

the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>68</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the proposed rule change will prevent fraudulent and manipulative acts and protect investors and the public interest by continuing to prohibit Trading Permit Holders from engaging in deceptive and other abusive telemarketing acts or practices. Additionally, the proposed rule change removes impediments to and perfects the mechanism for a free and open market and a national market system, because it provides consistency among telemarketing rules of national securities exchanges and FINRA, therefore making it easier for investors to comply with these rules. The proposed rule change to include Rule 9.24 in the list of Exchange Rules that apply to CBSX also protects investors by eliminating any potential confusion among investors as to whether Rule 9.24 applies to CBSX Trading Permit Holders.

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

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

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

- A. Significantly affect the protection of investors or the public interest;
- B. Impose any significant burden on competition; and
- C. Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)<sup>69</sup> of the Act and Rule 19b-4(f)(6)<sup>70</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2012-024 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-CBOE-2012-024. This file number should be included on the subject line if email 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 Web site 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

should refer to File Number SR-CBOE-2012-024 and should be submitted on or before April 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>71</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66602; File No. SR-Phlx-2012-31]

### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Acceptable Complex Execution ("ACE") Parameter Order Protection Feature**

March 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on March 8, 2012, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Exchange Rule 1080, Commentary .08, Complex Orders on Phlx XL, by adopting new Rule 1080.08(i), which would establish an Acceptable Complex Execution Parameter ("ACE Parameter"), a price range outside of which a Complex Order (as defined below) will not be executed by the PHLX XL<sup>®</sup> automated options trading system<sup>3</sup> following a Complex Order

<sup>71</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> This proposal refers to "PHLX XL" as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL" for branding purposes.

<sup>68</sup> 15 U.S.C. 78f(b)(5).

<sup>69</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>70</sup> 17 CFR 240.19b-4(f)(6).

Live Auction (“COLA”), as defined below.

The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

## II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of the proposed rule change is to establish the ACE Parameter in order to prevent Complex Orders<sup>4</sup> from automatically executing at

<sup>4</sup> For purposes of the electronic trading of Complex Orders on the Exchange, a Complex Order is an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced as a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy.

A Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying security (stock or Exchange Traded Fund Share (“ETF”)) coupled with the purchase or sale of options contract(s). The underlying security must be the deliverable for the options component of that Complex Order and represent exactly 100 shares per option for regular way delivery. Stock-option orders can only be executed against other stock-option orders and cannot be executed by the System against orders for the individual components. Member organizations may only submit Complex Orders with a stock/ETF component if such orders comply with the Qualified Contingent Trade Exemption from Rule 611(a) of Regulation NMS. Member organizations submitting such Complex Orders with a stock/ETF component represent that such orders comply with the Qualified Contingent Trade Exemption. Members of FINRA or the NASDAQ Stock Market LLC (“NASDAQ”) are required to have a Uniform Service Bureau/Executing Broker Agreement (“AGU”) with Nasdaq Options Services LLC in order to trade Complex Orders containing a stock/ETF component; firms that are not members of FINRA or NASDAQ are required to have a Qualified Special Representative (“QSR”) arrangement with NOS in order to trade Complex Orders containing a stock/ETF component. The maximum number of components of a Complex Order is six. A stock-

potentially erroneous prices. The ACE Parameter feature is designed to help maintain a fair and orderly market. The Exchange believes that the ACE Parameter feature will assist with the maintenance of fair and orderly markets by helping to mitigate the potential risk of executions at prices which are extreme and potentially erroneous.

The ACE Parameter feature is used to define a price range outside of which a Complex Order will not be executed following a COLA.<sup>5</sup> The ACE Parameter is a percentage defined by the Exchange on an issue-by-issue basis. The ACE Parameter percentage shall not be less than 3 percent. The ACE Parameter price range is based on the Complex National Best Bid or Offer (“cNBBO”)<sup>6</sup> at the time an order would be executed. A Complex Order to sell will not be executed at a price that is lower than the cNBBO bid by more than the ACE Parameter percentage. A Complex Order to buy will not be executed at a price that is higher than the cNBBO offer by more than the ACE Parameter percentage. A Complex Order or a portion of a Complex Order that cannot be executed within the ACE Parameter pursuant to the proposed rule will be placed on [sic] Exchange’s Complex Limit Order Book (“CBOOK”).<sup>7</sup>

For example, assume the ACE parameter is set at 10%, and a PHLX XL participant submits a Complex Order with a strategy to buy Series A and buy Series B.

A complex order is received to buy 30 Series A and buy 30 Series B (30 units of the strategy) for a net debit of \$8.40 and a COLA is initiated. At the end of the COLA, the market is:

NBBO for Series A is \$4.50–\$4.60, size 10 × 10.

NBBO for Series B is \$2.90–\$3.00, size 10 × 10.

cNBBO for the strategy is \$7.40–\$7.60.

Executions to buy the strategy (buy Series A and buy Series B) will occur up to \$8.36 (\$7.60 + [0.10 × \$7.60]). Any remainder of the order will be placed on the CBOOK at \$8.40.

The Exchange believes a minimum 3 percent level<sup>8</sup> is reasonable and appropriate because a marketable order that would deviate from the cNBBO by 3% or more may be indicative of an extreme or potentially erroneous price, and an Exchange participant would

option order may include up to five options components (legs). See Exchange Rule 1080.08(a)(i).

<sup>5</sup> COLA is the automated Complex Order Live Auction process. See Exchange Rule 1080.08(e).

<sup>6</sup> See Exchange Rule 1080.08(a)(vi).

<sup>7</sup> See Exchange Rule 1080.08(f).

<sup>8</sup> For simplicity of explanation, the above example uses a 10% ACE Parameter, which is consistent with the 3% minimum in the proposed rule.

likely want to evaluate the affected Complex Order further following the COLA before receiving an automatic execution. The Exchange also believes that a 3 percent minimum is reasonable and appropriate in comparison to other price check parameters currently in existence on at least one other U.S. options exchange.<sup>9</sup>

The Exchange will issue an Options Trader Alert (“OTA”) to membership indicating the issue-by-issue ACE Parameter percentages. The Exchange will also maintain a list of ACE Parameter percentages on its Web site.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>10</sup> in general and with Section 6(b)(5) of the Act,<sup>11</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

The ACE Parameter feature is designed to protect investors from extreme and potentially erroneous executions of their Complex Orders. The Exchange also believes the ACE Parameter feature should assist with the maintenance of fair and orderly markets by helping to mitigate the potential risks of receiving executions at prices that are extreme and potentially erroneous.

Finally, the proposed rule change should also make it easier for users to read and understand the operation of PHLX XL as it relates to the execution of Complex Orders, and will fully describe the operation of the new ACE Parameter feature, all to the benefit of

<sup>9</sup> The Exchange notes that the Chicago Board Options Exchange, Incorporated (“CBOE”) currently applies a no less than 3 percent “acceptable percentage distance” outside of which it will not execute complex orders. See Securities Exchange Act Release No. 66207 (January 20, 2012), 77 FR 4073 (January 26, 2012) (SR-CBOE-2012-004) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Automatic Execution and Complex Order Price Check Parameter Features) (“CBOE Notice”).

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

PHLX XL participants, and to the options markets as a whole.

#### 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.

#### 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)<sup>13</sup> thereunder.

Phlx has asked the Commission to accelerate the 30-day operative delay.<sup>14</sup> The Commission finds that accelerating the 30-day operative delay is consistent with the protection of investors and the public interest because the ACE Parameter is designed to prevent the automatic execution of Complex Orders at potentially extreme or erroneous prices.<sup>15</sup> Accordingly, the Commission designates the proposal operative upon filing.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of

the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-31 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-Phlx-2012-31. This file number should be included on the subject line if email 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 Web site 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-Phlx-2012-31, and should be submitted on or before April 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Kevin M. O'Neill,  
Deputy Secretary.

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 3, 2012, and comments were due by March 5, 2012. No comments were received.

**DATES:** Comments must be submitted on or before April 20, 2012.

**FOR FURTHER INFORMATION CONTACT:** Cmdr Michael DeRosa, Maritime Administration, U.S. Merchant Marine Academy, 300 Steamboat Road, New York, NY 11024. Telephone: 516-726-5642; or email: [DeRosaM@USMMA.EDU](mailto:DeRosaM@USMMA.EDU). Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

*Title:* U.S. Merchant Marine Academy Candidate Application for Admission.

*OMB Control Number:* 2133-0010.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Individuals desiring to become students at the U.S. Merchant Marine Academy.

*Forms:* KP 2-65.

*Abstract:* The collection consists of Parts I, II, and III of Form KP 2-65 (U.S. Merchant Marine Academy Candidate Application). Part I of the form is completed by individuals wishing to be admitted as students to the U.S. Merchant Marine Academy.

*Annual Estimated Burden Hours:* 12,500 hours.

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

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> The Commission notes that the ACE Parameter is substantially similar to a price check parameter adopted by another options exchange. See CBOE Rule 6.53C, Interpretation and Policy .08(e) and CBOE Notice, *supra* note 9.

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).