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

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60363; File No. SR–Phlx–2009–61]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change Relating to Exchange Rules for the Options Order Protection and Locked/Crossed Market Plan

July 22, 2009.

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 July 20, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 thereunder,[4] proposes to modify the Exchange's rules to reflect its participation in the Options Order Protection and Locked/Crossed Market Plan (''Plan''). The proposed rules implement the Exchange's participation in the Plan, and will be substantially similar to the rules of other exchanges that are also implementing the Plan with minor variations to account for differences between the exchanges' market structures.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 17, 2008, the Exchange filed an executed copy of the Options Order Protection and Locked/Crossed Market Plan (''Plan''), joining all other approved options markets in adopting [sic] the Plan. The Plan requires each options exchange to adopt rules implementing various requirements specified in the Plan. This proposal is designed to fulfill that obligation.

Background

The Plan will replace the current Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan''). That plan requires its participant exchanges to operate a stand-alone system or ''Linkage'' for sending order-flow between exchanges to limit trade-throughs. The Options Clearing Corporation (''OCC'') operates the Linkage system (the ''System''). The Linkage rules provide for unique types of Linkage orders, with a complicated set of requirements as to who may send such orders and under what conditions. Before a market maker can trade through another exchange's quote, it first must send a Linkage order and then wait three seconds for a response.

While the Linkage largely has operated satisfactorily, it is under significant strain. When the Commission approved the Linkage Plan in 2000, average daily volume (''ADV'') in the options market was approximately 2.6 million contracts across all exchanges. By 2007, the ADV had increased four-fold to more than 10.8 million contracts, putting added strain on the ability of market makers to comply with the complex Linkage rules. At the same time, the options markets have been moving towards quoting in pennies. This greatly increases the number of price changes in an option, giving rise to greater chances of trade-throughs and missing markets as market makers send Linkage orders and have to wait three seconds for a response.

Based upon experience in the equities markets following the adoption of Regulation NMS in 2005, the options exchanges have determined to replace the System with the Plan providing for a set of rules and procedures designed to avoid trade-throughs and locked markets. The key to Regulation NMS's price-protection provisions is the Intermarket Sweep Order (''ISO''). Each equity exchange must adopt rules ''reasonably designed to prevent trade-throughs.'' Exempted from trade-through liability is an ISO, which is an order a member sends to an exchange displaying a price inferior to the national best bid and offer (''NBBO''), while simultaneously sending orders to trade against the full size of any other exchange that is displaying the NBBO. A simple prohibition against most trade-throughs, coupled with the ISO mechanism, has given the equities markets a straight-forward system to provide customers with price protection in a fast-moving, high-volume market that is quoted in pennies.

Proposed Temporary Linkage Rule. The Exchange proposes to adopt Rule 1088 which provides that the Exchange will continue to accept Principal Acting as Agent (''P/A'') and Principal Orders from options exchanges that continue to use such orders to address trade-throughs via the existing linkage for a temporary period.

Deletion of References to Linkage Orders. The Exchange proposes to delete references to Linkage P and P/A orders from its rules. Specifically, the Exchange proposes to delete current Rules 1081 and 1083 through 1087, which currently make up the Exchange's rules that track the Linkage Plan. Additionally, for consistency, the Exchange proposes to delete references to Linkage P and P/A Orders from Rule 1080.

The Proposed New Definitions. The proposed Plan incorporates a number of defined terms, some identical to definitions from the existing Linkage Plan and others that have been developed along with the proposed Plan itself. Accordingly, Phlx is proposing to adopt new Rule 1083, which sets forth the defined terms for use under the proposed Plan.

The Proposed Trade Through Rule. The Plan essentially would apply the Regulation NMS price-protection provisions to the options markets. Similar to Regulation NMS, the Plan would require participants to adopt

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

rules ''reasonably designed to prevent Trade-Throughs,'' while exempting ISOs from that prohibition.

Accordingly, the Exchange is proposing to adopt new Rule 1084, which codifies the requirement that the Exchange and other Plan participants avoid trading through superior prices on other markets. The Exchange is also proposing to add an ISO order in Rule 1066 based upon the definition of ISO currently used by Nasdaq for compliance with Regulation NMS when trading equities. Rule 1080(b) would be amended to reflect that an ISO is a permitted order that may be entered on the Exchange's systems. The ISO order will be exempt from the prohibition against trading-through, as well as several additional exceptions to the trade-through prohibition that track the exceptions under Regulation NMS or correspond to unique aspects of the options market, or both. Specifically:

- *System Issues:* Proposed Rule 1084(b)(i) tracks Section 5(b)(i) of the Plan which corresponds to the system-failure exception in Regulation NMS [5] for equity securities and permits trading through an Eligible Exchange that is experiencing system problems.
- *Trading Rotations:* Proposed Rule 1084(b)(ii) tracks Section 5(b)(ii) of the Plan which carries forward the current Trade-Through exception in the Old Plan [6] and is the options equivalent to the single price opening exception in Regulation NMS for equity securities.[7] Some Options exchanges use a trading rotation to open an option for trading, or to reopen an option after a trading halt. The rotation is effectively a single price auction to price the option and currently there are no practical means to include prices on other exchanges in that auction.
- *Crossed Markets:* Proposed Rule 1084(b)(iii) tracks Section 5(b)(iii) which corresponds to the crossed quote exception in Regulation NMS for equity securities.[8] If a Protected Bid is higher than a Protected Offer, it indicates that there is some form of market dislocation or inaccurate quoting. Permitting transactions to be executed without regard to Trade-Throughs in a Crossed Market will allow the market to quickly return to equilibrium.
- *Intermarket Sweep Orders (''ISOs''):* These two exceptions correspond to the ISO exceptions in Regulation NMS for equity securities.[9] Proposed Rule 1084(b)(iv) tracks Section 5(b)(iv) of the Plan which permits a Participant to execute orders it receives from other Participants or members that are marked as ISO even when it is not at the NBBO. Proposed Rule 1084(b)(v) tracks Section 5(b)(v) of the Plan which allows a Participant to execute inbound orders when it is not at the NBBO, provided it simultaneously ''sweeps'' all better-priced interest displayed by Eligible Exchanges.
- *Quote Flickering:* Proposed Rule 1084(b)(vi) tracks Section 5(b)(vi) of the Plan which corresponds to the flickering quote exception in Regulation NMS for equity securities.[10] Options quotations change as rapidly, if not more rapidly, than equity quotations. Indeed, they track the price of the underlying security and thus change when the price of the underlying security changes. This exception provides a form of ''safe harbor'' to market participants to allow them to trade through prices that have changed within a second of the transaction causing a nominal Trade-Through.
- *Non-Firm Quotes:* Proposed Rule 1084(b)(vii) tracks Section 5(b)(vii) of the Plan which carries forward the current non-firm quote Trade-Through exception in the Old Plan.[11] By definition, an Eligible Exchange's quotations may not be firm for automatic execution during this trading state and thus should not be protected from Trade-Throughs. In effect, these quotations are akin to ''manual quotations'' under Regulation NMS.
- *Complex Trades:* Proposed Rule 1084(b)(viii) tracks Section 5(b)(viii) of the Plan which carries forward the current complex trade exception in the Old Plan [12] and will be implemented through rules adopted by the Participants and approved by the Commission. Complex trades consist of multiple transactions (''legs'') effected at a net price, and it is not practical to price each leg at a price that does not constitute a Trade-Through. Narrowly-crafted implementing rules will ensure that this exception does not undercut Trade-Through protections.
- *Customer Stopped Orders:* Proposed Rule 1084(b)(ix) tracks Section 5(b)(ix) of the Plan which corresponds to the customer stopped order exception in Regulation NMS for equity securities.[13] It permits broker dealers to execute large orders over time at a price agreed upon by a customer, even though the price of the option may change before the order is executed in its entirety.[14]
- *Stopped Orders and Price Improvement:* Proposed Rule 1084(b)(x) tracks Section 5(b)(x) of the Plan which would apply if an order is stopped at price that did not constitute a Trade-Through at the time of the stop. In this case, an exchange could seek price improvement for that order, even if the market moves in the interim, and the transaction ultimately is effected at a price that would trade through the then currently-displayed market.
- *Benchmark Trades:* Proposed Rule 1084(b)(xi) tracks Section 5(b)(xi) of the Plan which would cover trades executed at a price not tied to the price of an option at the time of execution, and for which the material terms were not reasonably determinable at the time of the commitment to make the trade. This corresponds to a Trade-Through exemption in Regulation NMS for equity trades.[15] Phlx does not currently permit these types of options trades, and any transaction-type relying on this exemption would require Phlx to adopt implementing rules, subject to Commission review and approval.

The Proposed Locked and Crossed Markets Rule. Similar to Regulation NMS, the Plan requires its participants to adopt, maintain and enforce rules requiring members: to avoid displaying locked and crossed markets; to reconcile such markets; and to prohibit members from engaging in a pattern or practice of displaying locked and crossed markets. These provisions are subject to exceptions that are contained in the rules of each participant and that are to be approved by the Commission.

Accordingly, the Exchange proposes to adopt new Rule 1086, which would set forth the general prohibition against locking/crossing other eligible exchanges as well as several exceptions that the Plan participants approved that permit locked markets in limited circumstances. Specifically, the exceptions to the general prohibition on locking and crossing occur when (1) the locking or crossing quotation was displayed at a time when the Exchange was experiencing a failure, material delay, or malfunction of its systems or equipment; (2) the locking or crossing quotation was displayed at a time when there is a Crossed Market; or (3) the Member simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer.

[5] *See* Rule 611(b)(1) under the Act.

[6] *See* Linkage Plan Section 8(c)(iii)(E).

[7] *See* Rule 611(b)(3) under the Exchange Act.

[8] *See* Rule 611(b)(4) under the Exchange Act.

[9] *See* Rule 611(b)(5) and (6) under the Exchange Act.

[10] *See* Rule 611(b)(8) under the Exchange Act.

[11] *See* Linkage Plan Section 8(c)(iii)(C).

[12] *See* Linkage Plan Section 8(c)(iii)(G).

[13] *See* Rule 611(b)(9) under the Exchange Act.

[14] For a further discussion on how this exemption operates, *see* Regulation NMS Adopting Release, Exchange Act Release No. 51808 (June 9, 2005) at notes 322–325.

[15] *See* Rule 611(b)(7) under the Exchange Act.

Phlx Routing Arrangements. The Exchange proposes to rely upon the order routing arrangements already in place on its market, except that the Exchange proposes amendments to Rules 1080(m)(iv)(B) and (C) concerning FIND [16] and SRCH [17] Orders.

Currently, when the Phlx Best Bid/Offer (''PBBO'') is inferior to the Away Best Bid/Offer (''ABBO'') FIND and SRCH Orders are routed to the ABBO markets (following a ''Route Timer'' during which Phlx participants may price improve) and, if size remains in the FIND or SRCH Order following such routing, the Exchange will trade the order at the next PBBO price up to one minimum price variation (''MPV'') through the ABBO price subject to the order's limit price, or be entered into the Phlx XL II book and posted at its limit price one MPV inferior to the ABBO price if its limit price is equal to or through the ABBO price.

Under the instant proposal, Rules 1080(m)(iv)(B) and (C) would be amended to provide that if, at the end of the Route Timer, the ABBO is still the best price, the FIND Order will route to the away market(s) whose disseminated price is better than the PBBO (not just to the ABBO markets), up to a size equal to the lesser of either: (a) the away markets' size, or (b) the remaining size of the FIND Order. If the FIND Order still has remaining size after such routing, it will (i) trade at the next PBBO price (with no limitation of one MPV through the ABBO price), subject to the order's limit price, and, if contracts still remain unexecuted, the remaining size will be routed to away markets disseminating the same price as the PBBO, or (ii) be entered into the Phlx XL II book and posted at its limit price. A FIND Order that is routed to an away market will be marked as an ISO. Such ISO will conform to the requirements contained in proposed Rules 1066(i) and 1083(h).

Under the proposal, respecting SRCH Orders, if, at the end of the Route Timer, the ABBO is still the best price, the SRCH order will route to the away market(s) whose disseminated price is better than the PBBO, up to a size equal to the lesser of either: (a) The away markets' size, or (b) the remaining size of the SRCH order. If the SRCH order still has remaining size after such routing, it may (1) trade at the next PBBO price (or prices) if the order price is locking or crossing that price (or prices) up to the ABBO price, and/or (2) be entered into the Phlx XL II book at its limit price if not locking or crossing the Phlx price or the ABBO. The Phlx XL II system will route and execute contracts contemporaneously at the end of the Route Timer. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market. A SRCH Order that is routed to an away market will be marked as an ISO. Such ISO will conform to the requirements contained in proposed Rules 1066(i) and 1083(h).

Thus, the limitation on execution and/or booked limit order prices of one MPV away from the ABBO following routing of a FIND or SRCH Order to the ABBO markets (and all better-priced away markets) would be eliminated. This is consistent with the Plan and with the ISO Order type.

The Exchange proposes to amend its rules concerning orders that have been subject to its Quote Exhaust and Market Exhaust processes.

Respecting the Quote Exhaust feature, Exchange Rule 1082(a)(ii)(B)(3)(g)(iv)(A) and (B) currently state that remaining order volume from orders that have been subject to Quote Exhaust and routed to away markets will be posted on the Exchange at the ABBO price. Under the current proposal, if there still remain unexecuted contracts after trading at the Phlx and/or routing, the Quote Exhaust process of evaluating the Best Price will be repeated for any remaining order volume that is marketable.

Specifically, if the Exchange's Best Price is the Exchange's next available price standing alone, the Phlx XL II system will execute the initiating quote or order at the Exchange's next available price up to the Exchange's disseminated size. If the Best Price is equal to the ABBO price, the Phlx XL II system will execute the initiating quote or order at the Exchange's next available price up to the Exchange's disseminated size, and any remaining order volume from the execution on the Exchange will be routed away to the away market(s). If the Best Price is equal to the Exchange's pre-determined ''Acceptable Range'' price (based on a table published on the Exchange's web site), the Phlx XL II system will execute the initiating quote or order at the Exchange's next available price up to the Exchange's disseminated size, and any remaining volume from the execution on the Exchange will be posted at the Acceptable Range price for the remaining size, for a period of time not to exceed ten seconds and then cancelled after such period of time has elapsed.

Under the proposal, Rule 1082(a)(ii)(B)(4)(d)(vi) would be amended to state that, under the various Best Price scenarios, if after trading at the Phlx and/or routing, there is a remainder of the initiating order, and such remainder is still marketable, the entire process of evaluating the Best Phlx price and the ABBO will be repeated until: (A) The order size is exhausted, or (B) the order reaches its limit price. If there still remain unexecuted contracts after routing but the order has reached its limit price, the remainder will be posted at the order's limit price, except that, when the limit price crosses the Acceptable Range Price, the remainder will be posted at the Acceptable Range Price for a period of time not to exceed ten seconds and then cancelled after such period of time has elapsed. For a pilot period scheduled to expire November 30, 2009, during this up to ten second period, the Phlx XL II system will disseminate on the opposite side of the market from remaining unexecuted contracts: (i) A bid price of $0.00, with a size of one contract if the remaining size is a seller, or (ii) an offer price of $200,000, with a size of one contract if the remaining size is a buyer.

Respecting the Market Exhaust Auction, Exchange Rule 1082(a)(ii)(B)(4)(d)(iv) describes what happens to remaining order volume respecting orders subject to Market Exhaust. Currently, if the total number of contracts priced at the ABBO would not satisfy the number of marketable contracts the Exchange has, the Phlx XL II system will determine how many contracts it has available on the Exchange at a price equal to the ABBO. If the total number of ABBO contracts plus the number of contracts available on the Exchange at the ABBO price would satisfy the number of marketable contracts the Exchange has, the ABBO price becomes the ''Exchange Auction Price'' and the Phlx XL II system will trade available contracts on the Exchange at the Exchange Auction Price and contemporaneously route any remaining contracts to away markets at the Exchange Auction Price. Additionally, if the total number of ABBO contracts plus the number of contracts available on the Exchange at the ABBO price would not satisfy the number of marketable contracts the Exchange has, the Phlx XL II system currently will determine how many contracts are available on the Exchange at a price that is one Minimum Price Variation (''MPV'') through the ABBO price. If the total number of ABBO contracts plus the number of contracts

[16] A FIND order is an order that is routable upon receipt, or any time the option goes through an opening process. *See* Exchange Rule 1080(m)(iv)(B).

[17] A SRCH order is an order that is routable at any time. *See* Exchange Rule 1080(m)(iv)(C).

available on the Exchange at the ABBO price plus the number of contracts available on the Exchange at a price that is one MPV through the ABBO price would satisfy the number of marketable contracts the Exchange has, the price that is one MPV through the ABBO becomes the Exchange Auction Price.

Under the proposal, the ''one MPV away'' calculation will be deleted, and the Exchange's system will determine how many marketable contracts can be routed to all better priced away markets, not limited to the ABBO markets as stated in the current rule. This is because under the Plan, orders may be traded on the Exchange at the best Exchange price without the ''one MPV'' limitation if ISOs are routed to better priced away markets. Under both Quote Exhaust and Market Exhaust, all orders routed to away markets will be marked as ISOs. Such ISOs will conform to the requirements contained in proposed Rules 1066(i) and 1083(h).

Proposed Rule 1082(a)(ii)(B)(4)(d)(iv)(B) would state that, if the total number of contracts priced at the ABBO would not satisfy the number of marketable contracts the Exchange has, the Phlx XL II system will determine how many contracts are available on all better priced away markets. If the total number of contracts available on better priced away markets would satisfy the number of marketable contracts available on the Exchange, the Phlx XL II system will route all marketable contracts on the Exchange to other markets at the better prices.

If the total number of contracts priced at better priced away markets would not satisfy the number of marketable contracts the Exchange has, the Phlx XL II system will determine how many contracts it has available on the Exchange at the best Exchange price. If the total number of better priced away contracts plus the number of contracts available on the Exchange at the best Exchange price would satisfy the number of marketable contracts the Exchange has, the best Exchange price becomes the Exchange Auction Price and the Phlx XL II system will contemporaneously route the full size of displayed interest at better priced away markets to such better priced away markets, and trade remaining contracts on the Exchange at the Exchange Auction Price. In this situation, the Phlx XL II system will price any contracts routed to other markets at the away market price.

If the total number of better priced away contracts plus the number of contracts available on the Exchange at the PBBO price would not satisfy the number of marketable contracts the Exchange has, the Phlx XL II system will determine an Exchange Auction Price, using all available better priced away markets plus all available Exchange contracts, that will satisfy the number of marketable contracts the Exchange has. If that price is equal to or within the order limit price and the ''Auction Quote Range'' (''AQR'') determined by the Exchange, that price becomes the Exchange Auction Price and the system will contemporaneously route the full size of displayed interest at better priced away markets to such better priced away markets, and trade remaining contracts on the Exchange at the Exchange Auction Price. In this situation, the Phlx XL II system will price any contracts routed to other markets at the Exchange Auction Price.

Finally, the Exchange proposes similar changes to its ''Provisional Auction.'' Again, the ''one MPV'' calculation would be deleted, and pricing will be based on the best Exchange price instead of the ABBO.

Under the proposal, if the total number of better priced away contracts plus the number of contracts available on the Exchange at the Exchange Auction Price would not satisfy the number of marketable contracts the Exchange has, the system may repeat the auction process up to three times. If after that number of times, the Phlx XL II system still cannot either route and/or trade the entire initiating order, the Phlx XL II system will conduct a Provisional Auction by establishing the Exchange Auction Price at the AQR Price, routing to all away markets disseminating prices better than or equal to the Exchange Auction Price for their disseminated size, and trading as many contracts as possible on the Exchange at the AQR price. In this situation, the Phlx XL II system will price any contracts routed to other markets at the AQR price. Any unexecuted contracts from the initiating order will be displayed in the Exchange quote at the Exchange Auction Price for the remaining size for a brief period not to exceed ten seconds and subsequently cancelled back to the entering participant if they remain unexecuted and priced through the Auction Price. Just as under current rules, for a pilot period scheduled to expire November 30, 2009, during the brief period, the Phlx XL II system will disseminate, on the opposite side of the market from remaining unexecuted contracts: (i) A bid price of $0.00, with a size of one contract if the remaining size is a seller, or (ii) an offer price of $200,000, with a size of one contract if the remaining size is a buyer.

Miscellaneous. The Exchange proposes miscellaneous changes to its rules in connection with the new Plan. Specifically, The Exchange proposes the following amendments:

- Exchange By-Law Article XII, Section 12–11 would be amended to delete references to the Linkage Plan.
- Exchange Rule 1017(k) respecting automated openings on the Phlx XL II system, would be amended to state that any order volume that is routed to away markets pursuant to Rule 1017 will be marked as an ISO. Such ISO will conform to the requirements contained in proposed Rules 1066(i) and 1083(h).
- Exchange Rule 1033(a)(ii) and Options Floor Procedure Advice (''OFPA'') F–32, Solicitation of Quotations, currently state that, in response to a floor broker's solicitation of a single bid or offer, the members of a trading crowd (including the specialist and ROTs) may discuss, negotiate and agree upon the price or prices at which an order of a size greater than the AUTO–X guarantee can be executed at that time. The Rule and OFPA would be amended to delete references to the Linkage Plan and instead refer to the new Plan, and to delete references to Exchange rules that are being deleted in this filing. Additionally, the Rule and OFPA would be updated to reflect that the rule applies to single crowd bids and offers for orders of a size greater than the Exchange's disseminated size, instead of the obsolete ''AUTO–X guarantee'' (the Exchange's disseminated size is firm and is the guaranteed electronic order execution size).
- Rule 1034(a)(i)(C) currently states that a Linkage P/A Order that has been sent from the Exchange to, and price-improved on, another exchange at a price expressed in other than the appropriate minimum trading increment described in this rule, and then submitted to the Exchange for execution against the original customer limit order that gave rise to the Linkage P/A Order, may be traded on the Exchange at such price. Under the proposal, Rule 1034(a)(i)(C) would be amended to state that the Phlx XL II system will reject any order received at a price expressed in other than the appropriate minimum trading increment.
- The Exchange proposes to amend Rule 1066, Certain Types of Orders Defined, by adopting Rule 1066(i), which defines an ISO as a limit order that is designated as an ISO in the manner prescribed by the Exchange and is executed within the system by Participants at multiple price levels without respect to Protected Quotations of other Eligible Exchanges as defined in

Rule 1083. ISOs are immediately executable within the Phlx XL II system or cancelled, and shall not be eligible for routing as set out in Rule 1080.

Simultaneously with the routing of an ISO to the Phlx XL II system, one or more additional limit orders, as necessary, are routed by the entering party to execute against the full displayed size of any Protected Bid or Offer (as defined in Rule 1083(n)) in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an ISO. These additional routed orders must be identified as ISOs.

• Rules 1080(b)(i)(A), (B) and (C) would be amended to permit ISOs on the Phlx XL II system.

• Rule 1080(c)(iv)(F), currently states that the specialist will handle an order manually when the price of a limit order is not in the appropriate minimum trading increment pursuant to Rule 1034, including a Linkage P/A Order that has been sent from the Exchange to, and price-improved on, another exchange at a price expressed in other than such appropriate minimum trading increment, and then submitted to the Exchange for execution against the original customer limit order that gave rise to the Linkage P/A Order. As stated above in the proposed amendment to Rule 1034(a)(i)(C), the Phlx XL II system will reject any order received at a price expressed in other than the appropriate minimum trading increment. Therefore, Rule 1080(c)(iv)(F) will be deleted.

• Rule 1080(vi) would be deleted in its entirety because it contains obsolete language the concerning routing of Linkage P/A Orders and the handling of broker-dealer orders in the legacy Phlx XL system.

Implementation. The Exchange proposes to implement this proposed rule change upon withdrawal from the current Linkage Plan and effectiveness of the new Plan. Implementation is currently scheduled for August 31, 2009.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[18] in general, and with Section 6(b)(5) of the Act,[19] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, 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. In particular, the Exchange believes that adopting rules that implement the Plan will facilitate the trading of options in a national market system by establishing more efficient protection against trade-throughs and locked and crossed markets.

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

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 the self-regulatory organization 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.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register.** The Commission is considering granting accelerated approval of the proposed rule change at the end of a 21-day comment period.

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–2009–61 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–2009–61. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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–2009–61 and should be submitted on or before August 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

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[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(5).

[20] 17 CFR 200.30–3(a)(12).