date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), \(11\) which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. \(12\) The Commission notes the rule change is substantively identical to SRO rules that were approved by the Commission, and does not raise any new regulatory issues. For these reasons, the Commission designates the proposed rule change as operative upon filing.

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 e-mail to rule-comments@sec.gov. Please include File Number SR–C2–2010–004 on the subject line.

Paper Comments

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

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NASDAQ OMX PHXL LLC; Order Granting Approval to a Proposed Rule Change Relating to a Proposed Price Improvement System, Price Improvement XL

October 1, 2010.

I. Introduction

On July 30, 2010, NASDAQ OMX PHXL LLC ("PHXL" or "Exchange") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") \(1\) and Rule 19b–4 thereunder, a proposed rule change to establish Price Improvement XL ("PIXL"). The proposed rule change was published for
comment in the Federal Register on August 16, 2010. The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

In its filing, Phlx proposes to establish 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 (this initial order is referred to as the “PIXL Order”) against principal interest or against any other order it represents as agent (this matching order is referred to as the “Initiating Order”). Provided it submits the PIXL Order for electronic execution into the PIXL Auction (“Auction”) pursuant to the proposed Rule. In addition, Phlx proposes to provide 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.

III. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule change to establish rules for the implementation of the PIXL auction is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act. Specifically, as discussed further below, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires, in part, that the rules of an exchange be 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, and 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.

Section 6(b)(5) of the Act also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers. The Commission believes that approving the Exchange’s proposal to establish PIXL should increase competition among those options exchanges that offer similar functionality. For the reasons discussed below, the Commission finds that the Exchange’s proposal is consistent with the Act.

A. Auction Eligibility

Proposed Rule 1080(n)(i) describes the circumstances under which an Initiating Member may initiate a PIXL Auction. Notably, the proposal draws a distinction between orders for less than 50 contracts and those for 50 contracts or more, and affords slightly different treatment based on that distinction. The specific treatment of public customer and non-public customer orders for above and below 50 contracts is described directly below.

For public customer orders, if the 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/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. If the PIXL Order is for a size of less than 50 contracts, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) The NBBO 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. For public customer orders of less than 50 contracts, the Commission notes that minimum stop price must be one minimum increment better than the NBBO. In addition, the proposal seeks to protect the priority of resting limit orders on the Exchange book. The Commission notes that proposed Rule 1080(n)(i)(A)(2) and (n)(i)(B)(2), concerning orders that are submitted with a size of less than 50 contracts, will be effective on a pilot basis expiring August 31, 2011. The Exchange has agreed to provide the Commission with detailed information each month during the pilot period to assist the Commission, as well as the Exchange, in

4 For a more detailed discussion of the purpose of the proposal and examples, see Notice.
5 In approving this proposal, the Commission has considered the proposed rule change’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78f(f).
8 In addition, the Notice contains an example that illustrates the application of these specific provisions. See Notice, supra note 3, at 75 FR 50022.
ascertaining the level of price improvement attained for smaller-sized orders during the pilot period.

B. Initiating the Auction

An Initiating Member may initiate a PIXL Auction by submitting a PIXL Order in one of three ways: (1) Single stop price, (2) auto-match price, or (3) not-worse-than price.

Under the first option, the Initiating Member could submit a PIXL Order specifying a single “stop” price at which it seeks to execute the PIXL Order. Under the second option, an Initiating Member could submit a PIXL Order specifying that it is willing to automatically match (“auto-match”) as principal or as agent on behalf of an Initiating Order the price and size of all trading interest 10 and responses to the PIXL Auction Notification ("PAN," as described below), in which case the PIXL Order would be stopped at the NBBO on the Initiating Order side of the market (if 50 contracts or greater) or, if less than 50 contracts, 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 increment better than the limit of an order on the book on the same side as the PIXL Order.

Under the third and final option, an Initiating Member could submit a PIXL Order specifying that it is willing to either: (i) Stop the entire order at a single stop price and auto-match PAN responses, as described below, together with trading interest, at a price or prices that improve the stop price to a specified price above or below which the Initiating Member will not trade (a “Not Worse Than” or “NWT” price); (ii) stop the entire order at a single stop price and auto-match all PAN responses and trading interest at or better than the stop price; or (iii) stop the entire order at the NBBO on the Initiating Order side (if 50 contracts or greater) or the better of: (A) The PBBO price on the opposite side of the market from the PIXL Order improved by one minimum price improvement increment, or (B) the PIXL Order’s limit price (if the order is a limit order) on the Initiating Order side (if for less than 50 contracts), and auto-match PAN responses and trading interest at a price or prices that improve the stop price up to the NWT price. In all cases, if the PBBO on the same side of the market as the PIXL Order represents a limit order on the book, the stop price must be at least one minimum price improvement increment better than the booked limit order’s limit price.

Once the Initiating Member has submitted a PIXL Order for processing, the PIXL Order may not be cancelled. The Initiating Member may improve the stop price or NWT price of its Initiating Order, however such price may be improved only to the benefit of the PIXL Order during the Auction, and the order may not be cancelled.

The Commission notes that the proposed PIXL procedures regarding the submission of a PIXL Order using the auto-match and NWT prices are similar to the rules of the CBOE, BOX, and ISE.11 One notable difference is that the BOX and ISE Rules prohibit a member from cancelling or modifying the auto-match price during the price improvement auction 12 whereas the Phlx proposal would allow a member to modify the stop or NWT price, but such price may only be improved to the benefit of the PIXL Order during the Auction and the order may not be cancelled after it is entered. The Commission notes that when the Initiating Member selects the auto-match or NWT price prior to the start of the auction, competitive final pricing would be out of the Initiating Member’s control. The Commission believes that permitting the Initiating Member to improve the NWT price during the PIXL Auction could allow members to quickly react to an improving market and thereby provide additional opportunity for the member to offer price improvement to the PIXL Order.

In addition, the Exchange has undertaken to provide the Commission with the following data on a monthly basis, which the Commission and the Exchange can use to evaluate the proposed auto-match functionality: the percentage of all Phlx trades effected through the PIXL Auction in which the Initiating Member has chosen the auto-match feature, and the average amount of price improvement provided to the PIXL Order when the Initiating Member has chosen the auto-match feature versus the average amount of price improvement provided to the PIXL Order when the Initiating Member has chosen a stop price submission.

C. PIXL Auction Notification ("PAN")

When the Exchange receives a PIXL Order for Auction processing, a PAN detailing the side, size, and the stop price of the PIXL Order will be sent over the Exchange’s TOPO Plus Orders data feed.13 An updated PAN message will be sent over the Exchange’s TOPO Plus Orders data feed when the Initiating Member improves the stop price of the PIXL Order. The updated PAN will include the side, size, and improved stop price of the PIXL Order. Messages concerning updates to the stop price by the Initiating Member would be used by PAN respondents to improve a previously-submitted price when they are alerted that a stop price has been improved. Any person or entity may submit PAN responses, provided such response is properly marked specifying price, size, and side of the market. The Commission believes that access to the PIXL auction for those who may wish to compete for a PIXL Order should be sufficient to provide opportunities for a meaningful, competitive auction.14

D. PIXL Auction

A PIXL Auction would last for one second,15 unless it is concluded early as the result of any of the circumstances described below. PAN responses will not be visible to Auction participants, and will not be disseminated to the Options Price Reporting Authority (“OPRA”).16 A PAN response must be equal to or better than the NBBO at the time of receipt of the PAN response. A PAN response with a price that is outside the NBBO would be rejected. PAN responses may be modified or cancelled during the Auction.17 PAN responses on the same side of the market as the PIXL Order are considered


14 See TOPO Plus Approval Order, supra note 13 (approving market data fees for TOPO Plus Orders as consistent with Sections 6(b)(4) and 6(b)(5) of the Act).

15 The PIP, AIM, and PIM also are one-second auctions. See BOX Rules, Chapter V, Section 18(e)(i), CBOE Rule 6.74A(b)(1)(C), and ISE Rule 720(c)(1).

16 CBOE’s AIM also provides that responses to the auction will not be visible to other participants and will not be disseminated to OPRA. See CBOE Rule 6.74A(b)(1)(F).

17 See also CBOE Rule 6.74A(b)(1)(I).

10 “Trading interest” refers to unrelated orders received during the Auction, booked orders, and quotes that are considered for execution and allocation against the PIXL Order following the Auction.

11 See BOX Rules, Ch. V, Section 18(e), CBOE Rule 6.74A(b)(1)(A), and ISE Rule 716(d)(iii).

12 See BOX Rules, Ch. V, Section 18(e) and ISE Rule 716(d)(iii).
invalid and will be rejected. Multiple PAN responses from the same member may be submitted during the Auction. Multiple orders at a particular price level submitted by a member in response to a PAN may not exceed, in the aggregate, the size of the PIXL Order.

E. Conclusion of the PIXL Auction

An Auction could conclude early any time: (i) The PBBO crosses the PIXL Order on the same side of the market as the PIXL Order (since further price improvement will be unlikely and any responses offering improvement are likely to be cancelled), or (ii) there is a trading halt on the Exchange in the affected series. The proposed rules concerning the early conclusion of an Auction will be effective for a pilot period scheduled to expire August 31, 2011. The Exchange has undertaken to provide the Commission with detailed information each month during the pilot period to assist the Commission, as well as the Exchange, in ascertaining the effect of early Auction conclusions during the pilot period.

If the Auction concludes before the expiration of one second as the result of the PBBO crossing the stop price, the entire PIXL Order will be executed at the best response price(s) or, if the stop price is the best price in the Auction, at the stop price, unless the best response price is equal to the price of a limit order resting on the Phlx book on the same side of the market as the PIXL Order, in which case the PIXL Order will be executed against that response, but at a price that is at least one minimum price improvement increment better than the price of such limit order at the time of the conclusion of the Auction. The Commission notes that Phlx Rule 1080(n)(v) states that a pattern or practice of submitting unrelated orders or quotes that cross the stop price, causing a PIXL Auction to conclude before the end of the PIXL Auction period will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Phlx Rule 707.

If the Auction concludes early as the result of a trading halt on the Exchange in the affected series, the entire PIXL Order would execute against the Initiating Order at the stop price, since the Initiating Member had guaranteed that an execution would occur at the stop price (or better) prior to the initiation of the trading halt. An unrelated market or marketable limit order on the opposite side of the market from the PIXL Order received during the Auction will not cause the Auction to end early. Such order would execute against interest outside of the Auction. If contracts remain from such unrelated order at the time the Auction ends, however, they would participate in the PIXL order allocation process. This provision would be effective for a pilot period scheduled to expire on August 31, 2011. The Commission believes that allowing the PIXL auction to continue for the full auction period despite receipt of unrelated orders outside the Auction would allow the auction to run its full course and, in so doing, will provide a full opportunity for price improvement to the PIXL Order. Further, the unrelated order would be available to participate in the PIXL order allocation.

The Commission believes that approval of these provisions on a pilot basis is appropriate and will afford both the Exchange and the Commission an opportunity to analyze the impact of early terminations and unrelated orders on the PIXL process, as well as the Exchange’s surveillance procedures with respect to PIXL. In particular, the Exchange has agreed to provide the Commission with data on a monthly basis to assist the Commission, and the Exchange, in evaluating the operation of the PIXL Auction and the provisions for early termination of the Auction. In addition, the Exchange has agreed to provide information on (1) the number of times an unrelated market or marketable limit order (against the PBBO) on the opposite side of the PIXL Order is received during the Auction Period and (2) the price(s) at which an unrelated market or marketable limit order (against the PBBO) on the opposite side of the PIXL Order that is received during the Auction Period is executed, compared to the execution price of the PIXL Order. The Commission expects to be able to use this information to consider the impact of the proposed rule on the PIXL Order as well as the unrelated order.

F. Order Allocation

At the conclusion of the Auction, the PIXL Order would be allocated at the best price(s), which may include non-Auction quotes and orders that may be present at each price level. Public customer orders would have priority at each price level, after which contracts would be allocated among all Exchange quotes, orders, and PAN responses. Any unexecuted PAN responses would be cancelled.

1. Single Price Submission Option

Under the single stop price option, allocations would be made first at prices that improve the stop price, and then at the stop price with up to 40% of the remaining contracts after public customer interest is satisfied being allocated to the Initiating Member at the stop price. Remaining contracts would be allocated among remaining quotes, orders, and PAN responses at the stop price, and then to the Initiating Member.

2. Auto-Match Option

Under the auto-match option, the Initiating Member would be allocated an equal number of contracts as the aggregate size of all other quotes, orders, and PAN responses at each price point until a price point is reached where the balance of the order can be fully executed, except that the Initiating Member would receive up to 40% of the contracts remaining at the final price point (including situations where the final price point is the stop price).

3. Stop and NWT Option

Under the NWT option, after public customer interest is satisfied, contracts would be allocated first to quotes, orders, and PAN responses at prices

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18 The Exchange stated in its proposal that any PAN response on the same side of the market as the PIXL Order would be the result of an error, and therefore Phlx would reject such response.

19 A pattern or practice of submitting multiple orders in response to a PAN at a particular price point that exceed, in the aggregate, the size of the PIXL Order, will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Phlx Rule 707. See Phlx Rule 1080(n)(iv).

20 The Exchange’s surveillance plan and procedures are subject to inspection by the Commission, to ensure that the Exchange adequately monitors its market and its members, and enforces its rules and the federal securities laws, including the anti-fraud provisions.

21 Proposed Rules 1080(n)(iii)(F) through (H) address the handling of the PIXL Order and other orders, quotes and PAN responses when certain conditions are present. Specifically, if there are PAN responses that cross the then-existing NBBO (provided such NBBO is not crossed) at the time of the conclusion of the Auction, such PAN responses will be executed, if possible, at their limit price(s). If the final PIXL Auction price is the same as an order on the limit order book on the same side of the market as the PIXL Order, the PIXL Order may only be executed at a price that is at least one minimum price improvement increment better than the resting order’s limit price or, if such resting order’s limit price crosses the stop price, then the entire PIXL Order will trade at the stop price with all better priced interest being considered for execution at the stop price.

22 However, if only one specialist, SQT or RSQT matches the stop price, then the Initiating Member may be allocated up to 50% of the contracts executed at such price. This allocation is consistent with CBOE Rule 6.74A(b)(3)(F).

23 Under the proposed Rule, the specialist would not be entitled to receive orders for 5 contracts or fewer.
better than the NWT price (if any), beginning with the best price. Next, contracts would be allocated among quotes, orders, and PAN responses at prices equal to the Initiating Member’s NWT price and better than the Initiating Member’s stop price, beginning with the NWT price. The Initiating Member would receive an equal number of contracts as the aggregate size of all other quotes, orders, and PAN responses at each price point, except that the Initiating Member would be entitled to receive up to 40% of the contracts remaining at the final price point (including situations where the final price point is the stop price).

The Commission believes that the proposed PIXL rules should promote price competition within a PIXL auction by providing Phlx members with a reasonable opportunity to compete for a significant percentage of the PIXL order and, therefore, should protect investors and the public interest. The Commission continues to believe that a 40% allocation is consistent with the statutory standards for competition and free and open markets.24

G. Professionals

Phlx Rule 1000(b)(14) defines the term “professional” and provides that professional orders will be treated in the same manner as orders for an off-floor broker-dealer for the purposes of certain rules.25 The definition provides an exception for professional all-or-none orders, which are treated like customer orders. Phlx proposes to amend this definition to provide that professional orders will be treated in the same manner as orders for an off-floor broker-dealers for the purposes of PIXL and to also provide that PIXL orders for the beneficial accounts of professionals with an all-or-none designation 26 will be treated in the same manner as off-floor broker-dealer orders (i.e., not treated like customer orders). The Commission notes that this is consistent with the ISE’s PIM, where ISE Priority Customer interest is executed in full before Professional Orders and market maker quotes.27

H. Crossing Public Customer Orders on PIXL

Proposed Rule 1080(n)(v) addresses the situation where an Initiating Member holds public customer orders on both sides of the market in the same option series. Instead of initiating a PIXL Auction, an Initiating Member would be able to enter a PIXL Order for the account of a public customer paired with an order for the account of another public customer and such paired orders would be automatically executed without the need to commence a PIXL Auction. The execution price would be required to be expressed in the minimum quoting increment applicable to the series (e.g., a penny where the series trades in penny increments). An execution may not trade through the NBBO or at the same price as any resting customer order. The Commission believes that these specifications are designed to protect resting limit orders on the book, and would ensure that this mechanism could not be used to trade in increments that would not otherwise be available for trading outside the PIXL context.

Phlx Rule 1080(c)(ii)(C) prevents an Order Entry Firm from executing agency orders to increase its economic gain from trading against the order without first giving other trading interests on the Exchange an opportunity to either trade at the execution price when the member was already bidding or offering on the book. However, the Exchange recognizes that it may be possible for a firm to establish a relationship with a customer or other person to deny agency orders the opportunity to interact on the Exchange and to realize similar economic benefits as it would achieve by executing agency orders as principal. The proposed rule would provide that it would be a violation of Rule 1080(c)(ii)(C) for a firm to circumvent Rule 1080(c)(ii)(C) by providing an opportunity for (i) a customer affiliated with the firm, or (ii) a customer with whom the firm has an arrangement that allows the firm to realize similar economic benefits from the transaction as the firm would achieve by executing agency orders as principal, to regularly execute against agency orders handled by the firm immediately upon their entry as PIXL customer-to-customer immediate crosses. These provisions are substantially similar to those of CBOE.28

I. No Minimum Size Requirement for PIXL

Like the BOX’s PIP auction, the ISE’s PIM auction, and the CBOE’s AIM auction, the PIXL auction would be available for orders of fewer than 50 contracts. Under the Exchange’s proposal, there would be no minimum size requirement for orders entered into the PIXL for a pilot period expiring on August 31, 2011.

The Commission believes that the Exchange’s proposal should provide small customer orders with the opportunity for price improvement in a manner that is consistent with the Act. The Commission will evaluate the PIXL auction during the Pilot Period to determine whether it would be beneficial to customers and to the options market as a whole to approve any proposal requesting permanent approval to permit orders of fewer than 50 contracts to be submitted to the PIXL auction. In addition, the Commission will examine the data submitted by the Exchange with respect to situations in which the PIXL auction is terminated prematurely by an unrelated order. To aid the Commission in its evaluation, the Exchange represents that it will provide the following information each month:

Regarding the early conclusion of an Auction due to the PBBO crossing the PIXL Order stop price on the same side of the market as the PIXL order, or due to a trading halt, the Exchange has undertaken to provide the following information on a monthly basis during the pilot period:

1. The number of times that the PBBO crossed the PIXL Order stop price on the same side of the market as the PIXL Order and prematurely ended the PIXL Auction, and at what time the PIXL Auction ended;

2. The number of times that a trading halt prematurely ended the PIXL auction and at what time the trading halt ended the PIXL Auction;

3. Of the Auctions terminated early due to the PBBO crossing the PIXL order stop price, the number that resulted in price improvement over the PIXL Order stop price, and the average amount of price improvement provided to the PIXL Order;

4. In the Auctions terminated early due to the PBBO crossing the PIXL order stop price, the percentage of contracts that received price improvement over the PIXL order stop price;

5. Of the Auctions terminated early due to a trading halt, the number that resulted in price improvement over the PIXL Order stop price, and the average amount of price improvement provided to the PIXL Order;

24 See PIP Order, supra note 9, at 2789–2790 and PIM Order, supra note 9, at 75097–75098.
25 See Securities Exchange Act Release No. 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010) (SR–Phlx–2010–05) (adopting the term “professional” as a person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s)).
26 According to the Exchange, PIXL Orders are inherently all-or-none orders because the Initiating Member guarantees that the PIXL Order will be filled in its entirety.
27 See ISE Rule 723(d)(1).
28 See CBOE Rule 6.74A.09.
(6) In the auctions terminated early due to a trading halt, the percentage of contracts that received price improvement over the PIXL order stop price; and
(7) The average amount of price improvement provided to the PIXL Order when the PIXL Auction is not terminated early (i.e., runs the full one second).

(8) The number of times an unrelated market or marketable limit order (against the PBBO) on the opposite side of the PIXL Order is received during the Auction Period; and
(9) The price(s) at which an unrelated market or marketable limit order (against the PBBO) on the opposite side of the PIXL Order is received during the Auction Period is executed, compared to the execution price of the PIXL Order.

Regarding PIXL Orders of fewer than 50 contracts, the Exchange has undertaken to provide the following information on a monthly basis during the pilot period:
(1) The number of orders of fewer than 50 contracts entered into the PIXL Auction;
(2) The percentage of all orders of fewer than 50 contracts sent to Phlx that are entered into the PIXL Auction;
(3) The percentage of all Phlx trades represented by orders of fewer than 50 contracts;
(4) The percentage of all Phlx trades effected through the PIXL Auction represented by orders of fewer than 50 contracts;
(5) The percentage of all contracts traded on Phlx represented by orders of fewer than 50 contracts;
(6) The percentage of all contracts effected through the PIXL Auction represented by orders of fewer than 50 contracts;
(7) The spread in the option, at the time an order of fewer than 50 contracts is submitted to the PIXL Auction;
(8) The number of orders of 50 contracts or greater entered into the PIXL Auction;
(9) The percentage of all orders of 50 contracts or greater sent to Phlx that are entered into the PIXL Auction;
(10) The spread in the option, at the time an order of 50 contracts or greater is submitted to the PIXL Auction;
(11) Of PIXL trades where the PIXL Order is for the account of a public customer, and is for a size of fewer than 50 contracts, the percentage done at the NBBO plus $.01, plus $.02, plus $.03, etc.;
(12) Of PIXL trades where the PIXL Order is for the account of a public customer, and is for a size of 50 contracts or greater, the percentage done at the NBBO plus $.01, plus $.02, plus $.03, etc.; and
(13) Of PIXL trades where the PIXL Order is for the account of a broker dealer or any other person or entity that is not a public customer, and is for a size of fewer than 50 contracts, the percentage done at the NBBO plus $.01, plus $.02, plus $.03, etc.
(14) Of PIXL trades where the PIXL Order is for the account of a broker dealer or any other person or entity that is not a public customer, and is for a size of 50 contracts or greater, the percentage done at the NBBO plus $.01, plus $.02, plus $.03, etc.; and
(15) The number of orders submitted by Initiating Members when the spread was $.05, $.10, $.15, etc. For each spread, specify the percentage of contracts in orders of fewer than 50 contracts submitted to the PIXL Auction that were traded by: (a) The Initiating Member that submitted the order to the PIXL; (b) Phlx Market Makers assigned to the class; (c) other Phlx members; (d) Public Customer Orders; and (e) unrelated orders (in standard increments entered during the PIXL Auction). For each spread, also specify the percentage of contracts in orders of 50 contracts or greater submitted to the PIXL Auction that were traded by: (a) The Initiating Member that submitted the order to the PIXL; (b) Phlx market makers assigned to the class; (c) other Phlx members; (d) Public Customer Orders; and (e) unrelated orders (in standard increments entered during the PIXL Auction).

Regarding competition, the Exchange has undertaken to provide the following information on a monthly basis during the pilot period:
(1) The percentage of all Phlx trades effected through the PIXL Auction in which the Initiating Member has chosen the auto-match feature, and the average amount of price improvement provided to the PIXL Order when the Initiating Member has chosen the auto-match feature vs. the average amount of price improvement provided to the PIXL Order when the Initiating Member has chosen a stop price submission.

Regarding the Exchange’s auto-match feature, the Exchange has undertaken to provide the following information on a monthly basis during the pilot period:
(1) For the first Wednesday of each month: (a) The total number of PIXL auctions on that date; (b) the number of PIXL auctions where the order submitted to the PIXL was fewer than 50 contracts; (c) the number of PIXL auctions where the order submitted to the PIXL was 50 contracts or greater; (d) the number of PIXL auctions (for orders of fewer than 50 contracts) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc., and (e) the number of PIXL auctions (for orders of 50 contracts or greater) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc., and (f) the number of PIXL auctions (for orders of 50 contracts or greater) with 50 contracts or greater submitted to the PIXL Auction.

Section 11(a)(1) of the Act prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, “covered accounts”) unless an exception applies. Rule 11a2–2(T) under the Act, known as the “effect versus execute” rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)’s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution
of the transaction once it has been transmitted to the member performing the execution; 

(iii) may not be affiliated with the executing member; and

(iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission, the Exchange requests that the Commission concur with Phlx’s conclusion that members who enter orders into the Auction satisfy the requirements of Rule 11a2–2(T). 

For the reasons set forth below, the Commission believes that Exchange members entering orders into the Auction would satisfy the conditions of the Rule.

The Rule’s first condition is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange’s floor by electronic means. Phlx has represented that only specialists and SQTs possess any special or unique trading advantages in the handling of its orders after transmitting them to the exchange.41 Based on the Exchange’s representation, the Commission believes that PIXL satisfies the off-floor transmission requirement.

Second, the Rule requires that the member not participate in the execution of its order. Phlx has represented that at no time following the submission of an order is a member able to acquire control or influence over the result or timing of an order’s execution. According to the Exchange, the execution of a member’s order is determined by what other orders are present in the Auction and the priority of those orders. According to the Commission believes that a member does not participate in the execution of an order submitted to the Auction.

Third, Rule 11a2–2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated systems, such as PIXL, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange. Phlx has represented that the design of the Auction ensures that no member organization has any special or unique trading advantage in the handling of its orders after transmitting its orders to the Auction. Based on the Exchange’s representation, the Commission believes that PIXL satisfies this requirement.

Fourth, in the case of a transaction effectuated for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor an associated person thereof may retain any compensation in connection with affecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder. Phlx represents that member organizations relying on Rule 11a2–2(T) for transactions effectuated after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor.42

In considering the operation of automated execution systems operated by an exchange, the Commission noted that, when an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). See 1979 Release, supra note 33.

41 See 15 U.S.C. Section 78k(a)(1)(A); 17 CFR 240.11a2–2[T][a][1]. According to the Exchange, there are no other on-floor members, other than Exchange specialists and SQTs, who have the ability to submit orders into the Auction.


37 An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit order quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Exchange Rule 1014(b)(iii)(A).

38 Phlx has also represented that, while Floor Brokers have the ability to submit orders they represent as agent to the electronic limit order book through the Exchange’s Options Floor Broker Management System ("FBMS"), there is no mechanism by which such Floor Brokers can directly submit orders to the Auction. See supra 1979 Release, supra note 32.

39 Phlx has represented that, while Floor Brokers have the ability to submit orders they represent as agent to the electronic limit order book through the Exchange’s Options Floor Broker Management System ("FBMS"), there is no mechanism by which such Floor Brokers can directly submit orders to the Auction. See supra 1979 Release, supra note 32. See id.

40 The Exchange represented that because FBMS does not have the coding required to enter orders into the Auction, the “market maker” exception to Section 11(a) of the Act and Rule 11a2–2(T)(a)(1) thereunder.

41 The Exchange represented that because FBMS does not have the coding required to enter orders into the Auction, the “market maker” exception to Section 11(a) of the Act and Rule 11a2–2(T)(a)(1) thereunder.

42 The Exchange represented that because FBMS does not have the coding required to enter orders into the Auction, the “market maker” exception to Section 11(a) of the Act and Rule 11a2–2(T)(a)(1) thereunder.

43 The Exchange represented that because FBMS does not have the coding required to enter orders into the Auction, the “market maker” exception to Section 11(a) of the Act and Rule 11a2–2(T)(a)(1) thereunder.

44 The Exchange represented that because FBMS does not have the coding required to enter orders into the Auction, the “market maker” exception to Section 11(a) of the Act and Rule 11a2–2(T)(a)(1) thereunder.

45 See 17 CFR 240.11a2–2[T][a][ii][iv]. In addition, Rule 11a2–2(T)(d) requires that a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated person thereof exercises investment discretion, furnish to least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member or associated person thereof may retain any compensation in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2–2[T][d]. See also 1978 Release, supra note 40 (stating “[i]n the contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests”).
through PIXL must comply with this condition of the Rule.\textsuperscript{44}

\textbf{IV. Conclusion}

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.\textsuperscript{45}

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,\textsuperscript{46} that the proposed rule change (SR–Phlx–2010–108) is approved, except that (1) paragraphs (n)(i)(A)(2), (n)(i)(B)(2), (n)(ii)(B)(4), and (n)(iii)(D) of Phlx Rule 1080 are approved on a pilot basis until August 31, 2011; and (2) there shall be no minimum size requirement for orders entered into the PIXL for a pilot period expiring on August 31, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.\textsuperscript{47}

Florence E. Harmon,
Deputy Secretary.

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\textbf{SECURITIES AND EXCHANGE COMMISSION}
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\textbf{Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Amend Certain Rules Pertaining to Credit Options}
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October 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) \textsuperscript{48} and Rule 19b–4 thereunder,\textsuperscript{2} notice is hereby given that on September 20, 2010, the Chicago Board Options Exchange, Incorporated (“CBOE” or the “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.

\textbf{I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change}

CBOE proposes to amend certain rules pertaining to Credit Options. The text of the rule proposal is available on the Exchange’s Web site (http://www.cboe.com/legal), at the Exchange’s principal office, and at the Commission’s Public Reference Room.

\textbf{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 self-regulatory organization 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.

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

\textbf{1. Purpose}

The Exchange received approval to list and trade Credit Default Options and Credit Default Basket Options (collectively “Credit Options”) in 2007, and is planning to re-launch these products.\textsuperscript{3} In connection with the Exchange’s planned re-launching of Credit Options, the Exchange will be introducing contracts that have a payout that is less than $100,000.\textsuperscript{4} In addition, the Exchange would like to: (1) Change the quoting convention for Credit Default Options, (2) change the minimum price variation for Credit Option, and (3) designate a single applicable Credit Event for Credit Options.

\textbf{Quoting Convention and Minimum Price Variation Changes}

When CBOE launched Credit Default Options, the Exchange designated the cash settlement amount to be $100,000, which was equal to an exercise settlement value of $100 multiplied by a contract multiplier of 1,000 (which was specified by the Exchange at listing).\textsuperscript{5} Because the exercise settlement value is currently fixed by rule at $100,\textsuperscript{6} bids and offers for contracts are expressed in amounts ranging from $0 (no bid) to $100. The range of bids and offers is not hard coded into CBOE’s rules and is a function of pricing options that have a fixed payout.\textsuperscript{7} To arrive at the total amount a bid or offer represents per contract, the bid or offer is multiplied by the contract multiplier. For example, if a Credit Default Option has a cash settlement amount of $100,000 ($100 × 1,000), bids of $0.05, $45.15 and $67.50 equate to premium amounts of $50, $45.15 and $67.50, respectively.

CBOE proposes to change the quoting conventions for Credit Default Options by permitting the exercise settlement value to be an amount determined by the Exchange on a class-by-class basis that would be equal to $1 or $100, or a value between those values. By permitting the Exchange to vary the exercise settlement value, the range of bids and offers would vary in tandem. For example, if the Exchange sets the exercise settlement value at $10, bids and offers for that contract would range from $0 (no bid) to $10, and the total premium amount would be determined by multiplying the bid or offer by the contract multiplier.

In addition, by permitting the Exchange to set the exercise settlement value on a class-by-class basis, the Exchange would be able to list a contract having a cash settlement amount that could be arrived at in different ways. For example, for a Credit Default Option with a cash settlement amount of $1,000, the Exchange could: (1) Set the exercise settlement value at $1 with a contract multiplier of $1,000, (2) set the exercise settlement value at $10 with a contract multiplier of 100, (3) set the exercise settlement value at $100 with a contract multiplier of 100, or (4) set the exercise settlement value at $1,000 with a contract multiplier of 1. The Exchange notes that it will not list more than one Credit Default Option contract with a cash settlement amount

\textsuperscript{44} See Phlx 11(a) Letter, supra note 32.
\textsuperscript{45} 15 U.S.C. 78c(b)(5). In connection with the issuance of this approval order, neither the Commission nor its staff is granting any exemptions or no-action relief from the requirements of Rule 10b–5 under the Act. 17 CFR 240.10b–5.
\textsuperscript{46} According to a broker-dealer executing a customer order through the PIXL auction will need to comply with all applicable requirements of that Rule.
\textsuperscript{12} 17 CFR 200.30–3(a)(12).
\textsuperscript{6} The Exchange may vary the particular contract multiplier on a class-by-class basis within a range of to 1,000. See 29.1(a).
\textsuperscript{7} See Rule 29.1(a)(i).
\textsuperscript{8} The Exchange notes that with a fixed exercise settlement value of $100, any quote above $100 (e.g., $150) would not make economic sense since it would represent a premium cost ($150 × 1,000 = $150,000) that exceeds than (sic) the exercise settlement amount of the contract ($100 × 1,000 = $100,000).