

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

1. Purpose

The Phlx proposes to require that all Phlx quotations would be firm for all incoming customer and broker-dealer orders for their full disseminated size, thus eliminating any distinction between customer orders and broker-dealer orders respecting firm quotation size. The Phlx also proposes to provide that all Phlx guaranteed AUTO-X sizes would be the same for both customer and broker-dealer orders.

a. Firm Quotation Size

Currently, Exchange Rule 1082(b) requires that all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer orders at the disseminated price in an amount up to the disseminated size. Exchange Rule 1082(d) sets forth a different "quotation size" of one contract applicable to broker-dealer orders, which is distinguished from the "disseminated size" for which responsible brokers or dealers are firm for customer orders.⁸ The Exchange proposes to amend Exchange Rule 1082(b) to require that all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer orders and broker-dealer orders at the disseminated price in an amount up to the disseminated size, thus eliminating any distinction between customer orders and broker-dealer orders with respect to the size for which Exchange option quotations are firm.

The Exchange would also delete any references to "quotation size" and "broker-dealer" from Exchange Rule 1082(e). This would be to require all quotations made available by the Exchange and displayed by quotation vendors to be firm at the disseminated price in an amount up to the disseminated size for both customers and broker-dealers. The Phlx represents that the purpose of this provision is to provide both customers and broker-dealers with full access to the entire disseminated size of the Exchange's

quotations. Thus, the Exchange proposes to eliminate any distinction between the size for which its quotes are firm, whether for customers or broker-dealers, including market makers on other exchanges and Registered Options Traders ("ROTs").

b. Automatic Executions at the Disseminated Size for Eligible Customer and Broker-Dealer Orders

In November 2002, the Commission approved an Exchange proposal to provide automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum eligible size range to be determined by the specialist and subject to approval of the Options Committee, on an issue-by-issue basis.⁹ The Exchange now proposes to amend Exchange Rule 1080(c) by deleting the provision that such minimum and maximum sizes may be for a different number of contracts for customer orders than for broker-dealer orders. Corresponding sections of the Commentary to Exchange Rule 1080 concerning AUTO-X eligibility and different guaranteed AUTO-X sizes for customers and broker-dealers would also be deleted. This would result in automatic executions for both eligible customer orders and eligible broker-dealer orders at the Exchange's disseminated size.

The Exchange proposes to eliminate the distinction among customer orders and broker-dealer orders respecting AUTO-X guarantees. In order to ensure that customer and broker-dealer orders receive the same AUTO-X size guarantee, the Phlx proposes to delete the current provisions in Exchange Rule 1080, Commentary .05 requiring a minimum guaranteed AUTO-X size of ten contracts for off-floor broker-dealer orders in Top 120 options. Additionally, the current Commentary includes a provision that, with respect to all other options, off-floor broker-dealer limit orders may be eligible for automatic execution via AUTO-X on an issue-by-issue basis, subject to the approval of the Options Committee. The Exchange proposes to delete this provision in order to enable all eligible broker-dealer orders to be treated the same as eligible customer orders with respect to the Exchange's guaranteed AUTO-X size.

Finally, the Exchange proposes to delete from the Commentary the provision that the AUTO-X guarantee for off-floor broker-dealer limit orders may be for a different number of

contracts, on an issue-by-issue basis, than the AUTO-X guarantee for public customer orders, subject to the approval of the Options Committee.

c. Conclusion

The Exchange believes that this proposed "one size fits all" approach, as set forth in subsections a. and b. above, should enable the Exchange to compete for broker-dealer orders by ensuring that there would be no distinction between broker-dealer and customer orders with respect to: (i) the size for which the Exchange is firm at its disseminated price; and (ii) the Exchange's guaranteed AUTO-X size. Furthermore, the Exchange believes that the proposal should enhance the transparency of its markets and result in a larger number of orders automatically executed.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act¹¹ in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by requiring Exchange specialists and ROTs to be firm for up to the Exchange's disseminated size for all orders, and providing automatic executions at the same guaranteed size for all eligible orders.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such

⁸ Rule 11Ac1-1(d)(1)(ii) under the Act provides that an exchange or association may establish by rule and periodically publish a quotation size, which shall not be for less than one contract, for which responsible brokers or dealers who are members of such exchange or association are obligated under paragraph (c)(2) of this section to execute an order to buy or sell a listed option for the account of a broker or dealer that is in an amount different from the quotation size for which it is obligated to execute an order for the account of a customer. 17 CFR 240.11Ac1-1(d)(1)(ii).

⁹ See Securities Exchange Act Release No. 46886 (November 22, 2002), 67 FR 72015 (December 3, 2002) (SR-Phlx-2002-39).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).