

(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.*

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## 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).

(“RSQTs”),<sup>6</sup> and specialists.<sup>7</sup> Specialists are Exchange members who are registered as options specialists pursuant to Rule 1020(a). Paragraph (b) of Rule 1020 states that as a condition of a member being registered as a specialist in one or more options, it is understood that, in addition to the execution of commission orders<sup>8</sup> entrusted to him in such options, a specialist is to engage in a course of dealings for his own account to assist in the maintenance, insofar as reasonably practicable, of a fair and orderly market on the Exchange in such options. Paragraph (c) states that a specialist or his member organization shall not effect on the Exchange purchases or sales of any option in which such specialist is registered, for any account in which he or his member organization is directly or indirectly interested, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market. Paragraph (d) sets forth criteria for a specialist dealing in his own account in relation to assisting in the maintenance, insofar as reasonably practicable, of a fair and orderly market in the options in which he is registered.

Specialists apply for allocation of options issues pursuant to Rule 501 and RSQTs apply for assignment in options pursuant to Rule 507. The Exchange administers Rules 500 through 599 (the “Allocation and Assignment Rules”), including Rules 501, 506, and 507 as proposed herein.<sup>9</sup>

The Allocation and Assignment Rules generally describe the process for: Application for becoming and appointment of specialists; allocation of classes of options to specialist units and individual specialists; application for becoming and approval of SQTs and RSQTs and assignment of options to them; and specialist, SQT, and RSQT performance evaluations. The Allocation and Assignment Rules also

indicate under what circumstances new allocations may not be made.<sup>10</sup>

Each options class and series listed on the Exchange must currently have a specialist that has a physical presence on the options floor (“floor-based specialist”).<sup>11</sup> The floor-based specialist system is historically based in the traditional open outcry auction market system that has trading crowds at physical trading posts on the floor and Floor Brokers<sup>12</sup> that represent orders on the floor on behalf of others (“auction market system” or “open outcry system”). The auction market system is necessary, and indeed invaluable, to certain types of market participants (e.g., institutional traders and certain large-volume traders). The Exchange has developed, in parallel to the auction market system, an extensive electronic means to execute option orders.<sup>13</sup> As a result, the Exchange operates an options market that combines a traditional open outcry auction market trading floor with electronic trading (the “current Phlx market”).<sup>14</sup>

<sup>10</sup> See, e.g., Supplementary Material .01 to Rule 506 (specialist may not apply for a new allocation for a period of six months after an option allocation was taken away from the specialist in a disciplinary proceeding or an involuntary reallocation proceeding).

<sup>11</sup> At least one exchange that uses a specialist system has allowed certain option series to trade without a designated lead market maker (specialist). See Securities Exchange Act Release No. 56001 (July 2, 2007), 72 FR 37557 (July 10, 2007) (SR-NYSEArca-2007-34) (order approving). And at least one exchange that does not have a specialist system has allowed options to be traded without any market maker. See Securities Exchange Act Release No. 61735 (March 18, 2010), 75 FR 14227 (March 24, 2010) (SR-NASDAQ-2010-007) (order approving).

<sup>12</sup> An Options Floor Broker is an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and executing options orders received from members and member organizations. An Options Floor Broker shall not accept an order from any other source unless he is the nominee of a member organization qualified to transact business with the public in which event he may accept orders from public customers of the organization. See Rule 1060.

<sup>13</sup> See Rule 1080 regarding the Exchange’s electronic order, trading, and execution system. See also Securities Exchange Act Release Nos. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2002) (SR-Phlx-2002-04) (order approving the Exchange’s electronic interface for specialists and ROTs, AUTOM); 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003-59) (order approving the Exchange’s electronic platform for options, XL); and 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32) (order approving the Exchange’s enhanced electronic platform, XL II).

<sup>14</sup> The current Phlx market model combining open outcry and electronic trading is also used by other options exchanges, such as Chicago Board Options Exchange, Inc. (“CBOE”), NYSE Amex LLC (“NYSE Amex”) and NYSE Arca, Inc. (“NYSE Arca”). Only electronic options trading is done on other exchanges, such as the International Securities Exchange, LLC (“ISE”) and The NASDAQ Stock Market LLC (“NASDAQ”).

The Exchange has found that it can be difficult, if not impossible, to allocate certain option products; and has found that specialists may at times relinquish their options privileges. This could occur when, as an example, underlying securities are involved in a takeover, a merger/acquisition situation, or some type of rights offering. Without a specialist that is willing to accept, or retain, allocation of an option, however, the Exchange may not list such options, to the detriment of market participants and public investors. This filing seeks to remedy the inability to allocate options where no floor-based specialists are available for allocation.<sup>15</sup>

### *Specialist Rights and Obligations*

The Exchange initially proposes to define remote specialist in Rule 1020. In particular, the Exchange proposes to add sub-paragraph (a)(ii) stating that a Remote Specialist is a qualified RSQT approved by the Exchange to function as a specialist in one or more options if the Exchange determines that it cannot allocate such options to a non-remote specialist (that is, a floor based specialist) (“Remote Specialist”).

A Remote Specialist has all the rights and obligations of a specialist, unless Exchange rules provide otherwise. The Exchange believes that the concept of specialist rights and obligations applying to all specialists, including Remote Specialists, is paramount to the proposal and therefore uniformly applicable. The Exchange proposes to underscore this principle by indicating in Rule 1020(a) that the term specialist includes a Remote Specialist as defined in Rule 1020(a)(ii) and registered pursuant to Rule 501; and indicating that a Remote Specialist has all the rights and obligations of an options specialist unless Exchange rules provide otherwise.

### *Becoming a Remote Specialist*

The Exchange proposes to amend Rule 501, which generally deals with the process of applying for approval as a specialist, and to amend the rule to indicate that in certain circumstances RSQTs may act as specialists.

In particular, the Exchange proposes new paragraph (f)(i) to state that RSQTs,

<sup>15</sup> The Exchange has a process whereby certain options (e.g. securities of a subsidiary, or convertible into the securities of the issuer, issued in connection with a name change or a reverse stock split, or created in connection of a merger or acquisition or a “spin-off” transaction), are automatically allocated to the specialist that is already allocated the related options. See Supplementary Material .02 to Rule 506 and Exchange Act Release No. 60455 (August 6, 2009), 74 FR 40857 (August 13, 2009) (SR-Phlx-2009-62) (notice of filing and immediate effectiveness).

<sup>6</sup> 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).

<sup>7</sup> Rule 1014 also discusses other market makers including Directed SQTs and Directed RSQTs, which receive Directed Orders as defined in Rule 1080(I)(i)(A). Specialists may likewise receive Directed Orders.

<sup>8</sup> The Exchange proposes to delete the word “commission” from Rule 1020(b) to clarify that orders entrusted to specialists and [sic] are not limited to only commission orders.

<sup>9</sup> See Securities Exchange Act Release No. 59924 (May 14, 2009), 74 FR 23759 (May 20, 2009) (SR-Phlx-2009-23) (approval order that, among other things, established that Exchange staff administers Rules 500 through 599). See also Rule 500.

as defined in Rule 1014, may submit an application to be an approved specialist unit.<sup>16</sup> Upon application by a qualified RSQT (which has to become an RSQT pursuant to Rule 507), the Exchange will approve such organization as an approved off-floor Remote Specialist unit which may function as a specialist unit in one or more options. The Exchange could approve a Remote Specialist if the Exchange determines that it cannot allocate such options to a floor specialist. A Remote Specialist would not, in contrast to an on-floor specialist, have any physical presence on the options floor. Therefore, a Remote Specialist would not, in contrast to an on-floor specialist, have any duties emanating from having a floor presence. The Exchange clarifies in proposed Rule 501(f)(iii) that, as stated in Rule 1020(a)(ii), all specialist rights and obligations apply to Remote Specialists unless otherwise noted in the rules.

The Exchange believes that it is important that each Remote Specialist is available and reachable at all times during trading hours. The Exchange therefore proposes language in Rule 501(f)(ii) stating that every Remote Specialist must be accessible to exchange staff and members throughout all trading hours for the products allocated to the specialist.<sup>17</sup> To ensure that each Remote Specialist is reachable, the Exchange proposes language in subparagraph (f)(ii) stating that a Remote Specialist shall provide Exchange staff and members with telephone access to such specialist and/or associated staff at all times during trading hours.<sup>18</sup>

Rule 501(b) currently indicates that each specialist unit will include in the initial application the unit's back up specialist arrangements; and Rule 501(d) indicates that each specialist unit will indicate its assistant specialist.<sup>19</sup> Remote Specialists will not need to meet the assistant specialist staffing or the back-up specialist unit requirement.

The Exchange believes that this is rational and appropriate for Remote Specialists, who have constrained open outcry capabilities.<sup>20</sup> As such, the Exchange proposes to amend Rule 501 to indicate that back up specialist arrangements and assistant specialist requirements are not applicable to Remote Specialists.<sup>21</sup> All other Rule 501 application requirements will be applicable to Remote Specialists.

The requirement that each specialist designates an assistant specialist and a back-up specialist was initially established to help ensure that there would be adequate liquidity in a given issue in the event the appointed specialist was unavailable. At the time, the Exchange options market was strictly a floor-based auction market and there may have only been a few market makers (or market participants) in any given issue. It was therefore necessary to have an assistant or back-up specialist ready to take over as specialist if the appointed specialist was unable to fulfill its obligations. The rationale underlying the assistant/back-up requirement has become antiquated with the development of the classic auction system into the current Phlx market with extensive electronic-based trading. As such, RSQTs are assigned in the same options that are allocated to specialists and, in conjunction with other market makers on the Exchange, are able to provide liquidity in the event of a specialist's temporary absence. Moreover, since nearly all option issues traded on the Exchange are traded on multiple exchanges, the historical risk to be managed by the current assistant/backup requirement (namely, the ability of the Exchange to foster the provision of liquidity for investors) is no longer present.

The Exchange proposes clarifying changes to Rule 506, which deals with the process of qualified specialist units (that is, specialist units approved pursuant to Rule 501) applying for, and receiving, allocation of a class of

options; and indicates under what circumstances new allocations cannot be made. Paragraph (b) currently states that an allocation application shall, at a minimum, include the name and background of the head specialist and assistant specialist(s), the unit's experience and capitalization demonstrating an ability to trade the particular options class sought, and any other reasons why the unit believes it should be assigned or allocated the security. In addition, the Exchange may require that the application include other information such as system acceptance/execution levels and guarantees. The Exchange proposes to indicate in paragraph (b) that the assistant specialist requirement is not applicable to Remote Specialists. Paragraph (c) currently states that the Exchange's decisions regarding allocation of specialist privileges are communicated in writing to floor members. In light of the off-floor Remote Specialist proposal, the Exchange would modify paragraph (c) to indicate that communications would not be confined only to floor members, but would be made to all Exchange members (e.g. specialists, RSQTs, SQTs and ROTs).

Finally in terms of the application process, the Exchange proposes to clarify the parameters of Rule 507. This rule currently describes the process and criteria for successfully becoming an RSQT or SQT, which includes: Significant market-making and/or specialist experience; superior resources, including capital, technology and personnel; demonstrated history of stability, superior electronic capacity, and superior operational capacity; and proven ability to interact with order flow in all types of markets.<sup>22</sup>

After a market maker on the Exchange applies and is approved pursuant to Rule 507 to be an RSQT, the RSQT may then apply to become a Remote Specialist pursuant to the separate process set forth in Rule 501. The Exchange clarifies this two-step process in proposed new paragraph (f) of Rule 507, which states that nothing in Rule 507 shall be construed to automatically qualify an RSQT to be a Remote Specialist on the Exchange.

#### *Quoting Obligations and Priority*

Rule 1014 sets forth the quoting (market making) obligations for all market makers on the Exchange, with quoting requirements for RSQTs specified in Rule 1014(b)(ii)(D)(1)<sup>23</sup> and

<sup>16</sup> A "specialist unit" including a Remote Specialist unit, may have one or more individual "specialists."

<sup>17</sup> For Exchange trading hours, see Rule 101.

<sup>18</sup> To the extent necessary, the Exchange will announce such communication arrangements to its members via an Options Trading Alert ("OTA") or Options Regulatory Alert ("ORA").

<sup>19</sup> Paragraph (b) of Rule 501 states, in relevant part, that initial application(s) to become a specialist unit shall be in a form and/or format prescribed by the Exchange and shall include the following: the identity of the unit's staff positions and who will occupy those positions; the unit's clearing arrangements; the unit's capital structure, including any lines of credit; and the unit's back up arrangements endorsed by the parties.

Paragraph (d) of Rule 501 states, in relevant part, that each unit must consist of at least the following staff for each trading floor specialist post: one head specialist; and one assistant specialist that must be associated with the specialist unit.

<sup>20</sup> Moreover, recognizing that the market making functions of Remote Specialists and RSQTs may be similar in many respects but are not identical, the Exchange notes that current RSQTs, who also have constrained open outcry capabilities, have been fulfilling market making requirements on the Exchange (e.g. making two-sided market quotations) for years without specific back-up personnel requirements. See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (SR-Phlx-2003-59) (approval order relating to the Exchange's electronic trading platform XL and, among other things, Rule 507). See also Rules 507 and 1014.

<sup>21</sup> This concept follows through to the OFPAs. The Exchange proposes to clarify Advice E-1 to exempt a Remote Specialist from the specialist obligation to have personnel on the trading floor, while retaining the Remote Specialist obligation to have a representative available telephonically.

<sup>22</sup> For all RSQT application and approval criteria, see Rule 507(a)(i)(A) through (a)(i)(G).

<sup>23</sup> Regarding RSQT market making obligations, Rule 1014(b)(ii)(D)(1) states, in relevant part, that in

quoting requirements for specialists specified in Rule 1014(b)(ii)(D)(2).<sup>24</sup> The Exchange proposes to clarify that the two-sided market quoting requirements for specialists are applicable to Remote Specialists. The Exchange proposes also to clarify that RSQTs will have different quoting requirements when they are acting as Remote Specialists as opposed to when they are acting as RSQTs.

Specifically, the Exchange proposes to state in Rule 1014(b)(ii)(D)(2) that RSQTs functioning as Remote Specialists in particular options shall be responsible to quote two-sided markets just as on-floor specialists are now required to do. The Exchange also proposes to state in Rule 1014(b)(ii)(D)(1) that the RSQT quoting requirements found therein are not applicable to RSQTs when they are acting as Remote Specialists (in which case the specialist quoting requirements found in sub-paragraph (D)(2) are applicable). The Exchange believes that this appropriately establishes quoting equivalency among on-floor specialists and Remote Specialists.

Rule 1014 establishes that the market making (quoting) obligations do not

addition to the other requirements for ROTs set forth in this Rule 1014, except as provided in sub-paragraph (4) below, an SQT and an RSQT shall be responsible to quote two-sided markets in not less than 60% of the series in which such SQT or RSQT is assigned, provided that, on any given day, a Directed SQT ("DSQT") or a Directed RSQT ("DRSQT") (as defined in Rule 1080(l)(i)(C)) shall be responsible to quote two-sided markets in the lesser of 99% of the series listed on the Exchange or 100% of the series listed on the Exchange minus one call-put pair, in each case in at least 60% of the options in which such DSQT or DRSQT is assigned. Whenever a DSQT or DRSQT enters a quotation in an option in which such DSQT or DRSQT is assigned, such DSQT or DRSQT must maintain until the close of that trading day quotations for the lesser of 99% of the series of the option listed on the Exchange or 100% of the series of the option listed on the Exchange minus one call-put pair. To satisfy the applicable requirements of this sub-paragraph (D)(1) with respect to quoting a series, an SQT, RSQT, DSQT, or DRSQT must quote such series 90% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as the Exchange may announce in advance. The Exchange may consider exceptions to the requirement to quote 90% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances.

<sup>24</sup> Regarding specialist market making obligations, Rule 1014(b)(ii)(D)(2) states, in relevant part, that the specialist shall be responsible to quote two-sided markets in the lesser of 99% of the series or 100% of the series minus one call-put pair in each option in which such specialist is assigned. To satisfy the requirement of this sub-paragraph (D)(2) with respect to quoting a series, the specialist must quote such series 90% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as the Exchange may announce in advance. The Exchange may consider exceptions to the requirement to quote 90% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances.

apply to RSQTs (as well as to SQTs, DSQTs, and DRSQTs) in terms of certain types of options products. In particular, Rule 1014(b)(ii)(D)(4) states that RSQTs and the other market makers shall be deemed not to be assigned in any Quarterly Option Series ("QOS"),<sup>25</sup> any adjusted option series,<sup>26</sup> and any option series until the time to expiration for such series is less than nine months; and thereby establishes an exemption for RSQTs and the other market makers from the obligations set forth in Rule 1014 in the noted categories of products. The Exchange proposes to add new language to sub-paragraph (D)(4) to indicate that these exemptions apply to RSQTs only when they are acting as RSQTs, and do not apply to RSQTs when they are functioning as Remote Specialists in particular options.

Rule 1014(b)(ii)(B) currently indicates that no person who is either directly or indirectly affiliated with an RSQT ("affiliated RSQT") is allowed to submit quotations as a specialist, SQT, RSQT or non-SQT ROT in options in which such affiliated RSQT is assigned. These restrictions remain. The Exchange proposes to amend sub-paragraph (b)(ii)(B) only to indicate that an RSQT cannot quote both as RSQT and as Remote Specialist in a particular security. That is, if an RSQT is a Remote Specialist in a particular security, the Remote specialist must make a market (submit quotations) as a specialist and may not make a market as an RSQT in that particular security.

On-floor specialists currently participate in trades that are affected in open outcry, as well as electronically. In general, a trading crowd (including an on-floor specialist) has priority over out-of-crowd SQTs and RSQTs at the execution price for orders with the size of at least 500 contracts, while out-of-crowd SQTs and RSQTs have priority for orders of less than 500 contracts. In light of the central concept that to the extent practicable (and unless otherwise noted in Exchange rules), specialists and Remote Specialists are treated the same, that is, have similar rights and obligations, both specialists and Remote Specialists would have similar priority rights to the extent practicable. As such, Remote Specialist priority rights would be coextensive with their ability to submit electronic quotations via the

Exchange's electronic order, execution, and trading system, Phlx XL, while not being on the floor. For example, Commentary .05(c)(ii) states that respecting crossing, facilitation and solicited orders (as defined in Rule 1064) with a size of at least 500 contracts on each side that are represented and executed in open outcry, priority shall be afforded to in-crowd participants over RSQTs and out-of-crowd SQTs, and that such orders shall be allocated in accordance with Exchange rules. The Exchange proposes to add Remote Specialists to Commentary .05(c)(ii) so that they are treated similarly for priority purposes because they do not engage in open outcry floor trading.

Commentary .05(b) to Rule 1014 states that SQTs and RSQTs can submit orders electronically via XL, the Exchange's electronic order, execution and trading system. The Exchange proposes to add Remote Specialists to Commentary .05(b) so that they can likewise submit quotes electronically; and to confirm that, similarly to RSQTs, the Exchange has the ability to allocate one or more options to Remote Specialists. Commentary .05(C)(i) indicates that if a Floor Broker presents a non-electronic order in an option assigned to an RSQT, such RSQT or SQT may not participate in trades stemming from the non-electronic order unless the order is executed at the price quoted by the non-crowd RSQT or SQT at the time of execution. The Exchange proposes to include Remote Specialists in Commentary .05(C)(i) to establish priority that is coextensive with Remote Specialist electronic quoting and trading capabilities.<sup>27</sup>

The Exchange proposes to clarify several OFPAs commensurate with a Remote Specialist's off-floor electronic quoting and trading capabilities. In particular, the Exchange proposes to state in Advice A-10 that a Remote Specialist is exempted from the specialist duty of ensuring that at least one ROT is present in a floor trading crowd before such specialist can participate as principal in a trade. The Exchange proposes to state in Advice

<sup>27</sup> The Exchange has submitted an immediately effective filing proposing to delete obsolete terminology from certain Exchange rules including Rule 1014, which filing is subject to a 30 day operative delay. See Securities Exchange Act Release No. 63036 (October 4, 2010), 75 FR 62621 (October 12, 2010) (SR-Phlx-2010-131) (notice of filing and immediate effectiveness). SR-Phlx-2010-131 has proposed changes to the rule text of certain rules that are discussed in this filing, specifically sub-paragraph (b)(i)(B) and Commentary .05 of Rule 1014, and the text of these rules in Exhibit 5 reflects the changes made in SR-Phlx-2010-131 that are operative as of October 27, 2010.

<sup>25</sup> QOS are options series that expire at the close of business on the last business day of a calendar quarter. See Commentary .08 to Rule 1012. For index QOS, see Rule 1101A.

<sup>26</sup> Adjusted option series are defined in Rule 1014(b)(ii)(D)(4) as an option series wherein one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares.

A-7 that a Remote Specialist is exempted from the specialist obligation to advise a Floor Broker about cancellations. Additionally, the Exchange proposes to state in Advice B-3 that a Remote Specialist is exempted from the requirement that an ROT, including a specialist, trade a certain percentage of volume on the Exchange in person.

#### Surveillance

The Exchange has developed surveillance procedures for its auction and electronic markets. The Exchange will use the surveillance procedures now in place regarding specialists to perform surveillance of Remote Specialists.

#### Conclusion

The Exchange believes that its proposal to enable Remote Streaming Quote Traders to act as Remote Specialists where no on-floor specialists are willing to accept, or retain, an option allocation would enable Remote Specialists to provide a market that does not otherwise exist on the Exchange to the benefit of traders, investors, and public customers making hedging and trading decisions. The Exchange believes that allowing specialists to function off-floor also removes an operational issue by allowing off-floor specialists that are not required to be present on the trading floor in respect of certain option issues. Accordingly, the Exchange believes that the proposed rule change is designed to promote just and equitable principles of trade and to be in the public interest.

Finally, the Exchange notes that the Commission has approved, or options exchanges have filed for immediate effectiveness, proposals that allow these exchanges to have off-floor (remote) market makers that are similar in concept to the proposed Remote Specialists.<sup>28</sup> The Exchange does not believe that this filing raises any novel issues.

<sup>28</sup> See Securities Exchange Act Release Nos. 55531 (March 26, 2007), 72 FR 15736 (April 2, 2007) (SR-CBOE-2006-94) (order approving proposal to establish off-floor Delegated Primary Market-Makers); 57747 (April 30, 2008), 73 FR 25811 (May 7, 2008) (SR-CBOE-2008-49) (notice of filing and immediate effectiveness to establish off-floor Lead Market-Makers); 57568 (March 26, 2008), 73 FR 18016 (April 2, 2008) (SR-CBOE-2008-32) (notice of filing and immediate effectiveness to establish ability of off-floor Delegated Primary Market-Makers to operate in any options class traded on Hybrid); and 52827 (November 23, 2005), 70 FR 72139 (December 1, 2005) (SR-PCX-2005-56) (approval order establishing Lead Market Makers).

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>29</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>30</sup> 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 allowing Exchange option specialists that are not on an Exchange floor where the Exchange determines that it cannot allocate options to a floor based specialist.

#### 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

<sup>29</sup> 15 U.S.C. 78f(b).

<sup>30</sup> 15 U.S.C. 78f(b)(5).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-145 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-2010-145. 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 such 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 No. SR-Phlx-2010-145 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>31</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-27645 Filed 11-1-10; 8:45 am]

**BILLING CODE 8011-01-P**

#### DEPARTMENT OF STATE

[Public Notice: 7221]

#### State-40, Employee Contact Records

**SUMMARY:** Notice is hereby given that the Department of State proposes to

<sup>31</sup> 17 CFR 200.30-3(a)(12).