

general, to protect investors and the public interest.

The Commission believes that the proposal will continue to provide customers with an opportunity for price improvement over the NBBO. The Commission notes that once a Crossing Transaction is submitted into the PIM auction, the Crossing Transaction may not be cancelled.<sup>13</sup> Therefore, the Agency Order submitted to the PIM auction when ISE's BBO is not equal to the NBBO will be guaranteed an execution price of at least the NBBO and, moreover, will be given an opportunity for execution at a price better than the NBBO.

The Commission does not agree with the concerns raised by the commenter. Under the proposal, the PIM will continue to provide an opportunity for customer orders to receive an execution at a price better than NBBO. All orders entered into the PIM will continue to be exposed to all ISE members before the submitting member can execute against the Agency Order. Moreover, the Commission believes the proposal may increase the likelihood of members entering Agency Orders into the PIM because the member will only be required to guarantee an execution at the NBBO when ISE's BBO is not equal to the NBBO, which would provide additional customer orders an opportunity for price improvement over the NBBO. The proposal also may encourage increased participation in a PIM by ISE members willing to trade with an agency order at the NBBO but not better than the NBBO. Increased participation by ISE members would decrease the proportion of an Agency Order that would be internalized by the submitting member.<sup>14</sup>

The Commission thus believes that ISE's proposal is consistent with the requirements of the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (File No. SR-ISE-2008-29), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Nancy M. Morris,**  
Secretary.

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**BILLING CODE 8010-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57844; File No. SR-Phlx-2008-39]

#### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Permanent Approval of the Exchange's Directed Order Program

May 21, 2008.

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> notice is hereby given that on May 20, 2008, the Philadelphia Stock Exchange, Inc. ("Phlx" or "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 substantially prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Phlx proposes to adopt, on a permanent basis, a pilot program concerning Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM)<sup>3</sup> and Automatic Execution System (AUTO-X), and Exchange Rule 1014, Obligations And Restrictions Applicable To Specialists And Registered Options Traders. Specifically, the current pilot program covers: (1) Exchange Rule 1080(l), Directed Orders, under which Exchange specialists, Streaming Quote Traders ("SQTs"),<sup>4</sup> and Remote

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

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

<sup>3</sup> AUTOM is the Exchange's electronic order delivery, routing, execution, and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution features. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. AUTOM is today more commonly referred to as Phlx XL. See Exchange Rule 1080.

<sup>4</sup> An SQT is an Exchange Registered Options Trader who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

Streaming Quote Traders ("RSQTs")<sup>5</sup> trading on the Exchange's electronic options trading platform, Phlx XL,<sup>6</sup> receive Directed Orders (as defined below); and (2) Exchange Rule 1014(g)(viii), which sets forth the trade allocation algorithm for electronically executed and allocated trades involving Directed Orders. This proposal is in connection with a pilot program that is currently scheduled to expire on May 27, 2008.<sup>7</sup> The text of the proposed rule change is available at the Phlx, the Commission's Public Reference Room, and [http://www.phlx.com/exchange/phlx\\_rule\\_fil.html](http://www.phlx.com/exchange/phlx_rule_fil.html).

#### 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 Phlx 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 III below. The Phlx 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 proposed rule change is to adopt, on a permanent basis, a pilot that: (i) permits specialists, SQTs, and RSQTs assigned in options that trade on Phlx XL to receive directed orders ("Directed Orders")<sup>8</sup> from a member or member organization ("Order Flow Provider" or "OFP")<sup>9</sup> that submits, as agent, a customer order to the Exchange electronically, and (ii) establishes a trade allocation algorithm for Directed Orders that are electronically executed and allocated to reward such Directed Specialists, SQTs,

<sup>5</sup> An RSQT is a participant in the Exchange's electronic trading system, Phlx XL, who has received permission from the Exchange to trade in options for his own account and to generate and submit option quotations electronically from off the floor of the Exchange through AUTOM in eligible options to which such RSQT has been assigned. See Exchange Rule 1014(b)(ii)(B).

<sup>6</sup> See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003-59).

<sup>7</sup> See Securities Exchange Act Release No. 55803 (May 23, 2007), 72 FR 30413 (May 31, 2007) (SR-Phlx-2007-37).

<sup>8</sup> See Exchange Rule 1080(l)(i)(A).

<sup>9</sup> See Exchange Rule 1080(l)(i)(B).

<sup>13</sup> See ISE Rule 723(b)(3).

<sup>14</sup> See ISE Rule 723(d)(4).

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).

and RSQTs<sup>10</sup> with a participation guarantee for attracting such order flow to the Exchange. The proposed rule is subject to a pilot program scheduled to expire on May 27, 2008.<sup>11</sup>

Pursuant to Exchange Rule 1080(l), OFPs must transmit Directed Orders to a particular specialist, SQT, or RSQT through AUTOM. If the Exchange's disseminated best bid or offer is at the National Best Bid or Offer ("NBBO") when the Directed Order is received, the Directed Order is automatically executed on Phlx XL and allocated to the orders and quotes represented in the Exchange's quotation. A Directed Specialist, SQT, or RSQT will receive a participation allocation pursuant to Exchange Rule 1014(g)(viii) if the Directed Specialist, SQT, or RSQT was quoting at the NBBO at the time that the Directed Order was received.<sup>12</sup> Otherwise, the automatic execution will be allocated to those quotations and orders at the NBBO pursuant to Exchange Rule 1014(g)(vii).<sup>13</sup> The specialist will manually execute Directed Orders that are received when the Exchange is not quoting at the NBBO.<sup>14</sup>

The Exchange believes that the current pilot program rewards specialists, SQTs, and RSQTs for actively engaging in marketing activities and establishing relationships with OFPs that generate Directed Orders sent to the Exchange by such OFPs. The Exchange believes that the permanent adoption of this rule will continue to result in additional order flow to the Exchange, thus adding depth and liquidity to the Exchange's markets, and enabling the Exchange to continue to compete effectively with other options exchanges for order flow.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>15</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>16</sup> in particular in that it is designed to promote just and equitable principles of trade, 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, by continuing to permit specialists, SQTs, and RSQTs trading options on Phlx XL to receive Directed Orders and by encouraging the capture of order flow on the Exchange by rewarding Directed Order recipients with a participation guarantee in trades involving Directed Orders.

### *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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2008-39 on the subject line.

### *Paper Comments*

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

All submissions should refer to File Number SR-Phlx-2008-39. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. 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-2008-39 and should be submitted on or before June 19, 2008.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>17</sup> and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.<sup>18</sup> Section 6(b)(5) 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 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. The Commission notes that the Exchange's Directed Order program was approved on a pilot basis.<sup>19</sup> The Exchange has asked the Commission to approve the Exchange's program on a permanent basis. For the reasons noted by the Commission when it initially approved the Exchange's Directed Order program on a pilot basis, the Commission continues to believe that the program does not jeopardize market integrity or the incentive for market participants to post competitive quotes. Accordingly,

<sup>17</sup> 15 U.S.C. 78f.

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> The Commission initially approved the Exchange's Directed Order program on a one-year pilot basis to expire on May 27, 2006. See Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (SR-Phlx-2004-91). The Commission subsequently extended the pilot period for an additional one-year period to expire on May 27, 2007. See Securities Exchange Act Release No. 53870 (May 25, 2006), 71 FR 31251 (June 1, 2006) (SR-Phlx-2006-27). The Commission again extended the pilot for another one-year period to expire on May 27, 2008. See note 7 *supra*.

<sup>10</sup> The term "Directed Specialist, RSQT, or SQT" means a specialist, RSQT, or SQT that receives a Directed Order. See Exchange Rule 1080(l)(i)(C). The word "Directed" modifies all three; that is, it is referring to a Directed Specialist, Directed SQT, and Directed RSQT.

<sup>11</sup> See note 7 *supra*.

<sup>12</sup> See Exchange Rule 1080(l)(ii).

<sup>13</sup> See Exchange Rule 1080(l)(iii).

<sup>14</sup> See Exchange Rule 1080(l)(iv).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

the Commission finds that the proposal is consistent with the Act.<sup>20</sup>

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change would allow the Exchange's Directed Order program to continue without disruption. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>21</sup> for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Phlx-2008-39) is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E8-11932 Filed 5-28-08; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57842; File No. SR-NASDAQ-2008-031]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Rule 4350 Related to the Direct Registration Programs

May 20, 2008.

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> notice is hereby given that on April 1, 2008, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by Nasdaq. The Commission is publishing this notice to solicit comments on the

proposed rule change from interested parties.

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

Nasdaq proposes to modify the requirement for a foreign private issuer to be eligible to rely on an exception to the requirement to participate in a Direct Registration Program and to clarify the applicability of the requirement to book-entry-only securities. Nasdaq will implement the proposed change related to book-entry-only securities immediately upon approval and the proposed change affecting foreign private issuers on March 31, 2009.

The text of the proposed rule change is below. Proposed new language is in italicized; proposed deletions are in brackets.<sup>3</sup>

### Rule 4350. Qualitative Listing Requirements for Nasdaq Issuers Except for Limited Partnerships

#### (a) Applicability

(1) Foreign Private Issuers. A foreign private issuer may follow its home country practice in lieu of the requirements of Rule 4350, provided, however, that such an issuer shall: Comply with Rules 4350(b)(1)(B), 4350(j) and 4350(m), have an audit committee that satisfies Rule 4350(d)(3), and ensure that such audit committee's members meet the independence requirement in Rule 4350(d)(2)(A)(ii). *In addition, a foreign private issuer must be eligible to participate in a Direct Registration Program, as required by Rule 4350(l), unless prohibited from complying by a law or regulation in its home country.* A foreign private issuer that follows a home country practice in lieu of one or more provisions of Rule 4350 shall disclose in either its annual reports filed with the Commission or on its website each requirement of Rule 4350 that it does not follow and shall describe the home country practice followed by the issuer in lieu of such requirements. In addition, a foreign private issuer making its initial public offering or first U.S. listing on Nasdaq shall make the same disclosures in either its registration statement or on its website.

(2)–(5) No change.

(b)–(k) No change.

#### (l) Direct Registration Program

(1) All securities initially listing on Nasdaq on or after January 1, 2007, must

be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act. This provision does not extend to: (i) Additional classes of securities of companies which already have securities listed on Nasdaq; (ii) companies which immediately prior to such listing had securities listed on another registered securities exchange in the U.S; or, (iii) [non-equity] securities which are book-entry-only.

(2)(A) *Except as indicated in paragraph (2)(B) below, on [On] and after March 31, 2008, all securities listed on Nasdaq (except [non-equity] securities which are book-entry-only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act.*

(B) *Until March 31, 2009, a foreign private issuer may follow its home country practice in lieu of the requirements of this Rule 4350(l), provided, however, that such an issuer must follow the requirements of Rule 4350(a) and IM-4350-6 for doing so. Thereafter, the listed securities of such issuers (except securities which are book-entry-only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act unless prohibited from complying by a law or regulation in its home country.*

(3) No change.

(m)–(n) No change.

### IM 4350-6 Applicability

1. Foreign Private Issuer Exception and Disclosure. A foreign private issuer (as defined in Rule 3b-4 under the Exchange Act) listed on Nasdaq may follow the practice in such issuer's home country (as defined in General Instruction F of Form 20-F) in lieu of some of the provisions of Rule 4350, subject to several important exceptions. First, such an issuer shall comply with Rule 4350(b)(1)(B) (Disclosure of Going Concern Opinion), Rule 4350(j) (Listing Agreement) and Rule 4350(m) (Notification of Material Noncompliance). Second, such an issuer shall have an audit committee that satisfies Rule 4350(d)(3). Third, members of such audit committee shall meet the criteria for independence referenced in Rule 4350(d)(2)(A)(ii) (the criteria set forth in Rule 10A-3(b)(1), subject to the exemptions provided in Rule 10A-3(c) under the Exchange Act). *Fourth, a foreign private issuer must comply with Rule 4350(l) (Direct Registration Program) unless prohibited from complying by a law or regulation in its home country.* Finally, a foreign private issuer that elects to follow home

<sup>20</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</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> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaq.complinet.com>.