

not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule changes accomplish these objectives by enhancing Exchange rules by clarifying that most initial listing standards, as well as certain representations included in Exchange Rule Filings to list an ETP, are considered continued listing standards. Additionally, the NYSE Arca listing rules will be modified to require that issuers of securities listed under the Rule 5 and Rule 8 series must notify the Exchange regarding instances of non-compliance and to clarify that deficiencies will be subject to the delisting process in Rule 5.5(m). The Exchange believes that these amendments will enhance the NYSE Arca listing rules, thereby serving to improve the national market system and protect investors and the public interest.

#### *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, as amended. The Exchange believes that the proposed rule change to amend the listing rules for ETPs in the NYSE Arca Rule 5 and Rule 8 series and the related notification requirement will have no impact on competition. Furthermore, since T&M Staff has provided the same guidance regarding ETP continued listing requirements to all exchanges, the Exchange believes that there will be no effect on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

### **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 up to 90 days (i) as the Commission may designate 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2017-01 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2017-01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2017-01 and should be submitted on or before February 15, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

[FR Doc. 2017-01612 Filed 1-24-17; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-79835; File No. SR-Phlx-2016-119]

### **Self-Regulatory Organizations; NASDAQ PHLX LLC; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the PIXL Price Improvement Auction in Phlx Rule 1080(n) and To Make Pilot Program Permanent**

January 18, 2017.

#### **I. Introduction**

On December 6, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the eligibility requirements for its Price Improvement XL mechanism ("PIXL" or "Auction") and make permanent those aspects of PIXL that are currently operating on a pilot basis. On December 15, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 22, 2016.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### **II. Description of the Proposal**

The Exchange adopted PIXL in October 2010 as a price-improvement mechanism on the Exchange.<sup>4</sup> PIXL is a component of the Exchange's fully automated options trading system, PHLX XL<sup>®</sup>, that allows an Exchange member (an "Initiating Member") to

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 79584 (December 16, 2016), 81 FR 93979 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR-Phlx-2010-108) ("PIXL Approval Order").

electronically submit for execution a simple or complex order it represents as agent on behalf of a public customer, broker dealer, or any other entity (“PIXL Order”) against principal interest or against any other order it represents as agent (an “Initiating Order”) provided it submits the PIXL Order for electronic execution into PIXL.

Certain aspects of PIXL are currently operating on a pilot basis (“Pilot”),<sup>5</sup> which is set to expire on January 18, 2017.<sup>6</sup> In this proposal, the Exchange proposes to make the Pilot permanent. In addition, Phlx proposes to modify the requirements for PIXL auctions involving less than 50 contracts (other than auctions involving Complex Orders) where the National Best Bid and Offer (“NBBO”) is only \$0.01 wide.

#### A. PIXL Auction Eligibility

Currently, a PIXL Auction may be initiated if all of the following conditions are met. If the PIXL Order (except if it is a Complex Order) is for the account of a public customer the Initiating Member must stop the entire PIXL Order (except if it is a Complex Order) at a price that is equal to or better than the NBBO and the internal market BBO (the “Reference BBO”) 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.<sup>7</sup>

If the PIXL Order (except if it is a Complex Order) is for the account of a broker dealer or any other person or entity that is not a public customer the Initiating Member must stop the entire PIXL Order (except if it is a Complex Order) at a price that is the better of: (i) The Reference BBO 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 the Reference BBO.<sup>8</sup>

<sup>5</sup> Four components of the PIXL system are currently operating on a pilot basis: (i) Auction eligibility for Complex Orders in a PIXL Auction; (ii) the provision that an unrelated market or marketable limit order (against the PBBO) on the opposite side of the market from the PIXL Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction; (iii) the early conclusion of a PIXL Auction; and (iv) no minimum size requirement of orders entered into PIXL.

<sup>6</sup> See Securities Exchange Act Release No. 78301 (July 12, 2016), 81 FR 46731 (July 18, 2016) (SR-Phlx-2016-75).

<sup>7</sup> See Phlx Rule 1080(n)(i)(A).

<sup>8</sup> See Phlx Rule 1080(n)(i)(B).

PHLX proposes to amend PIXL to require that, if the PIXL Order (except if it is a Complex Order) is for less than 50 option contracts, and if the difference between the NBBO is \$0.01, the Initiating Member must stop the entire PIXL Order at one minimum price improvement increment better than the NBBO on the opposite side of the market from the PIXL Order, and better than any limit order on the limit order book on the same side of the market as the PIXL Order. This requirement would apply regardless of whether the PIXL Order is for the account of a public customer, or where the PIXL Order is for the account of a broker dealer or any other person or entity that is not a Public Customer. The Exchange would continue to require that the Initiating Member stop the entire PIXL Order at a price that is better than any limit order on the limit order book on the same side of the market as the PIXL Order regardless of the size of the PIXL Order and the width of the NBBO.

The Exchange would retain the current requirements for Auction eligibility in all other instances. Accordingly, if the PIXL Order (except if it is a Complex Order) is for the account of a public customer and such order is for 50 option contracts or more or if the difference between the NBBO is greater than \$0.01, the Initiating Member must 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 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 (except if it is a Complex Order) is for the account of a broker dealer or any other person or entity that is not a public customer and such order is for 50 option contracts or more, or if the difference between the NBBO is greater than \$0.01, the Initiating Member must stop the entire PIXL Order (except if it is a Complex PIXL Order) at a price that is the better of: (i) The Reference BBO price improved by at least the Minimum 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 the Reference BBO.<sup>9</sup>

<sup>9</sup> The Exchange also proposes to add language to Rule 1080(n)(i) to clarify that, if any of the Auction eligibility criteria are not met, the PIXL Order will be rejected. The Exchange further proposes to add language to Rule 1080(n)(i) to clarify the treatment of paired public customer-to-public customer orders

The Exchange believes that these changes to PIXL may provide additional opportunities for PIXL Orders, other than Complex Orders, of under 50 option contracts to receive price improvement over the NBBO where the difference in the NBBO is \$0.01 and therefore encourage the increased submission of orders of under 50 option contracts.<sup>10</sup> Phlx notes that the statistics for the current pilot, which include, among other things, price improvement for orders of less than 50 option contracts under the current Auction eligibility requirements, show relatively small amounts of price improvement for such orders.<sup>11</sup> Phlx believes that the proposed requirements will therefore increase the price improvement that orders of under 50 option contracts may receive in PIXL.<sup>12</sup> The Exchange also notes that the initial PIXL requirements for Auction eligibility had differentiated between PIXL Orders for a size of less than 50 option contracts and PIXL Orders for a size of 50 contracts or more (both for PIXL Orders for the account of a public customer and for the account of a broker-dealer of any other person or entity that is not a public customer), with more stringent requirements for PIXL Orders for a size of less than 50 option contracts.<sup>13</sup>

#### B. Pilot Program

As described above, four components of the PIXL system are currently operating on a pilot basis: (i) Auction eligibility for Complex Orders in a PIXL Auction; (ii) no minimum size requirement of orders entered into PIXL; (iii) the early conclusion of a PIXL Auction; and (iv) the provision that an unrelated market or marketable limit order (against the PBBO) on the opposite side of the market from the PIXL Order received during the Auction will not cause the Auction to end early and will execute against interest outside

pursuant to Rule 1080(n)(vi) as a result of these proposed changes. Specifically, Exchange would allow a PIXL Order to trade on either the bid or offer, pursuant to Rule 1080(n)(vi), if the NBBO is \$0.01 wide, provided (1) the execution price is equal to or within the NBBO, (2) there is no resting customer at the execution price, and (3) \$0.01 is the Minimum Price Variation (MPV) of the option. The Exchange also proposes to add language that it will continue to reject a PIXL Order to buy (sell) if the NBBO is only \$0.01 wide and the Agency order is stopped on the bid (offer) if there is a resting order on the bid (offer). The Exchange states that these requirements are unchanged from the Exchange’s current practice.

<sup>10</sup> See Notice, *supra* note 3, at 93981.

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*

<sup>13</sup> See PIXL Approval Order, *supra* note 4 at 62161.

of the Auction. The pilot has been extended until January 18, 2017.<sup>14</sup>

During the Pilot period, the Exchange submitted certain data periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders, there is significant price improvement available through PIXL, and that there is an active and liquid market functioning on the Exchange both within PIXL and outside of the Auction mechanism.<sup>15</sup> The Exchange has requested that the Commission approve the Pilot on a permanent basis.

### 1. Complex Orders

Rule 1080(n) sets forth Auction eligibility requirements for Complex Orders. If the PIXL Order is a Complex Order and of a conforming ratio, as defined in Rule 1098(a)(i) and (a)(ix), the Initiating Member must stop the entire PIXL Order at a price that is better than the best net price (debit or credit) (i) available on the Complex Order book regardless of the Complex Order book size; and (ii) achievable from the best Phlx bids and offers for the individual options (an “improved net price”), provided in either case that such price is equal to or better than the PIXL Order’s limit price. Complex Orders consisting of a ratio other than a conforming ratio will not be accepted.<sup>16</sup> This provision applies to all Complex Orders submitted into PIXL and, where applied to Complex Orders where the smallest leg is less than 50 contracts in size, is part of the current Pilot.<sup>17</sup>

The Exchange does not propose to modify the Auction eligibility requirements for Complex Orders to require increased price improvement. The Exchange states that Rule 1080(n)(i)(C) already requires that the Initiating Member must stop the entire PIXL Order at a price that is better than the best net price (debit or credit) that is available on the Complex Order book regardless of the Complex Order book size; and that is achievable from the best Phlx bids and offers for the individual options, provided in either case that such price is equal to or better than the PIXL Order’s limit price.<sup>18</sup>

The Exchange proposes, however, to make permanent the sub-paragraph concerning Auction eligibility for Complex Orders in PIXL. Rule 1080(n)(i)(C) states that the Auction eligibility requirements for a PIXL Order

that is a Complex Order, where applied to Complex Orders where the smallest leg is less than 50 contracts in size, is part of the current Pilot.<sup>19</sup> The Exchange states that the initial proposed Auction eligibility requirements for simple PIXL Orders of less than 50 contracts were more stringent than the Auction eligibility requirements for simple PIXL Orders of 50 contracts or more.<sup>20</sup> In approving different Auction eligibility requirements for simple PIXL Orders of less than 50 contracts, the Commission noted that it was approving this provision on a pilot basis so that it could ascertain the level of price improvement attained for smaller-sized orders during the pilot period.<sup>21</sup> The Exchanges subsequently proposed implementing size-based Auction eligibility requirements for Complex Orders in PIXL on a pilot basis.<sup>22</sup> The Commission subsequently approved the elimination of the size-based distinction for Auction eligibility for simple PIXL Orders, and permitted Phlx to adopt the Auction eligibility standard that previously applied to orders of 50 contracts or greater.<sup>23</sup>

Phlx believes it is appropriate to approve this aspect of the Pilot on a permanent basis for two reasons.<sup>24</sup> First, Phlx notes that the Auction eligibility requirements for simple PIXL Orders are currently operating on a permanent basis.<sup>25</sup> Although the Auction eligibility requirements for Complex PIXL Orders distinguish between Complex PIXL Orders where the smallest leg is less than 50 contracts and Complex PIXL Orders where the smallest leg is 50 contracts or greater, the substantive Auction eligibility requirements for all Complex PIXL Orders are currently the same. The Exchange believes that to the extent that the SEC approved the simple PIXL Order Auction eligibility requirements on a pilot basis, it was to determine if the different Auction eligibility requirements for simple PIXL Orders of less than 50 contracts resulted in different levels of price improvement for those orders in comparison to simple

PIXL Orders of 50 contracts or greater.<sup>26</sup> Since no comparable distinction exists here, and since the Auction eligibility requirements for Complex PIXL Orders where the smallest leg is 50 contracts or greater is already operating on a permanent basis, Phlx believes it is appropriate to approve, on a permanent basis, the same Auction eligibility requirements for Complex PIXL Orders where the smallest leg is less than 50 contracts.<sup>27</sup>

Second, the Exchange also believes that it is appropriate to approve this aspect of the Pilot on a permanent basis for Complex Orders where the smallest leg is less than 50 contracts in size because this will continue to provide such Orders with the opportunity to receive price improvement.<sup>28</sup> Specifically, the Exchange believes that the Auction eligibility requirements, which require a Complex Order to be stopped at a net debit/credit price that improves upon the stated markets present for the individual components of the Complex Order, ensure that at least one option leg will be executed at a better price than the established bid or offer for such leg.<sup>29</sup> Phlx asserts that it has gathered data throughout the Pilot that indicates that there is a robust market for simple orders, including small customer orders, both within and outside of PIXL, and significant opportunities for price improvement for small customer orders that are entered into PIXL.<sup>30</sup> Phlx believes that the market for Complex Orders, including small customer orders, both within and outside of PIXL is similarly robust, and therefore has requested that the Commission approve this aspect of the Pilot on a permanent basis.<sup>31</sup>

### 2. No Minimum Size Requirement

Rule 1080(n)(vii) provides that, as part of the current Pilot, there will be no minimum size requirement for orders to be eligible for the Auction.<sup>32</sup> The Exchange believes that the data gathered since the approval of the Pilot, which it discussed in the Notice, establishes that there is liquidity and competition both within PIXL and outside of PIXL, and

<sup>19</sup> The Commission approved expanding PIXL to include Complex Orders in 2013, and approved this provision on a pilot basis. See Securities Exchange Act Release No. 69845 (June 25, 2013), 78 FR 39429 (July 1, 2013) (SR-Phlx-2013-46) (“Complex PIXL Approval Order”).

<sup>20</sup> See PIXL Approval Order, *supra* note 4 at 62161.

<sup>21</sup> See PIXL Approval Order, *supra* note 4 at 62161–62.

<sup>22</sup> See Complex PIXL Approval Order, *supra* note 19.

<sup>23</sup> See Securities Exchange Act Release No. 70654 (October 10, 2013), 78 FR 62891 (October 22, 2013) (SR-Phlx-2013-76).

<sup>24</sup> See Notice, *supra* note 3, at 93982.

<sup>25</sup> See PIXL Approval Order, *supra* note 4.

<sup>26</sup> See Notice, *supra* note 3, at 93982.

<sup>27</sup> See *id.*

<sup>28</sup> See *id.*

<sup>29</sup> See *id.*

<sup>30</sup> See Notice, *supra* note 3, at 93983.

<sup>31</sup> See *id.*

<sup>32</sup> The Rule also requires the Exchange to submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism. Any raw data which is submitted to the Commission will be provided on a confidential basis.

<sup>14</sup> See *supra* note 6.

<sup>15</sup> See Phlx Rule 1080(n)(vii).

<sup>16</sup> See Phlx Rule 1080(n)(i)(C).

<sup>17</sup> See *id.*

<sup>18</sup> See Notice, *supra* note 3, at 93982.

that there are opportunities for significant price improvement within PIXL.<sup>33</sup>

The Exchange also has gathered information about activity in orders for less than 50 contracts and 50 contracts or greater for simple PIXL Auctions between January and June 2015. For Auctions occurring during that period, 93% of Auctions were for orders for less than 50 contracts, a percentage that increased slightly over that time period. Auctions for orders of less than 50 contracts accounted for 45.5% of the contract volume traded in PIXL. Auctions of 50 contracts or more made up 7.0% of all PIXL Auctions and accounted for 54.5% of contracts traded in PIXL.<sup>34</sup>

With respect to price improvement, 68.6% of PIXL Auctions for simple PIXL Orders executed at a price that was better than the NBBO at the time the Auction began. 69.2% of Auctions for less than 50 contracts received price improvement. 56.3% of Auctions for 50 contracts or more received price improvement. 66.5% of contracts in Auctions for less than 50 contracts received price improvement. 55.7% of Auctions for 50 contracts or more received price improvement.<sup>35</sup>

Phlx has also gathered data relating to the number of Complex Orders entered into PIXL. For November 2016, a total of 18,016 orders were entered into PIXL where the smallest leg was less than 50 contracts, representing 99,941 contracts. For November 2016, a total of 641 orders were entered into PIXL where the smallest leg was 50 contracts or greater, representing 52,686 contracts.<sup>36</sup>

The Exchange believes that the data gathered during the Pilot period indicates that there is meaningful competition in PIXL Auctions for all size orders, there is an active and liquid market functioning on the Exchange outside of the auction mechanism, and that there are opportunities for significant price improvement for orders executed through PIXL.<sup>37</sup> With respect to Complex Orders, the Exchange believes that this data establishes that there is liquidity and competition both within PIXL for Complex Orders and outside of PIXL for Complex Orders.<sup>38</sup> The Exchange therefore has requested that the Commission approve the no minimum size requirement on a

permanent basis for both simple and Complex PIXL Orders.

### 3. Early Conclusion of the PIXL Auction

Rule 1080(n)(ii)(B) provides that the PIXL Auction shall conclude at the earlier of (i) the end of the Auction period; (ii) for a PIXL Auction (except if it is a Complex Order), any time the Reference BBO crosses the PIXL Order stop price on the same side of the market as the PIXL Order; (iii) for a Complex Order PIXL Auction, any time the cPBBO<sup>39</sup> or the Complex Order book crosses the Complex PIXL Order stop price on the same side of the market as the Complex PIXL Order; or (iv) any time there is a trading halt on the Exchange in the affected series.<sup>40</sup> The last three conditions are operating as part of the current Pilot.

As with the no minimum size requirement, the Exchange has gathered data on these three conditions to assess the effect of early PIXL Auction conclusions on the Pilot.<sup>41</sup> Between January and June 2015, 320 Auctions for simple PIXL Orders terminated early because the Phlx BBO crossed the PIXL Order stop price on the same side of the market. No Auctions terminated early because of halts. The number of Auctions that terminated early was 1/100th of 1% of all PIXL Auctions over the period. The Auctions that terminated early included 1/100th of 1% of contracts traded in PIXL Auctions. The share of Auctions that terminated early was stable between January and June 2015.<sup>42</sup>

<sup>39</sup> Rule 1098(a) defines the cPBBO as “the best net debit or credit price for a Complex Order Strategy based on the PBBO for the individual options components of such Complex Order Strategy, and, where the underlying security is a component of the Complex Order, the National Best Bid and/or Offer for the underlying security.” See Rule 1098(a)(iv).

<sup>40</sup> If the situations described in either of the final three conditions occur, the entire PIXL Order will be executed at: (1) in the case of the Reference BBO crossing the PIXL Order stop price, 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 or better than 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; (2) in the case of the cPBBO or the Complex Order book crossing the Complex PIXL Order stop price on the same side of the market as the Complex PIXL Order, the stop price against executable PAN responses and executable Complex Orders using the allocation algorithm in sub-paragraph (E)(2)(d)(i) through (iv); or (3) in the case of a trading halt on the Exchange in the affected series, the stop price, in which case the PIXL Order will be executed solely against the Initiating Order. Any unexecuted PAN responses will be cancelled. See Rule 1080(n)(ii)(C).

<sup>41</sup> See Exhibit 3 to SR-Phlx-2016-119.

<sup>42</sup> See Notice, *supra* note 3, at 93984.

Between January and June 2015, 76.3% of PIXL Auctions for simple PIXL Orders that terminated early executed at a price that was better than the NBBO at the time the Auction began. 71.9% of contracts in Auctions that terminated early received price improvement. The average amount of price improvement per contract for PIXL Auctions that terminated early was 4.1%.<sup>43</sup>

Based on the data gathered during the pilot, the Exchange does not anticipate that any of these conditions will occur with significant frequency, or will otherwise significantly affect the functioning of PIXL Auctions.<sup>44</sup> The Exchange also notes that over 75% of PIXL Auctions for simple PIXL Orders that terminated early executed at a price that was better than the NBBO at the time the Auction began, and over 70% of contracts in Auctions that terminated early received price improvement.<sup>45</sup> With respect to Complex PIXL Orders, the Exchange similarly does not anticipate, based on the data gathered on this aspect of the Pilot for simple PIXL Orders, that either Rule 1080(n)(ii)(B)(3) or (4) will occur with significant frequency, or will otherwise significantly affect the functioning of Complex PIXL Order Auctions.<sup>46</sup> The Exchange therefore has requested that the Commission approve this aspect of the Pilot on a permanent basis for both simple and Complex PIXL Orders.

### 4. Unrelated Market or Marketable Limit Order

Rule 1080(n)(ii)(D) provides that an unrelated market or marketable limit order (against the PBBO) on the opposite side of the market from the PIXL Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction. In the case of a Complex PIXL Auction, an unrelated market or marketable limit Complex Order on the opposite side of the market from the Complex PIXL Order as well as orders for the individual components of the Complex Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction. If contracts remain from such unrelated order at the time the Auction ends, they will be considered for participation in the order allocation process described elsewhere in the Rule. This section is operating as part of the current Pilot.

In approving this feature on a pilot basis, the Commission found that

<sup>43</sup> See *id.*

<sup>44</sup> See *id.*

<sup>45</sup> See *id.*

<sup>46</sup> See *id.*

<sup>33</sup> See Notice, *supra* note 3, at 93983. See also Exhibit 3 to SR-Phlx-2016-119.

<sup>34</sup> See Notice, *supra* note 3, at 93983.

<sup>35</sup> See *id.*

<sup>36</sup> See *id.*

<sup>37</sup> See *id.*

<sup>38</sup> See *id.*

“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.”<sup>47</sup> The Exchange does not believe that this provision has had a significant impact on either the unrelated order or the PIXL Auction process, either for simple or Complex PIXL Orders.<sup>48</sup> The Exchange therefore has requested that the Commission approve this aspect of the Pilot on a permanent basis for both simple and Complex PIXL Orders.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.<sup>49</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>50</sup> which requires, among other things, that the rules of a national securities 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, 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 customers, issuers, brokers and dealers.

As part of its proposal, the Exchange provided summary data on Exhibit 3 of its filing for the period January through June 2015, which the Exchange and Commission both publicly posted on their respective Web sites. Among other things, this data is useful in assessing the level of price improvement in the Auction, in particular for orders for fewer than 50 contracts; the degree of competition for order flow in such Auctions; and a comparison of liquidity in the Auctions with liquidity on the Exchange generally.<sup>51</sup> Based on the data

provided by the Exchange, the Commission believes that the Exchange's price improvement auction generally delivers a meaningful opportunity for price improvement to orders, including orders for fewer than 50 contracts, when the spread in the option is \$0.02 or more. At the same time, as the Exchange has recognized, the data do not demonstrate that such orders have realized significant price improvement when the NBBO has a bid/ask differential of \$0.01.<sup>52</sup> Recognizing this, the Exchange has proposed to amend the Auction eligibility requirements to require price improvement of at least one minimum price improvement increment over the NBBO for PIXL Orders of less than 50 option contracts where the difference in the NBBO is \$0.01.

The Exchange's proposal to modify the Auction eligibility requirements for orders of fewer than 50 contracts and seek permanent approval of the Pilot, as amended with the new provision, will, in the Commission's view, promote opportunities for price improvement for such orders when the NBBO is \$0.01 wide, while continuing to provide opportunities for price improvement when spreads are wider than \$0.01.

In addition, the Commission has carefully evaluated the PIXL Pilot data and has determined that it would be beneficial to customers and to the options market as a whole to approve on a permanent basis the provisions concerning early conclusion of the PIXL Auction, and the receipt of an unrelated market or marketable limit order (against the Phlx BBO) on the opposite side of the market from the PIXL Order during the Auction. The Commission notes that there have been few instances of early termination of PIXL. The Commission further notes that permitting the PIXL Auction to continue despite receipt of unrelated orders outside the Auction would allow the Auction to run its full course and provide a full opportunity for price improvement to the PIXL Order while allowing the unrelated order to seek an execution, including in the Auction's order allocation.

The Commission believes that, particularly for Auctions for fewer than 50 contracts when the bid/ask differential is wider than \$0.01, the data provided by the Exchange support its proposal to make the Pilot permanent. The data demonstrate that the Auction generally provides price improvement opportunities to simple and complex orders, including orders of retail customers and particularly when the

bid/ask differential is wider than \$0.01, that there is meaningful competition for orders on the Exchange; and that there exists an active and liquid market functioning on the Exchange outside of the Auction.<sup>53</sup> The Commission further believes that the proposed revisions to the eligibility requirements for simple PIXL Orders of fewer than 50 contracts with respect to circumstances when the NBBO is \$0.01 wide should help to enhance the operation of the Auction by providing meaningful opportunities for price improvement in such circumstances, and should benefit investors and others in a manner that is consistent with the Act. Thus, the Commission has determined to approve the Exchange's proposed revisions to Rule 1080(n) and to approve the Pilot, as proposed to be modified, on a permanent basis.

### IV. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after publication of the notice thereof in the **Federal Register**. In particular, accelerated approval of the proposal would allow the applicable rules, as amended, to remain in effect following the expiration of the Pilot on January 18, 2017, which would avoid any potential investor confusion that could result from a suspension or temporary interruption in the Pilot. The Commission further notes that the original proposal, as modified by Amendment No. 1, was subject to a 21 day comment period and no comments were received on the proposal. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>54</sup> to approve the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>55</sup> that the proposed rule change (SR-Phlx-2016-119), as modified by Amendment No. 1, be and hereby is approved on an accelerated basis.

<sup>53</sup> See Exhibit 3 to SR-Phlx-2016-119.

<sup>54</sup> 15 U.S.C. 78s(b)(2).

<sup>55</sup> 15 U.S.C. 78s(b)(2).

<sup>47</sup> See PIXL Approval Order, *supra* note 4.

<sup>48</sup> See Notice, *supra* note 3, at 93984.

<sup>49</sup> 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>50</sup> 15 U.S.C. 78f(b)(5).

<sup>51</sup> See Exhibit 3 to SR-Phlx-2016-119.

<sup>52</sup> See Notice, *supra* note 3, at 93985.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>56</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-01613 Filed 1-24-17; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79821; File No. SR-ICC-2016-014]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Provide for the Clearance of Additional Credit Default Swap Contracts

January 18, 2017.

On November 18, 2016, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to provide for the clearance of additional credit default swap contracts. (File No. SR-ICC-2016-014). The proposed rule change was published for comment in the **Federal Register** on December 7, 2016.<sup>3</sup> To date, the Commission has not received comments on the proposed rule change.

Section 19(b)(2) of the Act<sup>4</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day from the publication of notice of filing of this proposed rule change is January 20, 2017.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. ICC’s proposes to revise the ICC Rulebook (the “Rules”) to provide for the clearance of Standard Australian Corporate Single Name CDS contracts (collectively,

“STAC Contracts”) and Standard Australian Financial Corporate Single Name CDS contracts (collectively, “STAFCS Contracts”). The Commission finds it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider ICC’s proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2)<sup>5</sup> of the Act, designates February 24, 2017, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-ICC-2016-014).

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

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-01606 Filed 1-24-17; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79831; File No. SR-BOX-2016-58]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Order Granting Approval of Proposed Rule Change To Amend Interpretive Material to Rule 7150 (Price Improvement Period “PIP”) and Interpretive Material to Rule 7245 (Complex Order Price Improvement Period “COPIP”) To Make Permanent the Pilot Programs That Permit the Exchange to Have No Minimum Size Requirement for Orders Entered into the PIP (“PIP Pilot Program”) and COPIP (“COPIP Pilot Program”)

January 18, 2017.

#### I. Introduction

On December 9, 2016, BOX Options Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the eligibility requirements for its Price Improvement Period auction (“PIP” or “Auction”) and make permanent pilot programs for the PIP and Complex Order Price Improvement Period (“COPIP”) programs. The proposed rule change

was published for comment in the **Federal Register** on December 16, 2016.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Pursuant to BOX Rule 7150, Options Participants executing agency orders (“Initiating Participants”) may designate Market Orders and marketable limit Customer Orders for price improvement and submission to the PIP (“PIP Orders”) along with a matching contra order equal to the full size of the PIP Order. The PIP was introduced with the launch of the BOX Options Exchange facility (“BOX Facility”) in 2004.<sup>4</sup> The COPIP mechanism allows complex orders to be submitted to the COPIP in substantially the same manner as orders for single options series instruments currently are submitted to the PIP. The COPIP was established in January 2014.<sup>5</sup>

The PIP Pilot Program and COPIP Pilot Program (“Pilot Programs”) guarantee Participants the right to trade with their customer orders that are less than 50 contracts. The rules permitting an Initiating Participant to enter an agency order into the PIP and COPIP with no minimum size requirement were approved on a pilot basis.<sup>6</sup> Any order entered into the PIP is guaranteed an execution at the end of the auction at a price at least equal to the National Best Bid and Offer (“NBBO”).<sup>7</sup> Any order entered into the COPIP is guaranteed an execution at the end of the auction at a price at least equal to or better than the cNBBO,<sup>8</sup> cBBO<sup>9</sup> and BBO on the Complex Order Book for the Strategy at the time of commencement.<sup>10</sup> Both Pilot Programs are scheduled to expire on January 18, 2017.<sup>11</sup>

<sup>3</sup> See Securities Exchange Act Release No. 79531 (December 12, 2016), 81 FR 91227 (“Notice”).

<sup>4</sup> See Securities Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2003-04) (“PIP Approval Order”).

<sup>5</sup> See Securities Exchange Act Release No. 71148 (December 19, 2013) 78 FR 78437 (December 26, 2013) (“COPIP Approval Order”).

<sup>6</sup> See PIP Approval Order, *supra* note 4, and COPIP Approval Order, *supra* note 5.

<sup>7</sup> See BOX Rule 7150(f).

<sup>8</sup> The term “cNBBO” means the best net bid and offer price for a Complex Order Strategy based on the NBBO for the individual options components of such Strategy. See BOX Rule 7240(a)(3).

<sup>9</sup> The term “cBBO” means the best net bid and offer price for a Complex Order Strategy based on the BBO on the BOX Book for the individual options components of such Strategy. See BOX Rule 7240(a)(1).

<sup>10</sup> See BOX Rule 7245(f).

<sup>11</sup> See Securities Exchange Act Release No. 78353 (July 18, 2016), 81 FR 47843 (July 22, 2016) (SR-BOX-2016-32).

<sup>56</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Securities Exchange Act Release No. 79439 (Dec. 1, 2016), 81 FR 88291 (Dec. 7, 2016) (SR-ICC-2016-014).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 17 CFR 200.30-3(a)(31).

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

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