

recognized the problem FINRA was seeking to address and were generally supportive of the proposal, they indicated the need for FINRA to recognize that not all wash sales can be prevented. The proposed rule change explicitly includes language to exclude transactions that originated from unrelated algorithms or from separate and distinct trading strategies, trading desks, or aggregation units from being considered wash sales, provided these transactions are not undertaken for manipulative or other fraudulent purposes. The committees also requested guidance on whether the proposed rule change would apply to all wash sales or a subset. As noted above, only those firms that engage in a pattern or practice of effecting wash sale transactions that result in a material percentage of the trading volume in a particular security would generally violate Rule 5210, as well as Rule 2010. The proposed rule change would not, therefore, apply to isolated wash sale transactions, provided the firm's policies and procedures were reasonable.

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 60 days following publication of the *Regulatory Notice* announcing Commission approval. FINRA is providing firms with additional implementation time to ensure they have appropriate policies and procedures consistent with the proposed rule change.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will reduce the number of wash sale transactions that, while not undertaken for manipulative or fraudulent purposes, nonetheless result in misinformation being disseminated to the marketplace and the public. FINRA believes that by requiring members to have reasonable policies and procedures in place to review for, and prevent, wash sales, the quality of market data will be enhanced, thus promoting just and equitable principles

of trade and increasing the protection of investors and the public interest.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Although some firms may need to enhance their written policies and procedures and, potentially, implement changes to technological systems to ensure compliance with the proposed rule change, FINRA believes these changes are necessary to enhance the quality of market data and will not significantly burden competition as any firm running multiple algorithms or operating multiple trading strategies will be subject to the same standard.

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

Written comments were neither solicited nor 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 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-FINRA-2013-036 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-FINRA-2013-036. 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 such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2013-036 and should be submitted on or before September 25, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70278; File No. SR-PHLX-2013-87]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Commentary to Rule 1080 To Add a New PIXL ISO Order Type

August 28, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

(“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 21, 2013, 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 the Substance of the Proposed Rule Change**

The Exchange proposes to amend the Commentary to Rule 1080 to add a new PIXL ISO order type.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRrulefilings>, 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 Exchange proposes to amend the Commentary to Rule 1080 to add a new PIXL ISO order type.

##### **PIXL**

The price-improving electronic auction (“PIXL”) is a process whereby Exchange members electronically submit orders they represent as agent against principal interest or other interest that they represent as agent.<sup>3</sup> The submitted orders are stopped at a price and are subsequently entered into an auction seeking price improvement.

An Exchange member (“Initiating Member”) may initiate a PIXL auction

provided that it meets certain requirements depending on the size of the order, whether or not the order is for the account of a public customer and whether or not it is a Complex Order.<sup>4</sup> These requirements are as follows.

1. If the PIXL Order<sup>5</sup> is for the account of a public customer and is for a size of 50 contracts or more, the Initiating Member must stop the entire PIXL Order at a price that is equal to or better than the National Best Bid/Offer (“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.<sup>6</sup>

2. If the PIXL Order is for the account of a public customer and is for a size of less than 50 contracts, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) the Exchange's Best Bid or Offer (“PBBO”) price on the opposite side of the market from the PIXL Order improved by at least one minimum price improvement increment, 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 at least one minimum price improvement increment better than any limit order on the book on the same side of the market as the PIXL Order.<sup>7</sup>

3. If the PIXL Order is not for the account of a public customer and is for a size of 50 contracts or more, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) the PBBO 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.<sup>8</sup>

4. If the PIXL Order is not for the account of a public customer and is for a size of less than 50 contracts, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) the PBBO 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 at least one minimum improvement increment better than the PBBO on the opposite side of the market from the PIXL Order.<sup>9</sup>

5. If the PIXL Order is a Complex Order and of a conforming ratio,<sup>10</sup> 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, provided in either case that such price is equal to or better than the PIXL Order's limit price.<sup>11</sup>

##### **ISO**

An intermarket sweep order (“ISO”) is defined in Rule 1066(i)<sup>12</sup> as a limit order that is designated as an ISO in the manner prescribed by the Exchange and is executed within the system by participants at multiple price levels without respect to Protected Quotations of other Eligible Exchanges as defined in

<sup>8</sup> Rule 1080(n)(i)(B)(1).

<sup>9</sup> Rule 1080(n)(i)(B)(2). This component of the PIXL system is effective for a pilot period scheduled to expire July 18, 2014.

<sup>10</sup> The term “conforming ratio” is where the ratio between the sizes of the options components of a Complex Order is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.00) ratio is a conforming ratio, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not; where one component of the Complex Order is the underlying security, the ratio between any options component and the underlying security component must be less than or equal to eight contracts to 100 shares of the underlying security. See Commentary .08(a)(ix) to Rule 1080.

<sup>11</sup> Rule 1080(n)(i)(C). Where applied to Complex Orders where the smallest leg is less than 50 contracts in size, this component of the PIXL system shall be effective for a pilot period scheduled to expire July 18, 2014.

<sup>12</sup> In September 2013, the Exchange plans to begin implementation of enhancements to the Options Floor Broker Management System, with a trial period of two to four weeks, to be determined by the Exchange. As part of these enhancements, the definition of ISO will be moved to the Commentary to Rule 1080. See Securities Exchange Act Release No. 69471 (April 29, 2013), 78 FR 26096 (May 3, 2013) (SR-Phlx-2013-09).

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

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

<sup>3</sup> Rule 1080(n).

<sup>4</sup> For purposes of the electronic trading of Complex Orders pursuant to Rule 1080.08 only, a Complex Order is an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced as a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. See Commentary .08(a)(i) to Rule 1080.

<sup>5</sup> A member may electronically submit for execution an 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 (other than in the final two seconds of a trading session) it represents as agent provided it submits the PIXL Order for electronic execution into the PIXL auction. See Rule 1080(n).

<sup>6</sup> Rule 1080(n)(i)(A)(1).

<sup>7</sup> Rule 1080(n)(i)(A)(2). This component of the PIXL system is effective for a pilot period scheduled to expire July 18, 2014.

Rule 1083.<sup>13</sup> ISOs are immediately executable within the Exchange's options trading system or cancelled, and shall not be eligible for routing as set out in Rule 1080. Simultaneously with the routing of an ISO to the Exchange's options trading system, one or more additional limit orders, as necessary, are routed by the entering party to execute against the full displayed size of any Protected Bid or Protected Offer in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an ISO. These additional routed orders must be identified as ISOs.

#### PIXL ISO Order Type

The Exchange proposes to implement a new PIXL ISO order type ("PIXL ISO") that will allow the submission of an ISO into PIXL. Specifically, a PIXL ISO is the transmission of two orders for crossing pursuant to Rule 1080(n) without regard for better priced Protected Bids or Protected Offers because the participant transmitting the PIXL ISO to the Exchange has, simultaneously with the routing of the PIXL ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PIXL auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the PIXL Order, meaning that any execution(s) obtained from the away side will be given to the agency side of the order.

The Exchange will accept a PIXL ISO provided the order adheres to the current PIXL Order acceptance

requirements, which are outlined above, but without regard to the NBBO. The Exchange will execute the PIXL ISO in the same manner that it currently executes PIXL Orders, except that it will not protect prices away. Instead, order flow providers will bear the responsibility to clear all better priced interest away simultaneously with submitting the PIXL ISO order. There is no other impact to PIXL functionality. Specifically, liquidity present at the end of the PIXL auction will continue to be included in the PIXL auction as it is with PIXL Orders not marked as ISOs.

The Exchange will announce the implementation of this order type by Options Trader Alert.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</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. The proposal promotes just and equitable principles of trade and removes impediments to a free and open market in that it promotes competition, as described further below. Specifically, the proposal allows the Exchange to offer its members an order type that is already offered by another exchange.<sup>16</sup> In addition, the proposal benefits traders and investors because it adds a new order type for seeking price improvement through the PIXL mechanism. Finally, the proposal does not unfairly discriminate among members because all members are eligible to submit a PIXL ISO order.

#### 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. Instead, the proposal is pro-competitive. First, it will enable the Exchange to provide market participants with an additional method of seeking price improvement through PIXL. Second, the proposal will allow the Exchange to compete against other markets that already allow an ISO order type in their price improvement mechanisms.<sup>17</sup>

#### 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 does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) [sic] of the Act<sup>18</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>19</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-Phlx-2013-87 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.

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii) [sic].

<sup>19</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>13</sup> Under Rule 1083, a "Protected Quotation" includes a Protected Bid or Protected Offer. A "Protected Bid" or "Protected Offer" means a Bid or Offer in an options series, respectively, that: (i) is disseminated pursuant to the OPRA Plan; and (ii) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. "Bid" or "Offer" means the bid price or the offer price communicated by a member of an Eligible Exchange to any broker or dealer, or to any customer, at which it is willing to buy or sell, as either principal or agent, but shall not include indications of interest. The "OPRA Plan" means the plan filed with the SEC pursuant to Section 11Aa(1)(C)(iii) of the Act, approved by the SEC and declared effective as of January 22, 1976, as from time to time amended. "Best Bid" and "Best Offer" mean the highest priced Bid and the lowest priced Offer. Finally, "Eligible Exchange" means a national securities exchange registered with the SEC in accordance with Section 6(a) of the Act that: (i) Is a Participant Exchange in The Options Clearing Corporation ("OCC") (as that term is defined in Section VII of the OCC by-laws); (ii) is a party to the OPRA Plan; and (iii) if the national securities exchange is not a party to the OPRA Plan, is a participant in another plan approved by the Commission providing for comparable trade-through and locked and crossed market protection.

<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> See CBOE Rule 6.53(q).

<sup>17</sup> *Id.*

All submissions should refer to File Number SR-Phlx-2013-87. 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 such filing also will be available for inspection and copying at the principal offices 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-2013-87, and should be submitted on or before September 25, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70279; File No. SR-OCC-2013-14]

### Clearing Agency; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend an Existing Interpretation and Policy To Give OCC Discretion Not To Grant a Particular Clearing Member Margin Credit for an Otherwise Eligible Security

August 28, 2013.

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 August 15, 2013, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by OCC.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to amend an existing Interpretation and Policy so that OCC has discretion to disapprove as margin collateral for a particular clearing member, shares of an otherwise eligible security held as margin.

#### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

##### (A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### (1) Purpose of the Proposed Rule Change

The purpose of the proposed rule change is to provide OCC with discretion with regard to granting or not granting margin credit to a clearing member. OCC currently may withhold margin credit from all clearing members with respect to a specific security. OCC proposes to address the risk presented by concentrated positions of securities posted as margin by particular clearing members by withholding margin credit from such clearing member's accounts. OCC proposes to enhance its ability to limit its risk exposure to a concentrated position of equity securities posted as margin by a specific clearing member by providing OCC with the discretion to

disregard, for the purposes of granting margin credit, some or all of the otherwise eligible equity securities posted as margin. In addition, the proposed rule change is designed to provide OCC with discretion to make exceptions to proposed Interpretation and Policy .14 with respect to a specific clearing member. Accordingly, OCC may allow margin credit for an otherwise ineligible security for a specific clearing member in situations in which OCC determines that such security serves as a hedge to positions in cleared contracts in the same account of such clearing member.

Rule 604 lists the acceptable types of assets that clearing members may post with OCC to satisfy their margin requirements under Rule 601, including equity securities, and establishes the eligibility criteria for such assets. Equity securities are the most common form of margin assets posted by clearing members and, under Rule 601, are included in OCC's STANS margining system for the purposes of valuing such equity securities and determining on a portfolio basis a clearing member's margin obligation to OCC. Interpretation and Policy .14 to Rule 604 allows OCC to disapprove a security as margin collateral for all clearing members based on a consideration of the factors set forth in the interpretation, including number of outstanding shares, number of outstanding shareholders and overall trading volume. The STANS system currently takes into account the risk to a portfolio presented by fluctuations in the market price of concentrated security positions by identifying the two individual securities whose adverse price movements would result in the largest losses in each account and applying additional margin requirements to an account based on those losses if appropriate. However, this test does not evaluate a large equity securities position in relation to the securities position's average daily trade volume, which would be relevant if OCC were required to liquidate the position. OCC has determined that in the event of a clearing member liquidation, OCC may be exposed to concentration risk arising from a large equity security position deposited or pledged as margin by a particular clearing member. Depending on the relationship between the average daily trading volume of a particular security and the number of outstanding shares of such security deposited by a clearing member as margin, it is possible that the listed equities markets may not be able to quickly absorb the equity securities OCC seeks to sell, or without an

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

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

<sup>3</sup> OCC also filed the proposed rule change as an advance notice under Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act"). 12 U.S.C. 5465(e)(1). See SR-OCC-2013-805.

<sup>20</sup> 17 CFR 200.30-3(a)(12).