

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65050; File No. SR-Phlx-2011-101]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Regarding Streaming Quote Traders and Remote Streaming Quote Traders Entering Certain Option Day Limit Orders

August 5, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that on July 27, 2011, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposal to allow entry of day limit orders for the proprietary accounts of Streaming Quote Traders and Remote Streaming Quote Traders.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposal is to amend two subsections of Exchange Rule 1080 to allow entry of day limit orders for the proprietary accounts of Streaming Quote Traders (SQTs”) and Remote Streaming Quote Traders (“RSQTs”). The proposal will promote consistency among Registered Options Traders (“ROT”) on the Exchange by allowing SQTs and RSQTs to enter day limit orders exactly as non-SQT ROTs may currently do under the rules.

Background

There are several types of market makers on the Exchange, including ROTs,³ SQTs,⁴ RSQTs,⁵ and specialists.⁶ Each option class and series listed on the Exchange must currently have a specialist that is either a floor-based specialist or an off-floor specialist known as a Remote Specialist. The specialist system remains un-impacted by this proposal. This proposal deals exclusively with the electronic entry of day limit orders in SQT and RSQT proprietary accounts.

Current Rule 1080 (Phlx XL and XL II) discusses the Exchange’s enhanced electronic order, trading, and execution system (the “electronic interface”). The current iteration of the Exchange’s electronic interface is known as Phlx XL II.⁷ Rule 1080 states that it governs the orders, execution reports and administrative order messages

transmitted between the offices of member organizations and the trading floors of the Exchange. Rule 1080 also discusses what agency and proprietary orders are eligible for entry into the Exchange’s electronic interface.⁸

Subsection (b)(i)(A) of Rule 1080 indicates the types of agency orders that are eligible for entry via electronic interface.⁹ The Exchange does not propose any changes regarding entry of agency orders.

Subsection (b)(i)(B) of Rule 1080 indicates the types of proprietary (non-agency) orders that are eligible for entry via electronic interface. This subsection states that certain types of proprietary orders are eligible for entry via electronic interface subject to Commentary .04 of Rule 1080, discussed below.¹⁰

Subsection (b)(i)(B)(1) of Rule 1080 indicates the types of non-SQT ROTs and specialists proprietary orders that are eligible for entry via electronic interface, including GTC, day limit, IOC, ISO, limit on opening, and simple cancel orders.¹¹ The Exchange does not propose any changes regarding this subsection.¹²

Subsection (b)(i)(B)(2) states that the following types of orders for the proprietary account(s) of SQTs and RSQTs are eligible for entry via electronic interface: Limit on opening, IOC, and ISO. Currently, there is no ability for SQTs and RSQTs to enter day limit orders in their proprietary

⁸ In addition, Rule 1080 deals with, among other things, how quotations interact with limit orders on the book, order routing through the electronic interface, Price Improvement XL (known as “PIXL”), specialized quote feed (known as “SQF”), qualified contingent cross orders, and complex orders.

⁹ Rule 1080(b)(i)(A). This section states that for purposes of Exchange options trading, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

¹⁰ Commentary .04 of Rule 1080 states that Orders for the proprietary accounts of SQTs, RSQTs and non-SQT ROTs that may be entered for delivery through the electronic interface (through the use of Exchange approved proprietary systems to interface with the electronic interface of the Exchange) shall be for a minimum of one (1) contract. Orders for the proprietary account(s) of non-SQT ROTs with a size of less than 10 contracts shall be submitted as IOC only. Orders for the proprietary account(s) of SQTs and RSQTs shall be submitted as IOC only.

¹¹ Rule 1066 discusses certain order types.

¹² Subsection (b)(i)(B)(1), states that the following types of orders for the proprietary account(s) of non-SQT ROTs and specialists with a size of 10 contracts or greater are eligible for entry via electronic interface with AUTOM: GTC, day limit, IOC, ISO, limit on opening and simple cancel. The subsection states also that orders for the proprietary account(s) of non-SQT ROTs and specialists with a size of less than 10 contracts shall be submitted as IOC only.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ An ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Rule 1014 (b)(i).

⁴ An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically in 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 Rule 1014(b)(ii)(A).

⁵ An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Rule 1014(b)(ii)(B).

⁶ A Specialist (which includes an off-floor Remote Specialist) is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁷ See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32) (order approving Phlx XL II). Phlx XL II is the Exchange’s electronic order delivery and reporting system, which provides for the automatic entry and routing of Exchange-listed equity options, index options and U.S. dollar-settled foreign currency options orders to the Exchange trading floor. Rule 1080(a).

accounts. The proposal corrects this limitation by allowing day limit orders for the proprietary account(s) of SQTs and RSQTs to be entered pursuant to subsection (b)(i)(B)(2). The proposed change will promote consistency among ROTs by allowing SQTs and RSQTs to do what Commentary .04 of Rule 1080 now allows non-SQT ROTs to do: enter certain day limit orders (10 or more contracts) in their proprietary accounts.¹³

Commentary .04 of Rule 1080 states that orders for the proprietary accounts of SQTs, RSQTs and non-SQT ROTs may be entered for delivery via electronic interface through the use of Exchange approved proprietary systems of members that interface with the Exchange's electronic interface.¹⁴ Currently, proprietary non-SQT ROT orders with a size of less than 10 contracts have to be submitted as IOC and larger orders may be submitted as day limit and other order types; while proprietary SQT and RSQT orders may only be submitted as IOC.

The Exchange is proposing to put all the ROTs (SQTs, RSQTs and non-SQT ROTs) on an equal footing. Specifically, the Exchange proposes to state in Commentary .04 that orders for the proprietary account(s) of SQTs, RSQTs, and non-SQT ROTs with a size of less than 10 contracts shall be submitted as IOC only. Thus, where SQT and RSQT orders under the current rule could only be submitted as IOC, the proposed change to Commentary .04 would allow these SQTs and RSQTs to enter non IOC orders (e.g. day orders) in proprietary accounts if they are for 10 or more contracts.

The Exchange is proposing to amend subsection (b)(i)(B)(2) and Commentary .04 of Exchange Rule 1080 in order to encourage more liquidity by allowing market makers to rest more orders on the book. Initially with the onset of electronic quoting, the Exchange wanted to encourage electronic quoting and trading and thus did not accept day or day limit orders in the proprietary accounts of liquidity providers such as RSQTs and SQTs nor allow SQTs and RSQTs to submit non-IOC orders. With the extensive development of electronic market making, however, the Exchange has come to believe that allowance of day orders per subsection (b)(i)(B)(2) and Commentary .04 would enhance liquidity rather than discourage

electronic quoting and trading on the Exchange, to the benefit of traders and public customers.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system by further enhancing liquidity to the benefit of traders and public customers. This would be achieved by conforming subsection (b)(i)(B)(2) and Commentary .04 of Rule 1080 and thereby promoting consistency through uniformly allowing day limit orders for the proprietary account(s) of Registered Options Traders (SQTs, RSQTs, and non-SQT ROTs) to be entered via the Exchange's electronic interface. Prior to this proposal, such orders were allowed only for non-SQT ROTs.

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

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

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (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 e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2011-101 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-Phlx-2011-101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 a.m. and 3 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-Phlx-2011-101 and should be submitted on or before September 1, 2011.

¹³ Also, subsection (b)(i)(B)(1) allows non-SQTs and specialists to enter certain day limit orders (10 or more contracts) in their proprietary accounts.

¹⁴ Such orders have to be for a minimum of one (1) contract.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65048; File No. SR-NYSEArca-2011-52]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Options Rule 6.90 To Permit Qualified Contingent Cross Orders To Be Electronically Submitted to the NYSE Arca System From the Floor of the Exchange for Potential Execution

August 5, 2011.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on August 1, 2011, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Options Rule 6.90 to permit Qualified Contingent Cross Orders (“QCCs”) to be electronically submitted to the NYSE Arca System from the Floor of the Exchange for potential execution.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.nyse.com>, on the Commission's Web site at <http://www.sec.gov>, at the Exchange's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the 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.

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

1. Purpose

The purpose of this filing is to amend Rule 6.90 to permit QCCs to be electronically submitted to the NYSE Arca System from the Floor of the Exchange for potential execution.⁴ This filing is modeled after a recently approved rule change by NASDAQ OMX PHLX (“PHLX”).⁵

Background

The Exchange recently adopted rules that permit OTP Holders to submit QCCs electronically from off the Floor through the NYSE Arca System.⁶ The QCC permits an NYSE Arca OTP Holder to effect a qualified contingent trade (“QCT”) in a Regulation NMS stock and cross the options leg of the trade on the Exchange immediately upon entry and without order exposure if the order is for at least 1,000 contracts, is part of a QCT, is executed at a price at least equal to the NBBO and if there are no Customer Orders in the Exchange's Consolidated Book at the same price.⁷

⁴ The NYSE Arca System is configured to automatically reject a QCC entered when the order is for less than 1,000 contracts, is entered at a price worse than the national best bid or offer (“NBBO”) or is entered at the same price as Customer orders in the Exchange's Consolidated Book.

⁵ See Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR-PHLX-2011-56).

⁶ See Securities Exchange Act Release No. 64086 (March 17, 2011), 76 FR 16021 (March 22, 2011) (SR-NYSEArca-2011-09) (“NYSE Arca Electronic QCC Filing”).

⁷ A QCT is a transaction consisting of two or more component orders, executed as agent or principal, where: (a) At least one component is an NMS stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (b) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (c) the execution of one component is contingent upon the execution of all other components at or near the same time; (d) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined by the time the contingent order is placed; (e) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (f) the transaction is fully hedged (without regard to any prior existing

The NYSE Arca Electronic QCC Filing was based on an International Securities Exchange (“ISE”) rule approved by the Commission.⁸ The ISE QCC Proposal was controversial, attracting opposition from multiple exchanges including NYSE Arca.⁹ The Commission, however, ultimately approved the ISE QCC Proposal, finding it to be consistent with the Securities Exchange Act of 1934 (the “Act”). NYSE Arca implemented the NYSE Arca Electronic QCC Filing, and is proposing this rule change, as a competitive response to the approval of the PHLX floor-based QCC filing.

Under the NYSE Arca Electronic QCC Filing, QCCs currently may only be submitted electronically from off the Floor through the NYSE Arca System. In this regard, OTP Holders on the Floor of the Exchange are not allowed to enter QCCs into the NYSE Arca System, or otherwise effect them in open outcry. To provide a mechanism for the Exchange to surveil for whether QCCs were entered from off of the Floor, the Exchange adopted Commentary .01 to Rule 6.90, which requires OTP Holders to maintain books and records demonstrating that each QCC was routed to the NYSE Arca System from off of the Floor. Presently, any QCC that does not have a corresponding record required by this provision would be deemed to have been entered from on the Floor in violation of Rule 6.90. In addition, the Exchange has adopted policies and procedures to ensure that OTP Holders use the QCC properly.¹⁰

Discussion

QCCs permit OTP Holders to provide their customers a net price for the entire

position) as a result of other components of the contingent trade. See Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (the “QCT Release”). That release superseded a release initially granting the QCT exemption. See Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (“Original QCT Exemption”).

⁸ See Securities Exchange Act Release No. 63955 (February 24, 2011), 76 FR 11533 (March 2, 2011) (SR-ISE-2010-73) (“ISE Approval”). See also Securities Exchange Act Release No. 62523 (July 16, 2010), 75 FR 43211 (July 23, 2010) (SR-ISE-2010-73) (“ISE QCC Proposal”).

⁹ The Exchange notes that letters commenting on the ISE Proposal were submitted on its behalf by the Exchange's parent company, NYSE Euronext. See e.g., letters dated August 9, 2010 and October 21, 2010 from Janet L. McGinness, Senior Vice President—Legal & Corporate Secretary, Legal & Government Affairs, NYSE Euronext.

¹⁰ First, the Exchange requires OTP Holders to properly mark all QCCs as such. In addition, the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, has implemented an examination and surveillance program to assess OTP Holder compliance with the requirements applicable to QCCs, including the requirement that the stock leg of the transaction be executed at or near the same time as the options leg.

¹⁷ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.