

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63187; File No. SR-NYSEAmex-2010-100]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Amex LLC Amending Rule 900.3NY(h) To Define Stock/Complex Orders, Rule 963NY(d) To Update and Clarify the Priority of Complex Orders, Eliminate Rule 963.1NY, and Amend Rule 980NY To Establish a Complex Order Auction

October 27, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 20, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 Rule 900.3NY(h) to define Stock/Complex Orders, amend Rule 963NY(d) to update and clarify the priority of Complex Orders, eliminate Rule 963.1NY, and amend Rule 980NY to establish a Complex Order Auction. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, on the Commission's Web site at <http://www.sec.gov>, at 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 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this filing is to update and streamline the rules governing open outcry trading of Complex Orders, including the definition of a Stock/Complex Order, and to adopt new rules to provide for a Complex Order Auction ("COA") in the Electronic Complex Order rules. The filing also clarifies the minimum trading and quoting increment permissible for Complex Orders.

##### Stock/Complex Orders

NYSE Amex proposes to amend Rule 900.3NY(h) to define Stock/Complex Orders as orders for the purchase or sale of a Complex Order coupled with an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock ("convertible security") representing either the same number of units of the underlying stock or convertible security as are represented by the options leg of the Complex Order with the least number of contracts, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than 8 options contracts per unit of trading of the underlying stock or convertible security established for that series by the Clearing Corporation, as represented by the options leg of the Complex Order with the least number of options contracts.

##### Revision to Complex Order Open Outcry Rules

NYSE Amex proposes to amend Rule 963NY(d) and to delete Rule 963.1NY. The Exchange proposes to adopt a provision based on Chicago Board Options Exchange ("CBOE") Rule 6.45(e) to describe the priority of Complex Orders in open outcry. The new language does not change the process of executing a Complex Order or alter the priority of quotes and orders; rather, it streamlines and updates the rule text.

Currently, when executing a Complex Order, contra sided complex trading interest in the Trading Crowd has priority over individual orders and quotes in the leg markets at the same net debit or credit price, except when individual Customer orders in the Consolidated Book are present in all of the leg markets. When there are Customer orders present in all legs at

the same net debit or credit price, the Complex Order must first trade with the individual Customer orders, and may then trade against complex trading interest in the crowd. Complex Orders trading against contra side complex trading interest in the Trading Crowd must otherwise trade at least one leg at a price that is at least one minimum price variation better than individual Customer orders in the Consolidated Book.<sup>4</sup>

The proposed rule change will not alter these procedures or priorities.

In addition, the Exchange is clarifying that Stock/Complex Orders (involving two or more options legs and a stock leg) may be executed at a net debit or credit price with another ATP Holder without giving priority to equivalent bids (offers) in the individual series legs that are represented in the Trading Crowd or Customer limit orders in the Consolidated Book, provided at least one options leg of the order betters the corresponding Customer bid (offer) in the Consolidated Book by at least one minimum trading increment.

NYSE Amex also proposes to eliminate Rule 963.1NY. The proposed Rule 963NY(d) describes priority for all Complex Orders and Stock/option orders, while Rule 963.1NY only describes the procedures for executing complex transactions; it does not define or describe any execution priority, obligation, or privilege that was not already described in other rules. Additionally, those procedures did not lay out procedures for all complex transactions; it narrowly described only simple Complex Orders with two option legs. The proposed rule change specifically eliminates the description of a "locked book market" in Rule 963.1NY(f). This provision, which was based on NYSE Arca Rule 6.75, Commentary .01(f), was a description of a narrow circumstance, and was more appropriate when the Public Customer Book was maintained by an Order Book Official. At that time, the Order Book had priority to trade at a given price if it held an order. Paragraph (f) described a situation where the Order Book had orders at all of the prices where a Complex Order might trade, but the orders in the leg markets could not satisfy the terms of the Complex Order. The proposed new language addresses this and similar circumstances in a more clear manner.

<sup>4</sup> Stock/options orders may not trade at the same price as a Customer order in the option leg, unless satisfying the Customer order first, even though the Customer order cannot satisfy all the terms of the Stock/option order.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

### Complex Order Auction

Additionally, the Exchange proposes to adopt rules establishing a Complex Order Auction, based on rules approved for use by the CBOE. CBOE Rule 6.53(d) describes the process for a Complex Order RFR Auction. NYSE Amex proposes a similar auction under Rule 980NY, with one priority change based on NASDAQ OMX PHLX ("Phlx") Rule 1080 Commentary .08(e)(vi)(A)(2).

Proposed paragraph (d) of Rule 980NY will describe the COA process. The proposed rule change will give the Exchange the authority to determine, on a class by class basis, which incoming orders are eligible for a COA based on marketability (defined as a number of ticks from the current market), size, and Complex Order type ("COA-eligible orders").<sup>5</sup>

Upon receiving a COA-eligible order and a request by the ATP Holder representing the order that it be COA'd, the Exchange will send an RFR message to ATP Holders with an interface connection to NYSE Amex that have elected to receive such RFR messages. This RFR message will identify the component series, the size of the COA eligible order and any contingencies, if applicable. However, the RFR will not identify the side of the market (i.e., whether the COA-eligible order is to buy or sell).

Market Makers with an appointment in the relevant options class, and ATP Holders acting as agent for orders resting at the top of the Consolidated Book in the relevant options series, may electronically submit responses ("RFR Responses"), and modify, but not withdraw the RFR response at any time during the request response time interval (the "Response Time Interval"). RFR responses must be in a permissible ratio, and may be expressed on a net price basis in a one cent increment. In addition, RFR Responses will be visible to those who have subscribed to RFRs. The applicable Response Time Interval will be determined by the Exchange on a class by class basis, and, in any event, will not exceed one second. Proposed Rule 980NY(e)(3) also clarifies that the obligations of Rule 935NY, Order Exposure Requirements, are separate from the duration of the Response Time Interval.

<sup>5</sup> For example, the Exchange could determine that a complex order with two option legs is eligible for a COA to the extent they are less than two ticks away from the "top of the book", which would be the best price considering the net prices available among Complex Orders in the Consolidated Book and the individual component legs in the Consolidated Book. All pronouncements, including changes hereto, regarding COA eligibility and Response Time Intervals will be announced to ATP Holders via Regulatory Circular.

When the Response Time Interval expires, the COA-eligible order will be executed and allocated to the extent it is marketable, or route to the Consolidated Book to the extent it is not marketable. If executed, the rules of trading priority will provide that the COA-eligible order be executed based first on net price, and, at the same price:

(i) *Pre-existing interest in the leg markets*: Individual orders and quotes in the leg markets resting in the Consolidated Book prior to the initiation of a COA will have first priority to trade against a COA-eligible order;

(ii) *Customer Complex interest received during the Auction*: Customer Electronic Complex Orders resting in the Consolidated Book before, or that are received during, the Response Time Interval and Customer RFR Responses shall collectively have second priority to trade against a COA-eligible order. The allocation of a COA-eligible order against the Customer Electronic Complex Orders resting in the Consolidated Book shall be on a Size Pro Rata basis;

(iii) *Non-Customer Complex trading interest*: Non-Customer interest, comprised of Electronic Complex Orders resting in the Consolidated Book, Electronic Complex Orders placed in the Consolidated Book during the Response Time Interval, and RFR Responses, will collectively have third priority. The allocation of COA-eligible orders against these contra sided orders will be on a Size Pro Rata basis;

(iv) *Trading Interest that improves the derived Complex Best Bid/Offer*. Individual orders and quotes in the leg markets that cause the derived Complex Best Bid/Offer to be improved during the COA, and which match the best RFR Response and/or Complex Orders received during the Response Time Interval, will be filled after Complex Orders and RFR Responses at the same net price.<sup>6</sup> Allocations within the first category above (individual orders and quotes in the leg markets in the Consolidated Book) shall be in time, with Customer orders having priority ahead of non-customer orders and quotes at the same price. Allocations within the second category above (Customer Electronic Complex Orders resting in the Consolidated Book and Customer RFR responses) shall be based on a Size Pro Rata basis when multiple Customer Complex Orders or RFR responses exist at the same price. Allocations within the third category (non-Customer Electronic Complex

Orders in the Consolidated Book and non-Customer RFR responses) shall be based on a Size Pro Rata basis when multiple non-Customer interests exist at the same price. Allocations among the fourth category (individual orders or quotes in the leg markets that cause the derived BBO to be improved) shall be filled on a Customer order/size pro rata basis.

The following is an example of a COA: assume the Exchange's derived complex market, based on individual series orders and quotes in the Consolidated Book, is offered at \$1.15 for 20 contracts. In addition, assume a Customer Electronic Complex Order resting in the Consolidated Book is offered at \$1.15 for five contracts and two non-Customer orders resting in the Consolidated Book are offered at \$1.15 for five contracts each (for a total of 10 contracts). A COA eligible order is then received to buy the complex strategy 100 times paying \$1.15. COA will auction the order. An RFR message is sent to subscribers indicating the Complex Order series and the size of 100 contracts (but not the side of the market). The Response Time Interval for submitting RFR Responses will be for no more than one second. Before the conclusion of the Response Time Interval, the following RFR Responses on the other side are received: Customer RFR Responses to sell five at \$1.14 and five at \$1.15; and non-Customer RFR Responses to sell 15 at a price of \$1.13, 35 at a price of \$1.14, and 100 at a price of \$1.15. The execution of the COA eligible order will proceed as follows:

- 15 contracts get filled at \$1.13 (against non-Customer RFR Responses).
- 40 contracts get filled at \$1.14 (five contracts against Customer RFR Responses, then 35 contracts against non-Customer RFR Responses); and
- 45 contracts get filled at \$1.15 (20 contracts against the individual series legs in the Consolidated Book, then 10 contracts against Customer Electronic Complex Orders in the Consolidated Book and Customer RFR Responses allocated on a Size Pro Rata basis. The non-Customer interest is allocated on a Size Pro Rata basis as follows: 1 contract  $((5/110) \times 15)$  for each of the non-Customer Electronic Complex Orders resting in the Consolidated Book before the COA began, and 13 contracts  $((100/110) \times 15)$  against the non-Customer RFR Response.

The proposed rule change also describes the handing of unrelated incoming Electronic Complex Orders that may be received prior to the expiration of the COA. Specifically, the proposed rule change provides the following:

<sup>6</sup> See Securities Exchange Act Release No. 58361 (August 14, 2008) 73 FR 49529 (August 21, 2008) (approving SR-Phlx-2008-50).

- An incoming Electronic Complex Order received prior to the expiration of the Response Time Interval for a pending COA (the "original COA") that is on the opposite side of the original COA eligible order and is marketable against the starting price of the original COA eligible order will be ranked in price time with RFR Responses by account type. The original COA-eligible order will be executed and allocated as described in proposed subparagraph (e)(6) of Rule 980NY. Any remaining balance of either the initiating COA eligible order or the incoming Electronic Complex order will be placed in the Consolidated Book and ranked as described in subparagraph (b) of Rule 980NY.

- Incoming COA-eligible orders that are received prior to the expiration of the Response Time Interval for the original COA that are on the same side of the market, that are price [sic] equal to the original COA-eligible order will join the COA. A message with the updated size will be published. The new order will be ranked and executed with the initiating COA-eligible order in price time order. Any remaining balance of either the initiating COA eligible order and/or the incoming Electronic Complex order will be placed in the Consolidated Book and ranked as described in subparagraph (b) of Rule 980NY.

- Incoming COA-eligible orders received during the Response Time Interval for the original COA-eligible order that are on the same side of the market, and that are priced worse than the initiating order, will join the COA. The new order(s) will be ranked and executed with the initiating COA-eligible order in price time order. Any remaining balance of either the initiating COA eligible order and/or the incoming Electronic Complex order(s) will be placed in the Consolidated Book and ranked as described in subparagraph (b) of Rule 980NY.

- An incoming COA eligible order that is received prior to the expiration of the Response Time Interval for the original COA that is on the same side of the market and at a better price than the original COA eligible order, will cause the auction to end. The initiating COA-eligible order will be executed in accordance with subparagraph (e)(6). The COA-eligible order that caused the auction to end will then be executed in accordance with subparagraph (e)(6), and any unexecuted portion will either be (i) placed in the Consolidated Book, or (ii) if marketable, initiate another COA.

Proposed Commentary .04 states that a pattern or practice of submitting

unrelated orders that cause a COA to conclude early will be deemed conduct inconsistent with just and equitable principles of trade. Dissemination of information related to COA-eligible orders to third parties will also be deemed as conduct inconsistent with just and equitable principles of trade.

Finally, NYSE Amex is proposing the RFR Responses can be modified but not withdrawn at any time before the end of the Response Time Interval. RFR Responses are firm only with respect to COA-eligible orders and RFR Responses received during the Response Time Interval. Any RFR response not accepted to trade, either in whole or in a permissible ratio, would expire at the end of the Response Time Interval and would not be eligible to trade with the Consolidated Book.

#### Complex Order Minimum Increments

NYSE Amex is proposing to revise and clarify the minimum increments that are permissible for bids and offers on Complex Orders. The Exchange believes these changes will facilitate the orderly execution of Complex Orders in open outcry and via the Consolidated Book and the COA mechanism. With respect to minimum increments, currently Rules 963.1NY and 980NY provide that the Complex Orders may generally be expressed in any increments regardless of the minimum increment otherwise appropriate to the individual legs of the order. Thus, for example, a Complex Order could be entered at a net debit or credit price of \$1.03 even though the standard minimum increment for the individual series is generally \$0.05 or \$0.10. The Exchange is proposing to clarify in Rule 963NY and 980NY that Complex Orders entered onto the Exchange, and/or resting in the Consolidated Book may be expressed on a net price basis in a multiple of the minimum increment (*i.e.*, \$0.01, \$0.05, or \$0.10, as applicable) or in a one-cent increment as determined by the Exchange on a class-by-class basis.

NYSE Amex represents that any Customer Electronic Complex Orders entered to the NYSE Amex System must comply with the order exposure requirements of Rule 935NY, which prohibits an order entry firm from executing as principal against an order it represents as agent, unless the agency order is first exposed on the Exchange for at least one (1) second, or the order entry firm has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer.

NYSE Amex notes that all components of a Complex Order, a Stock/option order, or a Stock/Complex Order must be entered into the NYSE Amex System and displayed at a total or net debit or credit, and that all components of a Complex Order, a Stock/option order, or a Stock/Complex Order, including the stock component of a Stock/option order or Stock/Complex Order, must be traded as a complete package.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, 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. In particular, investors will have greater opportunities to manage risk with the Exchange defining Stock/Complex Orders, by the Exchange revising the coverage of Rule 963(d) to clarify its applicability, and with the removal of ambiguity by deleting Rule 963.1NY. The proposed adoption of rules governing a Complex Order Auction will facilitate the execution of Complex Orders while providing opportunities for price improvement.

#### *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 that is 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 solicited or received with respect to the proposed rule change.

#### **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 the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2010-100 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-NYSEAmex-2010-100. 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 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 will also be available for inspection and copying at the Exchange's principal office. 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 publicly available. All submissions should refer to File Number SR-NYSEAmex-2010-100 and should be submitted on or before November 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-27659 Filed 11-1-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-63192; File No. SR-Phlx-2010-145]**

### **Self-Regulatory Organizations; The NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Establish Remote Specialists**

October 27, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 14, 2010, 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 amend Exchange Rule 501 (Specialist Appointment), Rule 506 (Allocation Application), Rule 507 (Application for Approval as an SQT or RSQT and Assignment in Options), Rule 1014 (Obligations and Restrictions Applicable to Specialists and Registered Options Traders), and Rule 1020 (Registration and Functions of Options Specialists) to allow certain Exchange members to act as option specialists that are not physically present on the option trading floor. The Exchange also proposes to amend Options Floor Procedure Advices A-7 (Responsibility To Cancel), A-10 (Specialist Trading With Book), B-3 (Trading Requirements), and E-1 (Required Staffing of Options Floor)<sup>3</sup> to

<sup>7</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> Options Floor Procedure Advices ("OFPAs" or "Advices") generally correspond to Exchange rules. For example, OFPA B-3 is a corresponding Advice to Rule 1014 Commentary .01 and OFPA A-10 is a corresponding Advice to Rule 1063. OFPAs are part of the Exchange's minor rule plan ("MRP" or "Minor Rule Plan"), which consists of Advices with preset fines, pursuant to Rule 19d-1(c) under the Act. 17 CFR 240.19d-1(c). See Securities Exchange

conform them with the proposed rule changes.

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, on the Commission's Web site at <http://www.sec.gov>; 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 this proposal is to amend Exchange Rules 501, 506, 507, 1014, and 1020 and Option Floor Procedure Advices A-7, A-10, B-3, and E-1 to allow certain Exchange members to act as option specialists that are not physically present on the option trading floor.

##### **Background**

There are several types of market makers on the Exchange, including Registered Options Traders ("ROT's"),<sup>4</sup> Streaming Quote Traders ("SQT's"),<sup>5</sup> Remote Streaming Quote Traders

Act Release No. 50997 (January 7, 2005), 70 FR 2444 (January 13, 2005) (SR-Phlx-2003-40) (approval order establishing Floor Broker Management System in OFPA C-2 and Rule 1063). The Exchange is not proposing to change the fines in any Advices.

<sup>4</sup> 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).

<sup>5</sup> 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).