

Other provisions of the proposed rule change are patterned after similar rules on other exchanges.⁹

Amendment No. 6 to the proposed rule change specifies that the provisions of Commentary .02 to permit the floor broker to cross a specified percentage of an original order with a facilitation order of the originating firm would apply where the original order is a *public* customer order.

The Exchange further proposes to adopt Commentary .03 to Phlx Rule 1064. As set forth in Amendment No. 7 to the proposed rule change, Commentary .03 would state that a floor broker crossing a public customer order with an order that is not a public customer order, when providing a reasonable opportunity for the trading crowd to participate in the transaction, must disclose the public customer order that is subject to crossing prior to the execution of the order.

III. Discussion

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. Specifically, the Commission finds that the proposal is consistent with the requirements of sections 6(b)(5) of the Act¹⁰ that the rules of an exchange, among other things, be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.¹¹

The Commission believes that Phlx's proposal to grant crossing guarantees and participation rights to member firms seeking to execute crosses on the Exchange, under the proposed conditions, is reasonable. As noted above, other options exchanges have similar rules, and the proposed rule change should enable Phlx to compete with these exchanges in attracting order flow of broker-dealer firms seeking to cross or facilitate customer orders.

The Commission notes that, in approving member firm participation rights and other guaranteed participations in the past, it has found that rules entitling a market participant or participants to up to 40% of an order are not inconsistent with the statutory standards of competition and free and

open markets.¹² The Commission has raised concerns, on the other hand, about participation guarantees that "lock up" a larger percentage of an order, and thereby reduce the number of contracts for which the trading crowd can compete.¹³ The proposed rule change guarantees an allocation of no more than 40% of an order to a member firm seeking to facilitate an order. Moreover, the proposal includes a provision that limits the number of contracts to be allocated to the facilitating firm and the specialist in the aggregate to no more than 40% of the order. The rule for which the Phlx seeks approval is consistent with the Commission's position with respect to participation guarantees.

The Commission finds good cause for granting accelerated approval of Amendment Nos. 4, 5, 6, and 7 to the proposed rule change. Amendment No. 4 restated the text of the proposed rule change as set forth in the Notice, and made revisions only to Commentary .03. Amendment Nos. 5 and 6 also revised proposed Commentary .03. To the extent that the revisions made by these amendments were retained in the final version of proposed Commentary .03 set forth in Amendment No. 7, they are discussed below.

Amendment No. 6 also amended proposed Commentary .02 to establish that the member firm participation guarantee would apply only when the floor broker is seeking to cross a facilitation order from the member firm with a *public* customer order. The Commission notes that Phlx Rule 1064(b), governing facilitation crosses, refers specifically to transactions in which a floor broker is holding an options order for a *public* customer that he or she is seeking to cross with a contra side order. The text of proposed new Commentary .02 as originally submitted also referred to the facilitation of a public customer order. Although in an earlier amendment the Exchange deleted the word "public" from proposed Commentary .02,¹⁴ the Exchange has now determined to restore the term. The Commission believes that this change is reasonable and also eliminates a possible inconsistency

between Phlx Rule 1064(b) and proposed Commentary .02.

The Commission also finds good cause for accelerating approval of Amendment No. 7 to the proposed rule change. Amendment No. 7 would amend the text of proposed Commentary .03 to state that a floor broker crossing a public customer order with an order that is not a public customer order, when providing for a reasonable opportunity for the trading crowd to participate in the transaction, shall disclose the public customer order that is subject to crossing prior to the execution of the order. As discussed in the Notice, the Phlx believes that "[i]f the customer order is disclosed first, the trading crowd may be more likely to bid or offer competitively as contra side to that customer's order, thus benefiting the customer." As originally proposed, Commentary .03, referred only to facilitation orders. Amendment No. 7 establishes that the provision would apply to all crossing transactions in which the floor broker is crossing a public customer order with an order that is not a public customer order.¹⁵ The Commission believes that it is appropriate to accelerate approval of Amendment No. 7.

Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5) and 19(b)(2) of the Act,¹⁶ to grant accelerated approval of Amendment Nos. 4, 5, 6, and 7 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 4, 5, 6 and 7, including whether Amendment Nos. 4, 5, 6 and 7 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment Nos. 4, 5, 6, and 7 that are filed with the Commission, and all written communications relating to these amendments between the Commission and any person, other than those that may be withheld from the public in

¹² See, e.g., Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000); 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000); 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000); 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

¹³ See, e.g., Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000).

¹⁴ See Amendment No. 2.

¹⁵ Commentary .03 also was amended by the Phlx to distinguish the disclosure requirement of proposed Commentary .03 from the provision of proposed Commentary .02(iv) requiring the floor broker to disclose all components of the customer order initially, before requesting that the trading crowd provide its market.

¹⁶ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

⁹ See Notice.

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).