The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

institution and settlement of administrative proceedings;

an adjudicatory matter; and

other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: August 22, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20935 Filed 8–23–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70242; File No. SR–Phlx–2013–76]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to the Discontinuation of the Differentiation of Price Improvement XL Orders of Less Than 50 Contracts

August 21, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on August 16, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to discontinue the differentiation in subsection (n)(i)(A)(2) and subsection (n)(i)(B)(2) of Rule 1080 (Phlx XL and Phlx XL II) regarding Price Improvement XL (''PIXL'') Orders that are for a size of less than 50 contracts.[3] The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx* 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to discontinue the differentiation in subsection (n)(i)(A)(2) and subsection (n)(i)(B)(2) of Rule 1080 regarding PIXL Orders that are for a size of less than 50 contracts.

The PIXL program in Rule 1080(n) provides a price-improvement mechanism in which a member (an ''Initiating Member'') may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (known as the ''PIXL Order'') against principal interest or against any other order it represents as agent, provided that such Initiating Member submits the PIXL Order for electronic execution into the one-second long PIXL Auction (''Auction'') pursuant to the rule. In addition, PIXL provides for the automatic execution, under certain conditions, of a crossing transaction where there is a public customer order in the same options series on each side.

Currently, subsection (n)(i)(A) of Rule 1080 states that for public customer orders, if a PIXL Order is for 50 contracts or more, the Initiating Member must stop the entire PIXL Order at a price that is equal to or better than the National Best Bid or Offer (''NBBO'') on the opposite side of the market from the PIXL Order, provided that such price must be at least one minimum price improvement increment (as determined by the Exchange but not smaller than one cent) better than any limit order on the limit order book on the same side of the market as the PIXL Order. Subsection (n)(i)(B) states that for non-public customer orders (*i.e.,* where the order is for the account of a broker-dealer or any other person or entity that is not a public customer), if the order is for 50 contracts or more, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) The PBBO price improved by at least one minimum price improvement increment on the same side of the market as the PIXL Order; or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO.

Two subsections of Rule 1080 ((n)(i)(A)(2) and (n)(i)(B)(2)) currently require, on a pilot basis expiring July 18, 2014, a separate price improvement process for public customer and non-public customer PIXL Orders that are less than 50 contracts in size. Subsection (n)(i)(A)(2) states that if the PIXL Order is for less than 50 contracts, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) The PBBO price on the opposite side of the market from the PIXL Order, improved by at least one minimum price improvement increment; or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO, and at least one price improvement increment better than any limit order on the book on the same side of the market as the PIXL Order. Subsection (n)(i)(B)(2) states that if the PIXL Order is for less than 50 contracts, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) The PBBO price improved by at least one minimum price improvement increment on the same side of the market as the PIXL Order; or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO and at least one price improvement increment better than the PBBO on the opposite side of the market from the PIXL Order. Subsections (n)(i)(A)(2) and (n)(i)(B)(2) are together known as the ''Differentiation Provision''.

The Exchange is proposing to discontinue the Differentiation Provision and the disparate treatment for PIXL Orders for less than 50 contracts.[4] As a result, all PIXL Orders regardless of their size will be treated the same as PIXL Orders that are 50

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

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR–Phlx–2010–108) (order approving the PIXL electronic price improvement program and the noted pilot programs) (the ''PIXL Filing'').

[4] The Exchange is making conforming changes throughout subsection (n) of Rule 1080 to delete any rule text that differentiates PIXL procedures based on size.

contracts or greater in size in current Rule 1080(n).[5] Public customers will continue to have priority at each price level in accordance with PHLX Rule 1080(n)(ii)(E). Consistent with PIXL Orders of 50 contracts or greater in size, PHLX will consider resting quotes and orders for allocation at the end of the Auction with all prices that improve the stop price being considered first. At each given price point, PHLX will execute public customer interest in a price/time fashion such that all public customer interest which was resting on the order book is satisfied before any other interest that arrived after the Auction was initiated. After public customer interest at a given price point has been satisfied, remaining contracts will be allocated among all Exchange quotes, orders and Auction responses in accordance with the rules set forth in 1080(n)(ii)(E)(2) based on the manner in which the PIXL Order was submitted. Interest, whether resting prior to the commencement of the Auction or arriving during the Auction process, will continue to be executed according to the rules set forth in 1080(n)(ii)(E)(2).

The Exchange believes using the same exact allocation method, as it does today for PIXL Orders of 50 contracts or greater, is a fair distribution because the Initiating Order provides significant value to the market. The Initiating Member guarantees the PIXL Order an execution price at the NBBO or better at time of receipt, and is subject to market risk while the order is exposed to other market participants. The Initiating Member may only improve the stop price where they have stopped the agency side, and may not cancel their order once the Auction commences. Other market participants are free to modify or cancel their quotes and orders at any time during the Auction. The Exchange believes that the Initiating Member provides an important role in facilitating the price improvement opportunity for market participants. The following example illustrates how the proposed rule change would operate:

Example:

PBBO is 2.48–2.51 (60×30) (10 of the 30 on the offer is a public customer; 10 of the 30 on the offer is a market maker (MM) offering 10; 10 of the 30 on the offer is a resting off-floor broker dealer order).

NBBO is 2.48–2.51 (100×100).

Under the proposed PIXL Rule with the removal of the Differentiation Provision, a public customer order to buy may be entered into PIXL and stopped at a price equal to or within a range of 2.48–2.51. A non-public customer order to buy may be entered into PIXL and stopped at a price equal to or within a range of 2.49–2.51.

Assume a public customer or non-public customer order to buy 45 contracts is submitted into PIXL with a Stop Price of 2.51. The Auction will commence with an Auction notification being sent to market participants.

Assume, during the Auction, two market makers (MM1 and MM2) respond. MM1 responds to sell 10 contracts at 2.50 and MM2 responds to sell 10 contracts at 2.51.

At the end of the Auction, the PIXL Order will buy 10 contracts from MM1 at 2.50, leaving 35 to be allocated at the Stop Price of 2.51.

The allocation process would continue and 10 contracts will be allocated to the public customer on the book at 2.51, leaving 25 contracts to be allocated among the Initiating Order[6] which stopped the PIXL Order at 2.51, the two market makers offering at 2.51, and the off-floor broker dealer order on the offer at 2.51.

The remaining 25 contracts will be allocated at a price of 2.51 with 10 contracts (40%) being allocated to the Initiating Order, 8 (or 7)[7] contracts allocated to MM and 7 (or 8, per footnote 7) contracts allocated to MM2. Since all of the contracts have been allocated, the off-floor broker dealer order on the offer at 2.51 will not be allocated any contracts and will remain on the book.

The Exchange believes that the Differentiation Provision is unnecessary, and indeed is counterproductive to the goal of treating all PIXL Orders equally regardless of PIXL Order size. The Exchange believes removing the Differentiation Provision will attract new order flow that might not currently be afforded any price improvement opportunity into PIXL. When PIXL was first implemented, the Differentiation Provision was a means to ensure some level of price improvement for smaller orders. Currently, PIXL is a more mature product with a robust and seasoned price improvement mechanism that has the capacity to benefit all orders regardless of their size. Moreover, the Exchange notes that the Boston Options Exchange (''BOX'') currently has rules that do not differentiate price improvement opportunities based on the order size.[8] BOX's PIP mechanism was recently modified[9] to commence an auction even when there is resting interest at the PIP start price. When a PIP is initiated at a price equal to the NBBO, regardless of size, the resting quotes and orders on BOX are considered for allocation at the end of the auction. BOX executes interest that existed on the BOX order book prior to the commencement of a PIP before executing any interest which joined during the auction. This behavior aligns with the BOX standard trade allocation rules as they employ a price/time allocation algorithm. Similar to BOX, the PHLX proposed rule change will allow orders of any size to initiate an Auction at a price which is equal to or better than the NBBO where PHLX may have resting interest. PHLX will execute a PIXL Order against any interest, resting prior to the commencement of an Auction or interest which arrived during the Auction, in accordance with the rules as stated and illustrated with the example above. While this is different than the allocation algorithm that BOX employs, this behavior is consistent with the allocation algorithm established in the PHLX PIXL rules and employed today in PIXL when an order of 50 contracts or more is entered, regardless of the stop price.

While the removal of the Differentiation Provision removes the guarantee of price improvement in a limited instance, specifically when a PIXL Order is for fewer than 50 contracts and PHLX is already present at the NBBO at the commencement of the Auction, the Exchange believes that the proposed rule change will benefit

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[5] This proposal refers only to eliminating subsections (n)(i)(A)(2) and (n)(i)(B)(2) and does not refer to or effect the provision at subsection (n)(vii), on a pilot basis expiring July 18, 2014, regarding no required minimum value size for orders to be eligible for PIXL Auctions.

Pursuant to the PIXL Filing, *see* supra note 3, the Exchange has provided periodic reports to the Commission with detailed information to assist the Commission in ascertaining the level of price improvement attained for orders during the period of the pilot. The Exchange believes that these reports show the effectiveness of the PIXL program in providing price improvement for PIXL Orders. This proposal will not impact the pilot or any of the pilot reports. The Exchange will continue periodically providing the Reports to the Commission through July 18, 2014, or as required pursuant to the subsection (n)(vii) pilot.

[6] As defined in Rule 1080(n).

[7] *See* Rule 1014(g)(v)(E). PHLX rounds fractional allocations (i.e. 7.5 contracts in this case) downward, and allocates the remaining 1 contract on a random basis among those participants of equal priority.

[8] *See* BOX Rules Chapter V, Section 18(e). BOX likewise operates an auction known as the PIP that does not differentiate based on order size. Similarly to PIXL as proposed to be amended, PIP involves a member entering an order into an electronic auction at a price that is at least equal to the NBBO. See Securities Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15) (order approving trading rules for BOX including PIP).

[9] *See* Securities Exchange Act Release No. 67592 (August 3, 2012), 77 FR 154 (August 9, 2012) (SR–BOX–2012–03) (order approving rule change to amend the PIP).

customers because it will encourage the entry of more orders into PIXL, thus it is more likely that such orders may receive price improvement. Similar price improvement mechanisms on both the ISE and BOX do not guarantee price improvement over the NBBO today. ISE's PIM mechanism has no size differentiation and only guarantees price improvement over the ISE BBO.[10] The BOX PIP mechanism allows orders of any size to be stopped at the NBBO or better which also does not guarantee price improvement.

The Exchange believes that because there is no rational need for volume differentiation, and as there is a competitive disadvantage to the Exchange in continuing differentiation, it is appropriate to discontinue the Differentiation Provision and thereby simplify the way PIXL operates.

This proposal would continue to afford the same price improvement opportunities for public customer and non-public customer PIXL Orders as is in operation today, but without differentiating based on order size. By way of example, to initiate an Auction for public customer orders, the Initiating Member would stop the entire PIXL Order at a price that is equal to or better than the NBBO on the opposite side of the market from the PIXL Order, provided that such price was at least one price improvement increment (no smaller than one cent) better than any limit order on the limit order book on the same side of the market as the PIXL Order. Conversely, to initiate an Auction for non-public customer orders where the order is for the account of a broker-dealer or any other person or entity that is not a public customer, the Initiating Member would stop the entire PIXL Order at a price that is the better of: (i) The PBBO price improved by at least one minimum price improvement increment on the same side of the market as the PIXL Order; or (ii) the PIXL Order's limit price (if the order is a limit order), provided that in either case that such price is at or better than the NBBO. A member would initiate a one-second long Auction by submitting a PIXL Order in one of three ways: (i) A single stop price; (ii) an auto-match price; or (iii) a not-worse-than price. Thus, under this proposal all PIXL Orders would be handled by current procedures for the price improvement of non-public and public PIXL Orders that are of 50 contracts or greater.[11]

[10] *See* Securities Exchange Act Release No. 57847 (May 21, 2008), 73 FR 104 (May 29, 2008) (SR–ISE–2008–29) (order approving proposed rule change relating to the PIM).

[11] For a description of all PIXL procedures, *see* Rule 1080(n).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] 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 creating positive, beneficial incentives for Initiating Members to provide price improvement opportunities to market participants, most notably public customers. Specifically, the Exchange believes the proposal will result in more orders of less than 50 contracts being executed in PIXL, thus providing an increased probability of price improvement for small orders. By removing the Differentiation Provision market participants would be incentivized to introduce more customer orders to PIXL for the opportunity to receive price improvement. Furthermore, public customers will continue to have priority at each price level in accordance with PHLX Rule 1080(n)(ii)(E). In particular, the Exchange believes that using the same allocation process as is used today for PIXL Orders of 50 contracts or greater, is fair and equitable because of the value the Initiating Member brings to the market place. Specifically, by stopping the PIXL Order at or better than the NBBO, the Initiating Member facilitates a process that protects investors and is in the public interest by providing an opportunity for price improvement. The Differentiation Provision as it is presently constructed assumes all broker-dealers have the same view about the price of an options contract. But this assumption is not necessarily true. While the market participant that introduces an order of less than 50 contracts into PIXL may only value that option at the NBBO, another market maker participant may be willing to price improve because their valuation is different. These different opinions make for a robust price discovery system that is the backbone of the U.S. options markets. The Exchange believes strongly that it should encourage such price discovery, and the removal of the Differentiation Provision would help to achieve this and more generally, benefit investors by offering more opportunities for customers and non-customers to receive price improvement. For these reasons, the Exchange believes that the proposal is fair, reasonable and equitable for all market participants.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

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. To the contrary, the Exchange is proposing to amend Rule 1080(n) to offer opportunities found on other options exchanges and to further foster the price discovery process as well as create systems that embolden market participants to seek out price improvement opportunities for customers.

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2013–76 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2013–76. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–76, and should be submitted on or before September 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20775 Filed 8–26–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70241; File No. SR–NASDAQ–2013–109]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ's Optional Anti-Internalization Functionality

August 21, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on August 16, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASDAQ proposes to modify NASDAQ's optional anti-internalization functionality.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* 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, NASDAQ 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 those 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 parts of such statements.

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

1. Purpose

NASDAQ is proposing to modify its voluntary anti-internalization functionality to provide an additional option under that functionality. In addition, the proposed rule change contains certain clarifications to the text of the rule. Anti-internalization functionality is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act (''ERISA'') that preclude and/or limit broker-dealers managing accounts governed by ERISA from trading as principal with orders generated for those accounts. The functionality can also assist market participants in avoiding execution fees that may result from the interaction of executable buy and sell trading interest from the same firm. NASDAQ notes that use of the functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. As such, market participants using anti-internalization functionality will need to take appropriate steps to ensure that public customer orders that do not execute because of the use of anti-internalization functionality ultimately receive the same execution price (or better) they would have originally obtained if execution of the order was not inhibited by the functionality.

Currently, market participants may apply anti-internalization logic to all quotes/orders entered through a particular MPID, or to all orders entered through a particular order entry port, to which a unique group identification modifier is then appended. In other words, the logic may be applied on an MPID-by-MPID, or on a port-by-port basis.[3] Currently, two forms of anti-internalization logic may be applied: (i) if quotes/orders are equivalent in size, both quotes/orders will be cancelled, or if they are not equivalent in size, the smaller will be cancelled and the size of the larger will be reduced by the size of the smaller; or (ii) regardless of the size of the quotes/orders, the oldest quote/order will be cancelled in full. The applicable logic may be applied to an entire MPID, or alternatively, different logic may be applied to different order entry ports under a particular MPID.[4]

In response to member input, the proposed rule change will add an additional form of anti-internalization logic that a market participant could choose to apply, under which the most recent quote/order would be cancelled. As with the two existing forms of anti-internalization logic, the logic could be applied to an entire MPID, or to selected order entry ports under a particular MPID.[5] NASDAQ believes that the change will provide members with an additional tool for managing the book of

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[14] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] In the proposed rule change that introduced the ability to assign a group identification modifier with respect to anti-internalization processing, NASDAQ stated that the modifier may be assigned ''at the port level.'' Securities Exchange Act Release No. 65868 (December 2, 2011), 76 FR 76795 (December 8, 2011) (SR–NASDAQ–2011–158). However, this level of specificity was not included in the text of Rule 4757. In addition, although the rule indicates that designation of functionality at the port level is an option available to the market participant, the rule does not make it clear that in order to make use of these options, market participants must use NASDAQ's OUCH order entry protocol. Thus, the proposed rule change also adds additional specificity to the rule text with respect to these aspects of the anti-internalization functionality.

[4] With respect to this functionality also, participants wishing to make designations on the order port level must use the OUCH order entry protocol.

[5] *Id.*