Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

V.   Solicitation of Comments on Amendment Nos. 1 and 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment Nos. 1 and 2 to the proposed rule change are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2015-49 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-Phlx-2015-49. 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 will also 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-2015-49 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI.   Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[154] that the

proposed rule change (SR-Phlx-2015-49), as modified by Amendment Nos. 1 and 2, is approved

on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated

authority.[155]

Brent J. Fields
Secretary

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[154]   15 U.S.C. 78s(b)(2)).

[155]   17 CFR 200.30-3(a)(12).