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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58099; File No. SR-Phlx-2008-50]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Complex Orders

July 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 1, 2008, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to add Commentary .08 to Phlx Rule 1080 to establish an automated process for handling complex options orders on the Phlx's electronic trading platform for options, Phlx XL.³

The text of the proposed rule change is available at Phlx, the Commission's

Public Reference Room, and <http://www.phlx.com>.

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 Phlx 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 Phlx 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 proposed rule change is to more efficiently handle complex orders on the Exchange by establishing rules and systems that would enable the Exchange to handle such orders electronically.

Definitions

The proposed rule change would establish specific definitions relevant to the automated handling of complex orders.

Order Types

Proposed Phlx Rule 1080, Commentary .08(i) would define "Complex Order" to mean any of the following: a spread order;⁴ a straddle

⁴ A spread order is an order to buy a stated number of option contracts and to sell a stated number of option contracts in a different series of the same option and may be bid for or offered on a total net debit or credit basis. See Phlx Rule 1066(f)(1).

⁵ A straddle order is an order to buy a number of call option contracts and the same number of put option contracts with respect to the same underlying security (in the case of options on a stock or Exchange-Traded Fund Share) or the same underlying foreign currency (in the case of options on a foreign currency) and having the same exercise price and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts with respect to the same underlying security (in the case of options on a stock or Exchange-Traded Fund Share) or the same underlying foreign currency (in the case of options on a foreign currency) and having the same

order;⁵ a combination order;⁶ a ratio order;⁷ or a collar order (risk reversal).⁸

Complex Order Strategy

The term "Complex Order Strategy" means any Complex Order involving any option series which is priced at a net debit or credit (based on the relative prices of each component). The Exchange will calculate both a bid price and an offer price for each Complex Order Strategy based on the current PBBO (as defined below) for each component of the Complex Order and the bid/ask differential for each component.

For example, a Complex Order Strategy might be "buy one XYZ January 20 call, sell one XYZ January 20 put."

exercise price and expiration date (e.g., an order to buy two XYZ July 50 calls and to buy two XYZ July 50 puts is a straddle order). In the case of adjusted stock option contracts, a straddle order need not consist of the same number of put and call contracts if such contracts both represent the same number of shares at option. See Phlx Rule 1066(f)(2).

⁶ A combination order is an order involving a number of call option contracts and the same number of put option contracts in the same underlying security and representing the same number of shares at option (if the underlying security is a stock or Exchange-Traded Fund Share) or the same number of foreign currency units (if the underlying security is a foreign currency). A combination order includes a conversion (generally, buying a put, selling a call and buying the underlying stock or Exchange-Traded Fund Share) and a reversal (generally, selling a put, buying a call and selling the underlying stock or Exchange-Traded Fund Share). In the case of adjusted option contracts, a combination order need not consist of the same number of shares at option. See Phlx Rule 1066(f)(3).

⁷ For purposes of this rule, a "ratio order" would be defined as a spread, straddle or combination order that may consist of legs that have a different number of contracts. While a ratio order under this proposed rule may consist of legs that have a different number of contracts, in order to establish priority pursuant to Phlx Rules 1033(d) and (g), the number of contracts must differ only by a permissible ratio. A permissible ratio for purposes of priority is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.00) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not.

⁸ A collar order (risk reversal) is defined as an order involving the sale (purchase) of a call (put) option coupled with the purchase (sale) of a put (call) option in equivalent units of the same underlying security having a lower (higher) exercise price than, and the same expiration date as, the sold (purchased) call (put) option.

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 44612 (August 3, 2004) (order approving File No. SR-Phlx-2003-59).

The system would assign this Complex Order Strategy a specific identification number or code that would be used in the system to identify this Complex Order Strategy. Hypothetically, the identification number for this particular Complex Order Strategy could be "Complex Order Strategy #12345." Complex Order Strategy #12345 would have a bid price and an offer price, as stated above, based on the PBBO and the bid/ask differential for each component. If an investor wishes to purchase or sell, for example, 10 Complex Order Strategy 12345, such an investor would be bidding for or offering to buy 10 XYZ January 20 calls and sell 10 XYZ January 20 puts.

Other Definitions

PBBO

The term "PBBO" means the Phlx Best Bid and/or Offer for individual option series.

cPBBO

The term "cPBBO" means the best net debit or credit price for a Complex Order Strategy based on the PBBO for the individual components of such Complex Order Strategy.

NBBO

The term "NBBO" means the National Best Bid and/or Offer for individual option series.

cNBBO

The term "cNBBO" means the best net debit or credit price for a Complex Order Strategy based on the NBBO for the individual components of a Complex Order Strategy.

Phlx XL Participant

The term "Phlx XL participant" includes Streaming Quote Traders ("SQTs"), Remote Streaming Quote Traders ("RSQTs"), non-SQT Registered Options Traders ("ROTs"), specialists or non-Phlx market makers on another exchange; non-broker-dealer customers and non-market-maker off-floor broker-dealers; and Floor Brokers using the Options Floor Broker Management System.

Order Entry

Under the proposal, Complex Orders would be eligible to be entered in increments of \$0.01. Non-broker-dealer customers and non-market-maker off-floor broker-dealers would be permitted to enter Complex Orders as Day, Good Till Cancelled ("GTC") or Immediate or Cancel ("IOC"). Exchange SQTs,⁹

RSQTs,¹⁰ non-SQT ROTs,¹¹ specialists and non-Phlx market makers on another exchange would be permitted to enter Complex Orders as IOC only. Floor Brokers using the Options Floor Broker Management System¹² may enter Complex Orders as Day, GTC, or IOC on behalf of non-broker-dealer customers and non-market maker off-floor broker-dealers, and as IOC only on behalf of broker-dealers or affiliates of broker-dealers.

Eligible Complex Orders

A Complex Order would be eligible to trade on Phlx XL only when each component of the Complex Order is open for trading on the Exchange. Complex Orders may be executed against the Complex Order Book ("CBOOK") or placed on the CBOOK. Certain Complex Orders will be entered into a Complex Order Live Auction ("COLA") either following a Complex Order Opening Process ("COOP") or when a Complex Order improves the cPBBO. Complex Orders would not trade on Phlx XL when: (i) The Complex Order is received prior to the opening on the Exchange for each component of the Complex Order; (ii) during an opening rotation for any component of the Complex Order; (iii) during a trading halt for any component of the Complex Order; (iv) when the Exchange's automated execution system is disengaged for any component of the Complex Order; (v) when the Exchange's Risk Monitor Mechanism¹³

quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Phlx Rule 1014(b)(ii)(A).

¹⁰ An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Phlx Rule 1014(b)(ii)(B).

¹¹ A non-SQT ROT is an ROT who is neither an SQT nor an RSQT. See Phlx Rule 1014(b)(ii)(C).

¹² The Options Floor Broker Management System is a component of the Exchange's electronic options trading system designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. See Phlx Rule 1080, Commentary .06.

¹³ The Risk Monitor Mechanism automatically removes a Phlx XL participant's quotations from the

is engaged for any component of the Complex Order pursuant to Phlx Rule 1093 that represents all or a portion of the PBBO; or (vi) when the Exchange's market for any component of the Complex Order is disseminated pursuant to Phlx Rule 1082(a)(ii)(B).¹⁴

The Phlx XL system will begin a COOP upon the termination of most of the above conditions, except that the Phlx XL 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 for a quote of any component of the Complex Order that represents the PBBO. In either event, the Phlx XL system will immediately begin the COOP Evaluation (defined below) and will not initiate the COOP Timer (defined below).

COOP

The Phlx XL system will accept pre-opening Complex Orders, and will accept Complex Orders prior to re-opening following a halt in trading on the Exchange. Complex Orders received prior to the opening or during a trading halt will reside on the CBOOK. Once trading in each component of a Complex Order has opened (or re-opened following a trading halt), the Phlx XL system will initiate a COOP, provided that a COOP will only be conducted for any Complex Order Strategy that has a Complex Order pending at the opening or re-opening following a trading halt. The COOP will be conducted in two

Exchange's disseminated quotation in all series of a particular option once such Phlx XL participant executes a maximum volume threshold within a specific time period. In the event that the specialist's quote is removed by the Risk Monitor Mechanism and there are no other Phlx XL participants quoting in the particular option, the system will automatically provide two-sided quotes that comply with the Exchange's rules concerning quote spread parameters on behalf of the specialist until such time as the specialist revises the quotation. See Phlx Rule 1093(d).

¹⁴ If an SQT's or RSQT's (other than a Directed SQT or RSQT) quotation size in a particular series in a Streaming Quote Option is exhausted or removed by the Risk Monitor Mechanism, such SQT's or RSQT's quotation shall be deleted from the Exchange's disseminated quotation until the time the SQT or RSQT revises his/her quotation. If the Exchange's disseminated size in a particular series in a Streaming Quote Option is exhausted at that particular price level, and no specialist, SQT, or RSQT has revised their quotation immediately following the exhaustion of the Exchange's disseminated size at such price level, the Exchange shall automatically provide two-sided quotes that comply with the Exchange's rules concerning quote spread parameters on behalf of the specialist until such time as the specialist revises the quotation, with a size of one contract. See Phlx Rule 1082(a)(ii)(B).

⁹ An SQT is an ROT who has received permission from the Exchange to generate and submit option

phases, the "COOP Timer" and the "COOP Evaluation."

COOP Timer

A COOP Timer will begin counting a number of seconds during which bids and/or offers for a Complex Order Strategy can be received but during which Complex Orders may not be traded. The COOP Timer would be configurable to a period ranging from 0 to 600 seconds as determined by the Exchange and communicated to the Exchange membership via Exchange Circular. The purpose of the COOP Timer is to allow a time period for the markets trading the components of the Complex Order to conduct openings for the components and to establish prices on such markets after the opening. The Exchange believes that the COOP Timer should thus contribute to fair and orderly markets in Complex Orders on the Exchange at the opening or re-opening following a trading halt.

Multiple Complex Orders that represent the same Complex Order Strategy would participate in the COOP Timer. The Exchange will establish a maximum number of Complex Order Strategies that can be subject to a COOP Timer at any given time. Such maximum number will be communicated to the membership by Exchange Circular. The purpose of the "maximum number" proposal is to enable the Exchange to better manage system capacity relating to Complex Order Strategies subject to a COOP Timer. The system would "stagger" COOP Timers when the Phlx XL system has received the maximum number of Complex Order Strategies (*i.e.*, begin another round of COOP Timers that would include Complex Order Strategies that have not yet been the subject of a COOP Timer).

Complex Orders received during the COOP Timer and COOP Evaluation will reside on the CBOOK. Complex Orders will be visible to Phlx XL participants during the COOP Timer and COOP Evaluation.

The Phlx XL system will not engage the COOP Timer upon re-opening Complex Order trading when: (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. In either event, the Phlx XL system will immediately begin the COOP Evaluation.

COOP Evaluation

Upon expiration of the COOP Timer, the Phlx XL system will conduct a COOP Evaluation to determine which

Complex Order, if any, on the CBOOK will be the "COLA-eligible order" (as defined below) subject to a COLA. The Phlx XL system will establish one single COLA-eligible order¹⁵ for each COLA, against which Phlx XL participants may submit bids and offers. The COLA-eligible order, if any, will be identified by the Phlx XL system among the following Complex Orders: Market and marketable limit Complex Orders (including Complex Orders that cross the cPBBO), and Complex Orders that improve the cPBBO.

The purpose of the COOP Evaluation is to enable the system to determine, based on a "snap shot" of all Complex Orders on the CBOOK, the manner in which orders received during that time period will be handled. For example, if at the end of the COOP Timer the Phlx XL system determines that no market or marketable limit Complex Orders, Complex Orders that improve the cPBBO, and/or Complex Orders that cross the cPBBO exist on the CBOOK, Complex Orders that were received during the COOP Timer will remain on the CBOOK.

COLA-Eligible Order

On the other hand, if at the expiration of the COOP Timer, the Phlx XL system determines that there are market or marketable limit Complex Orders (including Complex Orders that cross the cPBBO) and/or Complex Orders that improve the cPBBO in the Phlx XL system, the Phlx XL system will conduct a COOP Evaluation to determine which of those orders will be placed in a COLA as the single "COLA-eligible order" for each particular Complex Order Strategy, against which Phlx XL participants may enter bids and offers. A "COLA-eligible order" means a Complex Order identified by way of a COOP or that improves the cPBBO respecting the specific Complex Order Strategy that is the subject of the Complex Order.

- If a single Complex Order exists in the Phlx XL system that improves the cPBBO on one side of the market, that order will be the COLA-eligible order.

- If multiple Complex Orders exist in the Phlx XL system that improve the cPBBO on one side of the market, the Complex Order at the best price will be the COLA-eligible order. If there are multiple Complex Orders at the best price, the Phlx XL system will treat the aggregate size at that price as a single COLA-eligible order. Such orders will

be executed in the order in which they were received.

- If market and/or marketable limit Complex Orders exist in the Phlx XL system on both sides of the market, the Complex Order on the side of the market with the larger marketable size will be the COLA-eligible order. If the market and/or marketable limit Complex Orders have the same size on both sides of the market, the market and/or marketable limit Complex Orders that represent the larger size associated with market orders will be the COLA-eligible order. If the size associated with market Complex Orders is the same on both sides of the market, the side of the market with the first Complex Order establishing the best price will be the COLA-eligible order. The size associated with multiple market and marketable limit Complex Orders at the same price will be aggregated and treated as one COLA-eligible order at the best price by the system. Such orders will be executed in the order in which they were received.

- If Complex Orders on opposite sides of the market that cross through the mid-point of the cPBBO exist in the Phlx XL system, the side of the market that is priced at the greater amount through the mid-point of the cPBBO will be the COLA-eligible order. If both sides of the market are priced at an equal amount through the mid-point of the cPBBO, or are priced at the cPBBO, the side of the market with the greater size will be the COLA-eligible order. If both sides of the market have the same size, the side of the market that was first to submit the best price will be a COLA-eligible order.

- Orders that are not determined to be the COLA-eligible order may participate in the COLA pursuant to proposed Phlx Rule 1080, Commentary .08(e)(iii), as described below.

- If Complex Orders on opposite sides of the market exist in the Phlx XL system that improve the cPBBO but do not cross the mid-point of the cPBBO, there will be no COLA-eligible order.

The purpose of these scenarios is to provide a methodology for determining which order in the Phlx XL system would qualify as the COLA-eligible order; the methodology is intended to reward the participant whose COLA-eligible order was either submitted first in time or whose COLA-eligible order would create the narrowest spread in the cPBBO. The Exchange believes that once a COLA has begun, the person submitting the initial COLA-eligible order should be the one to benefit from the auction relating to his or her particular COLA-eligible order during the COLA. Other Complex Orders

¹⁵ A single COLA-eligible order would also include multiple orders at the same (best) price that are aggregated and treated by the system as one COLA-eligible order pursuant to proposed Phlx Rule 1080, Commentary .08(d)(ii)(B)(2)(b).

representing the same Complex Order Strategy on the same side of the market as the COLA-eligible order under the scenarios listed above, regardless of price, would be entitled to executions only after the COLA-eligible order has been executed in full.

An order that would otherwise be the COLA-eligible order that is received in the Phlx XL system during the final ten seconds of any trading session would not be the COLA-eligible order.

COLA

Complex Orders on the CBOOK may be subject to an automated COLA process. A COLA may take place (1) following a COOP, or (2) during normal trading if the Phlx XL system receives a Complex Order that improves the cPBBO.

If the Phlx XL system identifies the existence of a single 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, unless the Phlx XL participant submitting the COLA-eligible order designates the COLA-eligible order as ineligible for execution during the COLA at a price that is inferior to the NBBO for the individual components of the Complex Order Strategy that is the subject of the COLA-eligible order. The purpose of this provision is to provide a method for Phlx XL participants, upon request, to protect each component of their Complex Order from trading through the NBBO. However, an otherwise "NBBO protected" COLA-eligible order may not be so designated once placed onto the CBOOK.

Upon the identification of the COLA-eligible order by the Phlx XL system, the Exchange will send a broadcast message to Phlx XL participants indicating that a COLA has been initiated. The broadcast message will identify the Complex Order Strategy, the size of the COLA-eligible order, and any contingencies, if applicable (e.g., All-or-None), but will not identify the side of the market or the price of the COLA-eligible order. The purpose of this provision is to maintain a fair and orderly market for Complex Orders on the Exchange by ensuring a "blind" auction in the COLA.

COLA Timer

Once the Phlx XL system has identified a COLA-eligible order (either through price-improvement or by way of a COOP), the COLA will begin with a timing mechanism (a "COLA Timer"), which is a configurable counting period not to exceed five seconds, during which Phlx XL participants may submit bids or offers that improve on the cPBBO for the particular Complex Order Strategy. In order to be consistent and to avoid confusion, the COLA Timer will be set for the same number of seconds for all options trading on the Exchange as determined by the Exchange and communicated to the membership via Exchange Circular. Complex Orders may be cancelled at any time prior to the commencement of a COLA. To ensure the uninterrupted continuity of the COLA, the proposed rule would provide that no Complex Order(s) in a particular Complex Order Strategy may be cancelled during the COLA for that Complex Order Strategy. Such Complex Orders may be cancelled following the completion of the COLA for that Complex Order Strategy.

Bidding and Offering in Response to a COLA

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 electronic bids or offers that improve the cPBBO, known as a "COLA Sweep." Phlx XL participants may also bid and/or offer electronically using limit orders. Such orders would be handled as described below.

A single Phlx XL participant may submit multiple COLA Sweeps at different prices in increments of \$0.01 in response to a COLA broadcast, regardless of the minimum trading increment applicable to the specific series. A COLA Sweep may be for a size that is less than the size of the COLA-eligible order, and multiple COLA Sweeps submitted by the same Phlx XL participant may be for different sizes at different price levels.

Phlx XL participants may change the size of a previously submitted COLA Sweep at the previously submitted COLA price during the COLA Timer. In the event that a Phlx XL participant submits multiple COLA Sweeps in a particular Complex Order Strategy, the system will use the Phlx XL participant's most recently submitted COLA Sweep at each price level as that participant's response at that price. The Phlx XL participant's most recently submitted COLA Sweep will be included in the allocation algorithm

described below, unless the newly submitted COLA Sweep has a size of zero. A COLA Sweep with a size of zero will remove a Phlx XL participant's previously submitted COLA Sweep from the COLA at that price level. The purpose of this provision is to reward Phlx XL participants that are first to bid or offer during the COLA Timer without penalizing them simply because the Phlx XL participant changes the size of his/her COLA Sweep. COLA Sweeps will not be visible to any participant and will not be disseminated by the Exchange. This is to ensure a fair auction during the COLA Timer, such that all participants would submit COLA Sweeps at their best price.

The Exchange's rules regarding exposure of Solicited Transactions and orders submitted by Order Entry Firms¹⁶ acting as agent who wish to trade as principal against such orders will apply to complex orders trading on Phlx XL.¹⁷

Execution of COLA-Eligible Orders

Upon the expiration of the COLA Timer, COLA Sweeps and/or any Complex Orders received during the COLA Timer that improve the cPBBO may be executed against the COLA-eligible order (unless the cPBBO is inferior to the cNBBO and the Phlx XL participant submitting the COLA-eligible order has designated the components of the COLA-eligible order as ineligible for execution at a price that is inferior to the cNBBO). The COLA-eligible order will receive the best price or prices available for the Complex Order Strategy represented by the COLA-eligible order. The components of a COLA-eligible order may be executed in one cent increments, regardless of the minimum quoting increments otherwise appropriate to the individual legs of the order. Executions in the COLA will comply with the requirements of Phlx Rule 1033(d).¹⁸

¹⁶The term "Order Entry Firm" means a member organization of the Exchange that is able to route orders to AUTOM. See Phlx Rule 1080(c)(ii)(A)(1).

¹⁷Under Exchange rules, Order Entry Firms may not execute as principal against orders on the limit order book they represent as agent unless: (a) Agency orders are first exposed on the limit order book for at least three seconds, (b) the Order Entry Firm has been bidding or offering on the Exchange for at least three seconds prior to receiving an agency order that is executable against such order, or (c) the Order Entry Firm proceeds in accordance with the crossing rules contained in Phlx Rule 1064. See Phlx Rule 1080(c)(ii)(C)(1). Order Entry Firms must expose orders they represent as agent for at least three seconds before such orders may be automatically executed, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders. See Phlx Rule 1080(c)(ii)(C)(2).

¹⁸Phlx Rule 1033(d), "Spread Type Priority," states that when a member holding a hedge order,

Trade Allocation and Priority

As stated above, COLA-eligible orders, COLA Sweeps, and responsive Complex Orders will trade first based on the best price or prices available at the end of the COLA Timer. If no COLA Sweeps or responsive Complex Orders for the same Complex Order Strategy as the COLA-eligible order that improve the initial cPBBO were received during the COLA Timer, each component of the COLA-eligible order 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 each component is executed such that the components comprise the Complex Order Strategy with the correct ratio for the desired net debit or credit. Trades pursuant to this paragraph will be allocated in accordance with Phlx Rule 1014(g)(vii), and an SQT or RSQT quoting all components of the Complex Order will have priority over SQTs and RSQTs quoting a single component, but not over customer orders.

If the markets for the individual components of a Complex Order Strategy independently improve during the COLA Timer and match the best price of COLA Sweep(s) and/or responsive Complex Order(s), the Phlx XL system will execute such COLA Sweep(s) and/or responsive Complex Orders before executing the individual components of the Complex Order Strategy. A non-broker-dealer customer Complex Order will have priority over specialists, SQTs, RSQTs, and off-floor broker-dealers bidding for and/or offering any component(s) of the Complex Order Strategy at the same price, but not over non-broker-dealer customer orders representing any component(s) of the Complex Order Strategy at the same price. The purpose of this provision is to encourage Phlx XL participants to participate in the Complex Order auction process, in which the Phlx XL system will create opportunities for price improvement of the COLA-eligible order, rather than doing so with individual orders. The Exchange believes that the systemic

as defined in Phlx Rule 1066, and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions at or within the bids and offers established in the marketplace, then the order may be executed as a hedge order at the total credit or debit with one other member with priority over either the bid or the offer established in the marketplace that is not better than the bids or offers comprising such total credit or debit, provided that the member executes at least one option leg at a better price than the established bid or offer for that option contract AND no option leg is executed at a price outside of the established bid or offer for that option contract.

approach using Complex Orders in the auction process will foster fair and orderly automated markets for Complex Orders, with the potential for price improvement each time the automated auction process is engaged.

If multiple customer Complex Orders, COLA Sweeps, Phlx XL participant Complex Orders and/or off-floor broker-dealer Complex Orders are eligible for execution against the COLA-eligible order at the same net price, the trade will be allocated, subject to the size of the COLA-eligible order:

- First, to customer marketable Complex Orders on the CBOOK (as defined below) in the order in which they were received;
- Second, to COLA Sweeps on a size pro-rata basis;
- Third, to SQTs, RSQTs, and non-SQT ROTs who have submitted IOC Complex Orders that are marketable against the COLA-eligible order, on a size pro-rata basis; and
- Fourth, to non-market maker off-floor broker-dealers on a size pro-rata basis.

Executions in the COLA will comply with the requirements of Phlx Rule 1033(d), as described above. For allocation purposes, the size of a COLA Sweep or responsive Complex Order received during the COLA Timer would be limited to the size of the COLA-eligible order. For example, if the size of a COLA-eligible order is 100 contracts, and a COLA Sweep is received for 500 contracts, the system will calculate the algorithm using a size of 100 contracts for the COLA Sweep. The purpose of this provision is to prevent artificially inflated COLA Sweep and Complex Order sizes intended to increase the size pro rata entitlement applicable to the Phlx XL participant submitting the COLA Sweep or Complex Order.

If a COLA-eligible order cannot be filled in its entirety, any remaining balance would be placed on the CBOOK unless the COLA-eligible order has been submitted with other instructions (*i.e.*, cancel).

Enhanced Specialist Participation

In the situation where the specialist submits a COLA Sweep during the COLA Timer at the same price as other COLA Sweeps that are eligible for execution against the COLA-eligible order, after customer marketable Complex Orders have been executed against the COLA-eligible order, the specialist would be entitled to receive the greater of 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 (*i.e.*, size pro rata); or 40% of the remainder of the order. The specialist is not entitled to receive an allocation that would exceed the size of the specialist's COLA Sweep.

Firm Quote Requirement for COLA-Eligible Orders

COLA Sweeps in response to a COLA broadcast would represent non-firm interest that can be modified at any time prior to the end of the COLA Timer. At the end of the COLA Timer, a COLA Sweep would be firm only with respect to the COLA-eligible order for which it is submitted, provided that COLA Sweeps that have size remaining after the COLA-eligible order is exhausted are also eligible to trade with other incoming COLA-eligible orders in the auction queue that are received during the COLA Timer after the initial COLA-eligible order has been executed in its entirety. Any COLA Sweeps not accepted in whole or in a permissible ratio will expire at the end of the COLA Timer.

Complex Orders Resting on the CBOOK

The proposed rule describes the handling of Complex Orders resting on the CBOOK, and incoming electronic Complex Orders that are received prior to the expiration of the COLA Timer (collectively, for purposes of this rule, "incoming Complex Orders") representing the same Complex Order Strategy as a COLA-eligible order. At the end of the COLA Timer, the Phlx XL system will determine the price and size of COLA Sweeps and any orders that were received during the COLA Timer that are unrelated to the COLA but nonetheless are eligible to participate in the COLA as set forth below.

Same Side of the Market as COLA-Eligible Order

Incoming Complex Orders that were received during the COLA Timer for the same Complex Order Strategy as the COLA-eligible order that are on the same side of the market will join the COLA. The original COLA-eligible order has priority at all price points (*i.e.*, multiple COLA Sweep Prices) over the incoming Complex Order(s), regardless of the price of the incoming Complex Order. Therefore, the incoming Complex Order would not be eligible for execution until the COLA-eligible order is executed in its entirety. The purpose of this provision is to provide incentive for, and to reward, customers who submit initial COLA-eligible orders by systemically completing the COLA for such an order. In this manner, the entire order may benefit from COLA Sweeps

and price-improving orders on the opposite side of the market. The Exchange further believes that affording priority to the initial COLA-eligible order at all price points submitted for the same Complex Order Strategy fosters a fair and orderly marketplace, is more technologically sound, and will eliminate the potentially disruptive effect of other market participants bidding or offering in penny increments for the purpose of taking advantage of COLA Sweeps and price-improving orders submitted for execution against the original COLA-eligible order without having submitted an initial Complex Order that improves the cPBBO (and thus becomes a COLA-eligible order).

Incoming Complex Orders on the same side of the market as a COLA-eligible order are eligible for execution once the entire COLA-eligible order has been executed. Once the COLA-eligible order has been executed in its entirety, additional Complex Orders on the same side of the market as the COLA-eligible order will be executed (if at all) at each price level in the order in which they were received. If such incoming Complex Orders are not executed in their entirety, any remaining contracts will not be considered a COLA-eligible order and the Phlx XL system will place such remaining bids or offers on the CBOOK, subject to other instructions. If the incoming Complex Order is not executed in its entirety, the system will not initiate a new COLA. Any remaining contracts will be placed on the CBOOK, subject to other instructions.

If no COLA Sweeps or Complex Orders for the same Complex Order Strategy as the COLA-eligible order were received during the COLA Timer, each component of the COLA-eligible order 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 each component is executed such that the components comprise the Complex Order Strategy with the correct ratio for the desired net debit or credit.

Trades involving the individual components of a Complex Order would be allocated in accordance with Exchange Rule 1014(g)(vii).¹⁹ An SQT or RSQT quoting all components of the Complex Order would have priority over SQTs and RSQTs quoting a single component, but not over customer orders.

¹⁹ Phlx Rule 1014(g)(vii) is the allocation algorithm applicable to trades executed on Phlx XL.

Customer Complex Orders—Opposite Side of the Market

Incoming customer 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 COLA Sweep Price will be executed against the COLA-eligible order (which will be executed in its entirety first as described in sub-paragraph (B) above) as follows:

- If such incoming customer Complex Order is a limit order at the same price as the best COLA Sweep Price, the incoming Complex Order will be executed at the Sweep Price.
- If such incoming Complex Order is a limit order that improved the best COLA Sweep Price, the incoming customer Complex Order will be executed at the mid-point of the best COLA Sweep Price and the limit order price, rounded, if necessary, to the closest minimum trading increment to the benefit of the COLA-eligible order.
- 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 Sweep Price, rounded, if necessary, to the closest minimum trading increment to the benefit of the COLA-eligible order.
- If multiple customer Complex Orders are received on the opposite side of the market from the COLA-eligible order, such orders will be executed in the order in which they were received at each price level.
- If the COLA-eligible order is executed in its entirety and there are remaining bids or offers from the incoming Complex Order(s), the Phlx XL system will place such bids or offers onto the CBOOK, subject to other instructions.

Non-Customer Complex Orders—Opposite Side of the Market

Incoming non-customer 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 COLA Sweep Price will be executed against the COLA-eligible order as follows:

- If such incoming non-customer Complex Order is a limit order at the same price as the best COLA Sweep Price, the incoming non-customer Complex Order will be executed at the Sweep Price.
- If such incoming non-customer Complex Order is a limit order that

improved the best COLA Sweep Price, the incoming non-customer Complex Order will be executed at the limit order price.

- 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.
- If multiple non-customer Complex Orders are received on the opposite side of the market from the COLA-eligible order, such orders will be executed in the order in which they were received at each price level.
- If the COLA-eligible order is executed in its entirety and there are remaining bids or offers from the incoming non-customer Complex Order(s), the Phlx XL system will place such bids or offers onto the CBOOK, subject to other instructions.

Incoming Complex Orders that were received during the COLA Timer on the opposite side of the market from the COLA-eligible order with a price inferior to any other COLA Sweep Price(s) will be executed against the COLA-eligible order after all interest at the better COLA Sweep Price(s) has/have been executed. The system will treat any unexecuted remaining contracts in the incoming Complex Order as a new Complex Order, and will not initiate a new COLA. Such unexecuted remaining contracts will be placed on the CBOOK, subject to other instructions.

CBOOK

Non-broker-dealer customer Complex Orders and non-market maker broker-dealer orders are eligible for entry into the CBOOK and may be designated as Day or GTC. Complex Orders may be entered onto the CBOOK in increments of \$0.01. The individual components of a Complex Order may be executed in minimum increments of \$0.01, regardless of the minimum increments applicable to such components. Such orders will be placed on the CBOOK by the system when the following conditions exist:

- The Complex Order does not price-improve upon the cPBBO;
- The order is received before the expiration of the COOP;
- When the Complex Order is received during a trading halt on the Exchange for any component of the Complex Order;
- When the Complex Order is received while the Exchange's automated execution system is

disengaged for any component of such Complex Order;

- When any component of the Complex Order is a pre-opening order; or
- When the Complex Order is received during the final 10 seconds of the trading session.

A COLA-eligible order designated as ineligible for execution in the COLA at a price that is inferior to the NBBO at the time of execution for the individual components of the Complex Order Strategy that is the subject of the COLA-eligible order may not be so designated once placed onto the CBOOK.

Therefore, any Complex Order initially so designated would lose this designation once placed onto the CBOOK.

Execution of Complex Orders in the CBOOK

Complex Orders will be automatically executed against orders on the CBOOK in price priority and in time priority at the same price. A Complex Order resting on the CBOOK will execute automatically against: (i) Quotes or orders on the limit order book for the individual components of the order, provided that the Complex Order can be executed in full or in a permissible ratio by such quotes or orders (allocated in accordance with Phlx Rule 1014(g)(vii), and an SQT or RSQT quoting all components of the Complex Order will have priority over SQTs and RSQTs quoting a single component, but not over customer orders); or (ii) an incoming marketable Complex Order(s) that do(es) not trigger a COLA Timer, whichever arrives first.

An incoming marketable Complex Order that does not trigger a COLA Timer will execute in the following order:

- First, against quotes or orders on the limit order book for the individual components of the order (provided that the Complex Order can be executed in full or in a permissible ratio by such quotes or orders). Trades executed pursuant to this provision will be allocated in accordance with current Phlx Rule 1014(g)(vii), which sets forth the allocation algorithm for electronic trades. An SQT or RSQT quoting all components of the Complex Order will have priority over SQTs and RSQTs quoting a single component, but not over customer orders.
- Second, against non-broker-dealer customer Complex Orders and non-market maker broker-dealer Complex Orders resting in the CBOOK in price priority and, at the same price, against (i) non-broker-dealer customer Complex Orders in the order in which they were

received; and (ii) non-market-maker broker-dealer Complex Orders on a size pro rata basis, provided that any execution pursuant to paragraph (f)(iii)(B)(2) complies with the requirements of Phlx Rule 1033(d).²⁰

A non-broker-dealer customer Complex Order will have priority over specialists, SQTs, and RSQTs and off-floor broker-dealers bidding for and/or offering any component(s) of the Complex Order Strategy at the same price, but not over non-broker-dealer customer orders representing any component(s) of the Complex Order Strategy at the same price.

Open Outcry

Phlx members and Phlx XL participants quoting and trading in open outcry would not be eligible to participate in the electronic Complex Order system. In order to participate, such members and Phlx XL participants must submit COLA Sweeps and/or responsive Complex Orders electronically.

Phlx XL Strategy Price Protection

The Exchange recognizes two Complex Order Strategies that could cause undue risk to market participants. In order to address these strategies, the Exchange has developed a program in the Phlx XL system known as Phlx XL Strategy Price Protection ("SPP"). SPP is a feature of Phlx XL that prevents certain Complex Order Strategies from trading at prices outside of pre-set standard limits. SPP will apply only to Vertical Spreads and Time Spreads, as defined below. Vertical Spreads have a quantifiable minimum and maximum value. Time Spreads have a quantifiable minimum value. SPP ensures that neither of these strategies will trade outside of these quantifiable values by more than a pre-set amount, as described below.

Vertical Spread

A Vertical Spread is a Complex Order Strategy consisting of the purchase of one call (put) option and the sale of another call (put) option overlying the same security that have the same expiration but different strike prices. The SPP will calculate the maximum possible value of a Vertical Spread by subtracting the value of the lower strike price from the value of the higher strike price as between the two components. For example, a Vertical Spread consisting of the purchase of one January 30 call and the sale of one January 35 call would have a maximum value of \$5.00. The minimum possible

value of a Vertical Spread is always zero.

The SPP will ensure that a Vertical Spread will not trade at a net price of less than the minimum possible value (minus a pre-set value setting an acceptable range) or greater than the maximum possible value (plus a pre-set value setting an acceptable range). The pre-set value and acceptable range will be uniform for all options traded on the Exchange as determined by the Exchange and communicated to the membership by Exchange Circular.

Time Spread

A Time Spread is a Complex Order Strategy consisting of the purchase of one call (put) option and the sale of another call (put) option overlying the same security that have different expirations but the same strike price. The maximum possible value of a Time Spread is unlimited. The minimum possible value of a Time Spread is zero. The SPP will ensure that a Time Spread will not trade at a price of less than zero, minus a pre-set value setting an acceptable range.

If the limits set forth above would be violated by an execution, the system will place the Complex Order on the CBOOK.

2. Statutory Basis

The Phlx believes that its proposal is consistent with Section 6(b) of the Act,²¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²² in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by establishing a system and rules that permit the automated handling of Complex Orders, and providing a price improving auction for Complex Orders that is fair, orderly, and results in customers receiving timely and quality executions on the Phlx.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

²⁰ See note 18, *supra*.

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 35 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 Phlx consents, the Commission will:

(A) By order approve 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. Please include File Number SR-Phlx-2008-50 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-Phlx-2008-50. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. 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-2008-50 and should be submitted on or before July 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-15698 Filed 7-9-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58098; File No. SR-NASDAQ-2008-035]

Self-Regulatory Organizations; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Filed by The NASDAQ Stock Market LLC

July 3, 2008.

On April 21, 2008, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the by-laws ("NASDAQ OMX By-Laws") of its parent corporation, NASDAQ OMX. The NASDAQ OMX By-Law Proposal was published for comment in the **Federal Register** on May 8, 2008.³ On June 10, 2008, Nasdaq filed an extension of time for Commission action extending the action date until July 3, 2008.

Section 19(b)(2) of the Act⁴ provides that within thirty-five days of the publication of notice of the filing of a proposed rule change, or within such longer period as the Commission may designate up to ninety days of such date

if it finds such longer period to be appropriate and publishes its reasons for so finding the Commission shall either approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposal, which relates to the acquisition of the Boston Stock Exchange, Inc. and the Boston Stock Exchange Clearing Corporation by NASDAQ OMX.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates August 6, 2008, as the date by which the Commission should either approve or institute proceedings to determine whether to disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-15627 Filed 7-9-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

In the Matter of: VMT Scientific, Inc.; Order of Suspension of Trading

July 8, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of VMT Scientific, Inc. ("VMT Scientific") because of questions regarding the accuracy of assertions in press releases concerning, among other things: (1) The legal status of VMT Scientific; (2) VMT Scientific's business combinations; (3) VMT Scientific's current financial condition; and (4) VMT Scientific's assets.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, July 8, 2008 through 11:59 p.m. EDT, on July 21, 2008.

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57761 (May 1, 2008), 73 FR 26182 (SR-NASDAQ-2008-035).

⁴ 15 U.S.C. 78s(b)(2).