IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–EDGA–2010–06) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62678; File No. SR–Phlx–2010–108]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to a Proposed Price Improvement System, Price Improvement XL (PIXL℠)

August 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on July 30, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II 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, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 thereunder,[4] proposes to adopt new Rule 1080(n), Price Improvement XL (PIXL℠), to establish a price-improvement mechanism on the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The purpose of the proposed rule change is to establish a price-improvement mechanism, PIXL, on the Exchange, which includes auto-match functionality in which a member (an "Initiating 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 it represents as agent (an "Initiating Order") provided it submits the PIXL Order for electronic execution into the PIXL Auction ("Auction") pursuant to the proposed Rule.

Auction Eligibility Requirements

All options traded on the Exchange are eligible for PIXL. Proposed Rule 1080(n)(i) describes the circumstances under which an Initiating Member may initiate an Auction.

If the PIXL Order 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. The purpose of this provision is to ensure that public customer PIXL Orders for 50 contracts or more are guaranteed at least the NBBO but do not trade ahead of other limit orders already on the Exchange's limit order book at the existing limit order's limit price.

For example, assume the Exchange's disseminated market (the "PBBO") in the affected series is the NBBO and is 1.00 bid for 10 contracts, 1.01 offered for 20 contracts and the existing disseminated 1.00 bid is a public customer limit order. If an initiating Member submits a public customer PIXL Order to buy 100 contracts @ the market together with a contra-side Initiating Order to sell 100 contracts, the entire PIXL Order must be stopped at a price of 1.01 because the public customer limit order on the limit order book has time priority at 1.00 over the public customer PIXL order.

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 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. The purpose of this provision is to ensure that smaller PIXL Orders will be guaranteed price improvement by establishing a size under which a PIXL Order must be submitted at a price better than the PBBO. The Exchange believes this should especially benefit public customers.[5] The provision concerning PIXL Orders for a size of less than 50 contracts will be effective for a pilot period scheduled to expire August 31, 2011.[6]

For example, assume the PBBO in the affected series is 1.00 bid—1.03 offer and the NBBO is 1.00—1.03. If an initiating Member submits a public customer PIXL Order to buy 25 contracts @ the market together with a contra-side Initiating Order to sell 25 contracts, the public customer PIXL Order must be stopped at least one minimum improvement increment better than the PBBO offer of 1.03 to guarantee price improvement. Therefore, in this example, the PIXL

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] The Exchange notes that Chicago Board Options Exchange, Inc. ("CBOE") Rule 6.74A(a)(3) provides that any AIM Agency Order (the equivalent of a PIXL Order) for less than 50 contracts that is entered into the CBOE's Automated Improvement Mechanism ("AIM") is guaranteed an execution at the NBBO price improved by one minimum price improvement increment or at the AIM Agency Order's limit price (if the order is a limit order). *See* Securities Exchange Act Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (SR–CBOE–2005–60).

[6] The Exchange proposes the one-year pilot in order to ascertain the level of price improvement attained for such smaller-sized orders during the pilot period.

Order could be stopped at 1.00, 1.01 or 1.02, but not at 1.03. If, however, the 1.00 bid price on PHLX represents a limit order resting on the book, the PIXL Order must be stopped at a price that is at least one minimum price improvement increment better than any limit order on the limit order book on the same side of the market as the PIXL Order. Therefore, in this circumstance the PIXL Order could be stopped at 1.01 or 1.02, but not at 1.00 and not at 1.03.

If the PIXL Order is for the account of a broker dealer or any other person or entity that is not 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.

If the PIXL Order is for the account of a broker dealer or any other person or entity that is not 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. The provision concerning PIXL Orders for a size of less than 50 contracts will be effective for a pilot period scheduled to expire August 31, 2011.

Broker dealers generally do not have priority over market maker quotes or orders and the Exchange believes that they should not be afforded such priority in the PIXL mechanism. The Exchange proposes to adopt proposed Rule 1080(n)(i)(B)(2), concerning such orders that are submitted with a size of less than 50 contracts, on a pilot basis scheduled to expire August 31, 2011, in order to ascertain the level of price improvement attained for such smaller-sized orders during the pilot period.

For example, if the PBBO and the NBBO are both .97–1.03 with no public customer orders on the book, the proposed rule would permit stop prices for a PIXL Order as follows:

A public customer PIXL Order to buy 50 contracts or more may be stopped at prices equal to or within a range of .97–1.03. A public customer PIXL Order of less than 50 contracts may be stopped at prices equal to or within a range of .97–1.02.[7] A PIXL order of 50 contracts or more for the account of a broker dealer may be stopped at prices equal to or within a range of .98–1.03. A PIXL order of less than 50 contracts for the account of a broker dealer may be stopped equal to or within a price range of .98–1.02.[8]

PIXL Orders submitted at or before the opening of trading are not eligible to initiate an Auction and will be rejected. Because a PIXL Auction must last for one second, PIXL Orders submitted during the final second of the trading session in the affected series are not eligible to initiate an Auction and will be rejected.

Finally, an Initiating Order may not be a solicited order for the account of any Exchange specialist, SQT, RSQT or non-streaming ROT assigned in the affected series. The Exchange believes that in order to maintain fair and orderly markets, a market maker assigned in an option should not be solicited for participation in an Auction by an Initiating Member. The Exchange believes that market makers interested in participating in transactions on the Exchange should do so by way of his/her quotations, and is able to *respond* to PIXL Auction Notifications, not create them by having an Initiating Member submitting Initiating Orders on his/her behalf.

Auction Process

An Initiating Member may initiate a PIXL Auction by submitting a PIXL Order in one of three ways. First, the Initiating Member could submit a PIXL Order specifying a single price at which it seeks to execute the PIXL Order (a "stop price").

Second, an Initiating Member could submit a PIXL Order specifying that it is willing to automatically match as principal or as agent on behalf of an Initiating Order the price and size of all trading interest[9] and responses to the PIXL Auction Notification ("PAN," as described below) ("auto-match"), in which case the PIXL Order will be stopped at the NBBO on the Initiating Order side of the market (if 50 contracts or greater) or, if less than 50 contracts, the better of: (i) the 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 increment better than the limit of an order on the book on the same side as the PIXL Order.

Third, an Initiating Member could submit a PIXL Order specifying that it is willing to either: (i) Stop the entire order at a single stop price and auto-match PAN responses, as described below, together with trading interest, at a price or prices that improve the stop price to a specified price above or below which the Initiating Member will not trade (a "Not Worse Than" or "NWT" price); (ii) stop the entire order at a single stop price and auto-match all PAN responses and trading interest at or better than the stop price; or (iii) stop the entire order at the NBBO on the Initiating Order side (if 50 contracts or greater) or the better of: (A) the PBBO price on the opposite side of the market from the PIXL Order improved by one minimum price improvement increment, or (B) the PIXL Order's limit price (if the order is a limit order) on the Initiating Order side (if for less than 50 contracts), and auto-match PAN responses and trading interest at a price or prices that improve the stop price up to the NWT price. In all cases, if the PBBO on the same side of the market as the PIXL Order represents a limit order on the book, the stop price must be at least one minimum price improvement increment better than the booked limit order's limit price.

For example, assume the PBBO and the NBBO are .97 bid–1.03 offer. An Initiating Member may submit a PIXL Order to buy 100 contracts for 1.01 together with a contra-side Initiating Order to sell 100 contracts at 1.01 with a NWT price of .99. In this example the Initiating Member has stopped the PIXL Order at 1.01 (two increments better than the NBBO) and will auto-match responses and trading interest down to the NWT price of .99.

Once the Initiating Member has submitted a PIXL Order for processing, such PIXL Order may not be modified or cancelled. Under any of these circumstances, the stop price or NWT price may be improved to the benefit of the PIXL Order during the Auction, but may not be cancelled. The purpose of this provision is to ensure that an Initiating Member guarantees the stop or NWT price or better (by way of improvement of the stop and/or NWT price to the PIXL Order's benefit during

[7] This example assumes that there is no limit order on the book at a price of .97. If there were, the rule requires that the order must be stopped at a price of .98 or better (at least one minimum price improvement increment better than the PBBO).

[8] This is at least one minimum price improvement increment better than the PBBO.

[9] "Trading interest" refers to unrelated orders received during the Auction, booked orders, and quotes that are considered for execution and allocation against the PIXL Order following the Auction.

the Auction), without "backing away" from that guarantee.[10]

PIXL Auction Notification ("PAN")

When the Exchange receives a PIXL Order for Auction processing, a PAN detailing the side, size and the stop price of the PIXL Order will be sent over the Exchange's TOPO Plus Orders data feed.[11] An updated PAN will also be sent over the Exchange's TOPO Plus Orders data feed when the Initiating Member improves the stop price of the PIXL Order. The updated PAN will include the side, size, and improved stop price of the PIXL Order. This information would be used by PAN respondents wishing to participate at better price levels to improve their price when they are alerted that a stop price has been improved.

PIXL Auction

The PIXL Auction will last for one second,[12] unless it is concluded as the result of any of the circumstances described below. Any person or entity may submit PAN responses provided such response is properly marked specifying price, size and side of the market. The Exchange believes that permitting any person or entity to submit responses to the PAN should attract PAN responses from all sources, maximizing the potential for liquidity in the Auction and thus affording the PIXL Order the best opportunity for price improvement.[13] PAN responses will not be visible to Auction participants, and will not be disseminated to the Options Price Reporting Authority ("OPRA").[14] The minimum price increment for PAN responses and for an Initiating Member's stop price and/or NWT price will be the minimum price improvement increment as set forth above.[15] A PAN response size at any given price point may not exceed the size of the PIXL Order.[16] A PAN response with a size greater than the size of the PIXL Order will be rejected. A PAN response must be equal to or better than the NBBO at the time of receipt of the PAN response. A PAN response with a price that is outside the NBBO will be rejected. This is because the Exchange does not want to encourage a large number of PAN responses that are outside of the NBBO that will be unexecuted (and subsequently cancelled) unless the NBBO moves to make them eligible. PAN responses may be modified or cancelled during the Auction.[17] The Exchange believes that any PAN response on the same side of the market as the PIXL Order would be the result of an error, and therefore such a response will be rejected. Multiple PAN responses from the same member may be submitted during the Auction. Multiple orders at a particular price level submitted by a member in response to a PAN may not exceed, in the aggregate, the size of the PIXL Order.

Conclusion of the PIXL Auction

There are a number of circumstances that will cause the Auction to conclude. The Auction will conclude at the end of the one-second Auction period,[18] except that it may conclude before the expiration of one second: (i) any time the PBBO crosses the PIXL Order stop price on the same side of the market as the PIXL Order (since further price improvement will be unlikely and any responses offering improvement are likely to be cancelled), or (ii) any time there is a trading halt on the Exchange in the affected series. The proposed rules concerning the early conclusion of the Auction will be effective for a pilot period scheduled to expire August 31, 2011.

If the Auction concludes before the expiration of one second as the result of the PBBO crossing the stop price, the entire PIXL Order will be executed at the best response price(s) or, if the stop price is the best price in the Auction, at the stop price, unless the best response price is equal to the price of a limit order resting on the PHLX book on the same side of the market as the PIXL Order, in which case the PIXL Order will be executed against that response, but at a price that is at least one minimum price improvement increment better than the price of such limit order at the time of the conclusion of the Auction.

For example, assume the PBBO and NBBO are both .97–1.03, and the .97 bid represents an order on the limit order book. A PIXL Order to buy 100 contracts is submitted with a contra-side Initiating Order to stop the PIXL Order at 1.00. Assume a PAN response is submitted to sell 10 contracts at .97 and another to sell 10 contracts at .99. Due to a change in the price of the underlying security, a PHLX specialist or market maker submits a bid price of 1.02, crossing the 1.00 stop price and concluding the Auction prior to the expiration of one second. 10 contracts from the PIXL Order will be executed at .98 (representing the .97 response price re-priced to .98, which is one minimum price improvement increment better than the .97 bid represented by the limit order on the book). 10 contracts will be executed at .99 (the next best response price after the execution at .98) and the remaining 80 contracts will be executed at 1.00 (the stop price) against the Initiating Order.

If the Auction concludes before the expiration of one second as the result of a trading halt on the Exchange in the affected series, the entire PIXL Order will be executed at the stop price against the Initiating Order. Since the Initiating Member has guaranteed that an execution will occur at the stop price (or better) prior to the trading halt, and PAN responses offer no such guarantee, the stop price is the only valid price at which to execute the PIXL Order, and the Initiating Member is the appropriate contra-side.[19]

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[10] The Exchange notes that Boston Options Exchange Group LLC ("BOX") Rules prohibit a BOX "Initiating Participant" from cancelling or modifying the BOX "Max Improvement Primary Improvement Order," the equivalent of the proposed NWT price, during the BOX PIP. *See* BOX Rules, Chapter V, Section 18(e)(ii). The Exchange believes that permitting the Initiating Member to improve the NWT price during the Auction adds another opportunity for price improvement for the PIXL Order, and that this proposed treatment of the NWT price simply expands upon the BOX's existing treatment of the Max Improvement Primary Improvement Order to the benefit of the PIXL Order. In this regard, the Exchange believes that there are no new regulatory concerns that are raised by its proposed treatment of the NWT price.

[11] For a description of TOPO Plus Orders, *see* Securities Exchange Act Release No. 60877 (October 26, 2009), 74 FR 56255 (October 30, 2009) (SR–Phlx–2009–92). *See* also, Securities Exchange Act Release No. 62194 (May 28, 2010), 75 FR 31830 (June 4, 2010) (SR–Phlx–2010–48) (Order Approving Market Data Fees for TOPO Plus Orders). Members who are "Professional Subscribers" to the TOPO Plus Orders data feed are subject to lower fees than the "External Distributors" from whom they receive TOPO Plus Orders.

[12] The Exchange notes that the one-second Auction period is currently in place on other options exchanges. *See* CBOE Rule 7.74A(b)(1)(C). *See* also, BOX Rules, Chapter V, Section 18(e)(i).

[13] While the CBOE permits members appointed in the affected series to respond (CBOE Rule 6.74A(b)(1)(D)) and also permits members representing limit orders at the top of the CBOE limit order book opposite the Agency Order to respond (CBOE Rule 6.74A(b)(1)(E)), the instant proposal would permit PAN responses from any person or entity. The Exchange believes that this deviation from other exchanges' practices is not substantial, and does not raise any new regulatory concerns. In fact, it should afford greater opportunities for price improvement for the PIXL Order.

[14] This is consistent with CBOE Rule 6.74A(b)(1)(F).

[15] This is consistent with CBOE Rule 6.74A(b)(1)(G).

[16] This is consistent with CBOE Rule 6.74A(b)(1)(H).

[17] This is consistent with CBOE Rule 6.74A(b)(1)(I).

[18] This is consistent with CBOE Rule 6.74A(b)(2)(A).

[19] The Exchange notes that trading on the Exchange in any option contract will be halted whenever trading in the underlying security has been paused or halted by the primary listing market. *See* Exchange Rule 1047(e). *See also,* Securities Exchange Act Release No. 62269 (June 10, 2010), 75 FR 34491 (June 17, 2010) (SR–Phlx–2010–82). Any executions that occur during any

Continued

An unrelated market or marketable limit order on the opposite side of the market from the PIXL Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction. If contracts remain from such unrelated order at the time the Auction ends, they will be considered for participation in the order allocation process described below. The Exchange believes that this should increase the number of contracts against which a PIXL Order could be executed, and should create more opportunities for the PIXL Order to be executed at each price level. This provision will be effective for a pilot period scheduled to expire on August 31, 2011.

For example, assume the PBBO is .97 (size of 10)–1.03 (size of 50), and the NBBO is 97–1.03. If an Initiating Member submits a PIXL Order to buy 100 contracts @1.00 together with an Initiating Order to sell 100 @1.00, the PIXL Order will be stopped @ 1.00. During the Auction, a PAN response arrives to sell 20 @.99 and the PBBO moves to .97 (size of 10)—1.00 (size of 50–the offer is 2 market makers @1.00 with 25 each). While the Auction is taking place, an unrelated order to sell 50 contracts @ .98 is submitted. The PBBO is now .97 (size of 10)–.98 (size of 50) (the offer is the result of the unrelated order to sell 50 contracts at .98). Once the Auction ends after one second, even though the unrelated order is not part of the Auction, 50 contracts from the PIXL Order will be executed at .98 against the unrelated order. Thereafter, 20 contracts from the PIXL Order will be executed at .99 (PIXL order buys from PAN responder), and 30 contracts from the PIXL Order will be executed at 1.00 (the PIXL order buys 12 contracts from the Initiating Order (40% of the 30) and 18 from market makers quoting at 1.00). The Exchange believes that this functionality provides maximum price improvement to the PIXL order by including limit orders and quotes in the execution price of the PIXL Order that are priced better than PAN responses.

Order Allocation

At the conclusion of the Auction, the PIXL Order will be allocated at the best price(s). As stated above, in order to maximize liquidity available to be executed against the PIXL Order, such best prices may include non-Auction quotes and orders that may be present at each price level. Public customer orders will have priority at each price level. After public customer interest at a particular price level has been satisfied, contracts will be allocated among all Exchange quotes, orders and PAN responses.

Single Price Submission Option

If the Initiating Member selected the single stop price option of the PIXL Auction, PIXL executions will occur at prices that improve the stop price, and then at the stop price with up to 40% of the remaining contracts after public customer interest is satisfied being allocated to the Initiating Member at the stop price. However, if only one specialist, SQT or RSQT matches the stop price, then the Initiating Member may be allocated up to 50% of the contracts executed at such price. Remaining contracts will be allocated pursuant to the algorithm set forth in Exchange Rules 1014(g)(vii)(B)(1)(b) and (d) among remaining quotes, orders and PAN responses at the stop price.[20] Thereafter, remaining contracts, if any, shall be allocated to the Initiating Member. The Exchange respectfully submits that this is identical to functionality currently in place on CBOE.

Auto-Match Option

If the Initiating Member selected the auto-match option of the PIXL Auction, the Initiating Member will be allocated an equal number of contracts as the aggregate size of all other quotes, orders and PAN responses at each price point until a price point is reached where the balance of the order can be fully executed, except that the Initiating Member shall be entitled to receive up to 40% of the contracts remaining at the final price point (including situations where the final price point is the stop price). If there are other quotes, orders and PAN responses at the final price point, the contracts will be allocated to such interest pursuant to the algorithm set forth in Exchange Rules 1014(g)(vii)(B)(1)(b) and (d). Any remaining contracts will be allocated to the Initiating Member.

For example, if the PIXL Order is to buy 1,000 contracts and there are three price points to be allocated, and quotes, orders and PAN responses with an aggregate size at each price point as follows:

Price	Responses	Total size of quotes, orders, and auction responses	Initiating member entitlement	Total contracts initiating member is allocated	Total contracts quotes, orders, and responses allocated	Total contracts trading
1.01	MM 1 = 100	100	Auto-match size	100	100	200
1.02	MM 1 = 100 MM 2 = 50	150	Auto-match size	150	150	300
1.03	Customer = 100 MM 1 = 150 MM 2 = 150	400	40% after customer filled + residual after all participants are satisfied.	160	Customer = 100 MM 1 = 120 MM 2 = 120	500

In this example, the Initiating Member is entitled to receive 100 contracts at 1.01 (matching the 100 contracts that are allocated among quotes, orders and PAN responses at 1.01), and the Initiating Member is entitled to receive 150 contracts at 1.02 (matching the 150 contracts allocated among quotes, orders and PAN responses at 1.02). Because 1.03 is the final price point, the customer is allocated 100 contracts and the Initiating Member is entitled to receive 160 contracts at 1.03 (40% of the remaining 400 contracts), with the remaining 240 contracts allocated among quotes, orders and PAN responses at 1.03. The residual PAN responses at 1.03 are cancelled.

latency between the pause or halt in the underlying security and the processing of the halt on the Exchange will be nullified pursuant to Exchange Rule 1092(c)(iv)(B).

[20] Under the proposed Rule, the specialist will not be entitled to receive orders for 5 contracts or fewer. If a price point has a size of 5 contracts or fewer and the specialist has submitted a quote, order or PAN response at that price point, contracts at that price point will nonetheless be allocated pursuant to Exchange Rules 1014(g)(vii)(B)(1)(b) and (d).

Stop and NWT Option

If the Initiating Member selected the "stop and NWT" option of the PIXL Auction, after public customer interest is satisfied, contracts will be allocated first to quotes, orders and PAN responses at prices better than the NWT price (if any), beginning with the best price, pursuant to the algorithm set forth in Exchange Rules 1014(g)(vii)(B)(1)(b) and (d) at each price point.

Next, contracts will be allocated among quotes, orders and PAN responses at prices equal to the Initiating Member's NWT price and better than the Initiating Member's stop price, beginning with the NWT price. The Initiating Member shall be allocated an equal number of contracts as the aggregate size of all other quotes, orders and PAN responses at each price point, except that the Initiating Member will be entitled to receive up to 40% of the contracts remaining at the final price point (including situations where the final price point is the stop price). In the case of an Initiating Order with a NWT price at the market, the Initiating Member shall be allocated an equal number of contracts as the aggregate size of all other quotes, orders and PAN responses at all price points, except that the Initiating Member shall be entitled to receive up to 40% of the contracts remaining at the final price point (including situations where the final price is the stop price).

If there are other quotes, orders and PAN responses at the final price point the contracts will be allocated to such interest pursuant to the algorithm set forth in Exchange Rules 1014(g)(vii)(B)(1)(b) and (d). Any remaining contracts shall be allocated to the Initiating Member.

Assume, for example, that the PIXL Order is to buy 1,000 contracts. The Initiating Member submits a stop price of 1.03, and a NWT price of 1.02. There are quotes, orders and PAN responses with an aggregate size at each price point as follows:

Price	Responses	Total size of quotes, orders, and auction responses	Initiating member entitlement	Total contracts initiating member is allocated	Total contracts quotes, orders, and responses allocated	Total contracts trading
1.01	MM 1 = 100	100	Zero—Price is below NWT level.	0	100	100
1.02	MM 1 = 100 MM 2 = 50	150	Auto-match size	150	150	300
1.03	Customer = 100 MM 1 = 150 MM 2 = 150	400	40% after customer filled + residual after all participants are satisfied.	200	Customer = 100 MM 1 = 150 MM 2 = 150	600

In this example, the Initiating Member is not entitled to receive any contracts at 1.01. All 100 contracts at 1.01 will be allocated among quotes, orders and PAN responses at 1.01 in accordance with Rule 1014(g)(vii)(B)(1)(b) and (d). The Initiating Member will receive 150 contracts at 1.02, with 150 contracts allocated among quotes, orders and PAN responses at 1.02. Because 1.03, the stop price, is the final price point, the customer interest will be allocated 100 contracts with the Initiating Member entitled to receive 200 contracts at 1.03 (40% of 500), with the remaining 300 contracts allocated among quotes, orders and PAN responses at 1.03.

A "stop and NWT" submission with a NWT price at the market will be treated in the same manner as a submission under the "auto-match" option except that the order may be stopped at any price level provided such level meets the criterion set forth above for a single stop price.

Professionals

In March, 2010, the Exchange amended its priority rules to give certain non-broker-dealer orders the same priority as broker-dealer orders.[21] In so doing, the Exchange adopted a new term for certain persons or entities, the "professional." A professional is defined in Rule 1000(b)14 as a person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A professional account is treated in the same manner as an off-floor broker-dealer for purposes of Phlx Rule 1014(g), to which the trade allocation algorithms described in proposed Rule 1080(n)(ii)(E) refer.

Additionally, Rule 1000(b)14 states that all-or-none orders will be treated like customer orders. PIXL Orders are inherently all-or-none orders because the Initiating Member guarantees that the PIXL Order will be filled in its entirety. If a PIXL Order happens to be submitted for the beneficial account of a professional with the redundant designation of all-or-none, such PIXL Order will not be rejected, but will be treated as any other PIXL Order, including for trade allocation purposes, under proposed Rule 1080(n)(ii)(E).

Accordingly, the Exchange proposes to amend Rule 1000(b)14 by: (i) clarifying that orders submitted pursuant to Rule 1080(n) for the beneficial accounts of professionals with an all-or-none designation will be treated in the same manner as off-floor broker-dealer orders, and (ii) adding proposed Rule 1080(n) to the list of rules to which the term "professional" applies. The effect of this is that professionals will not receive the same priority that is afforded to public customers, and instead will be treated as broker-dealers in this regard.

Miscellaneous Provisions

Proposed Rules 1080(n)(ii)(F) through (H) address the handling of the PIXL Order and other orders, quotes and PAN responses when certain conditions are present.

Specifically, if there are PAN responses that cross the then-existing NBBO (provided such NBBO is not crossed) at the time of the conclusion of the Auction, such PAN responses will be executed, if possible, at their limit price(s).

If the final PIXL Auction price is the same as an order on the limit order book on the same side of the market as the PIXL Order, the PIXL Order may only be executed at a price that is at least one minimum price improvement increment better than the resting order's limit price or, if such resting order's limit price crosses the stop price, then the entire PIXL Order will trade at the stop price with all better priced interest being considered for execution at the stop price.

[21] *See* Securities Exchange Act Release No. 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010) (SR–Phlx–2010–05).

For example, assume the PBBO is .97–1.03, and the Exchange receives a PIXL Order to buy with a stop price of 1.00. During the Auction a PAN response to sell @ .98 is received, and an unrelated order to buy 10 contracts @ .99 is received, crossing the PAN response price. In this situation, the PAN response to sell @.98 will be considered for execution at a price that is .01 better than the order on the PHLX book to buy at .99 so that it does not trade through the unrelated order to buy @.99. Therefore in this case the PAN response to sell at .98 will be executed and included for allocation at 1.00.

Finally, any unexecuted PAN responses will be cancelled.

Regulatory Issues

The proposed rule change contains several paragraphs that describe prohibited practices when participants use PIXL. Proposed Rule 1080(n)(iii) states that the PIXL Auction may be used only where there is a genuine intention to execute a bona fide transaction. It will be considered a violation of Rule 1080(n) and will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Exchange Rule 707 if an Initiating Member submits a PIXL Order (initiating an Auction) and also submits its own PAN response in the same Auction. The purpose of this provision is to prevent Initiating Members from submitting an inaccurate or misleading stop price or trying to improve their allocation entitlement by participating with multiple expressions of interest.

Proposed Rule 1080(n)(iv) states that a pattern or practice of submitting multiple orders in response to a PAN at a particular price point that exceed, in the aggregate, the size of the PIXL Order, will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 707. This is to prevent a member submitting orders in response to a PAN from artificially inflating its response size in order to gain a higher allocation than the percentage the member would have otherwise received.

Proposed Rule 1080(n)(v) states that a pattern or practice of submitting unrelated orders or quotes that cross the stop price, causing a PIXL Auction to conclude before the end of the PIXL Auction period will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 707. It will also be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 707 to engage in a pattern of conduct where the Initiating Member breaks up a PIXL Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating Member would have otherwise received in accordance with the allocation procedures described above.

Crossing Public Customer Orders On PIXL

Proposed Rule 1080(n)(v) addresses the situation where an Initiating Member holds public customer orders on both sides of the market in the same option series. Instead of initiating a PIXL Auction, an Initiating Member may enter a PIXL Order for the account of a public customer paired with an order for the account of a public customer and such paired orders will be automatically executed without a PIXL Auction. The execution price must be expressed in the minimum quoting increment applicable to the affected series. Such an execution may not trade through the NBBO or at the same price as any resting customer order. The Exchange believes that permitting such executions will benefit public customers on both sides of the crossing transaction by providing speedy and efficient executions to public customer orders in this circumstance.

Rule 1080(c)(ii)(C) prevents an Order Entry Firm from executing agency orders to increase its economic gain from trading against the order without first giving other trading interests on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the member was already bidding or offering on the book. However, the Exchange recognizes that it may be possible for a firm to establish a relationship with a customer or other person to deny agency orders the opportunity to interact on the Exchange and to realize similar economic benefits as it would achieve by executing agency orders as principal. It would be a violation of Rule 1080(c)(ii)(C) for a firm to circumvent Rule 1080(c)(ii)(C) by providing an opportunity for (i) a customer affiliated with the firm, or (ii) a customer with whom the firm has an arrangement that allows the firm to realize similar economic benefits from the transaction as the firm would achieve by executing agency orders as principal, to regularly execute against agency orders handled by the firm immediately upon their entry as PIXL customer-to-customer immediate crosses.

Pilot Program Information to the Commission

The Exchange represents that, in support of its proposed pilot programs concerning (i) the early conclusion of the Auction, and (ii) permitting orders of fewer than 50 contracts into the Auction, it will provide the following information each month during the pilot period: [22]

Regarding the early conclusion of the Auction due to the PBBO crossing the PIXL Order stop price on the same side of the market as the PIXL order, or due to a trading halt, the Exchange will provide the following monthly information:

(1) The number of times that the PBBO crossed the PIXL Order stop price on the same side of the market as the PIXL Order and prematurely ended the PIXL Auction, and at what time the PIXL Auction ended;

(2) The number of times that a trading halt prematurely ended the PIXL auction and at what time the trading halt ended the PIXL Auction;

(3) Of the Auctions terminated early due to the PBBO crossing the PIXL order stop price, the number that resulted in price improvement over the PIXL Order stop price, and the average amount of price improvement provided to the PIXL Order;

(4) In the Auctions terminated early due to the PBBO crossing the PIXL order stop price, the percentage of contracts that received price improvement over the PIXL order stop price;

(5) Of the Auctions terminated early due to a trading halt, the number that resulted in price improvement over the PIXL Order stop price, and the average amount of price improvement provided to the PIXL Order;

(6) In the auctions terminated early due to a trading halt, the percentage of contracts that received price improvement over the PIXL order stop price; and

(7) The average amount of price improvement provided to the PIXL Order when the PIXL Auction is not terminated early (*i.e.,* runs the full one second).

(8) The number of times an unrelated market or marketable limit order (against the PBBO) on the opposite side of the PIXL Order is received during the Auction Period;

(9) The price(s) at which an unrelated market or marketable limit order (against the PBBO) on the opposite side of the PIXL Order that is received during the Auction Period is executed, compared to the execution price of the PIXL Order.

[22] The Exchange will provide the information for a particular month not later than the last business day of the subsequent month. For example, information for the month of September would be provided to the Commission no later than the last business day of October. Information for the month of October would be provided no later than the last business day of November, etc.

Regarding PIXL Orders of fewer than 50 contracts, the Exchange will provide the following monthly information:

(1) The number of orders of fewer than 50 contracts entered into the PIXL Auction;

(2) The percentage of all orders of fewer than 50 contracts sent to Phlx that are entered into the PIXL Auction;

(3) The percentage of all Phlx trades represented by orders of fewer than 50 contracts;

(4) The percentage of all Phlx trades effected through the PIXL Auction represented by orders of fewer than 50 contracts;

(5) The percentage of all contracts traded on Phlx represented by orders of fewer than 50 contracts;

(6) The percentage of all contracts effected through the PIXL Auction represented by orders of fewer than 50 contracts;

(7) The spread in the option, at the time an order of fewer than 50 contracts is submitted to the PIXL Auction;

(8) The number of orders of 50 contracts or greater entered into the PIXL Auction;

(9) The percentage of all orders of 50 contracts or greater sent to PHLX that are entered into the PIXL Auction;

(10) The spread in the option, at the time an order of 50 contracts or greater is submitted to the PIXL Auction;

(11) Of PIXL trades where the PIXL Order is for the account of a public customer, and is for a size of fewer than 50 contracts, the percentage done at the NBBO plus $.01, plus $.02, plus $.03, etc.;

(12) Of PIXL trades where the PIXL Order is for the account of a public customer, and is for a size of 50 contracts or greater, the percentage done at the NBBO plus $.01, plus $.02, plus $.03, etc.; and

(13) Of PIXL trades where the PIXL Order is for the account of a broker dealer or any other person or entity that is not a public customer, and is for a size of fewer than 50 contracts, the percentage done at the NBBO plus $.01, plus $.02, plus $.03, etc.

(14) Of PIXL trades where the PIXL Order is for the account of a broker dealer or any other person or entity that is not a public customer, and is for a size of 50 contracts or greater, the percentage done at the NBBO plus $.01, plus $.02, plus $.03, etc.;

(15) The number of orders submitted by Initiating Members when the spread was $.05, $.10, $.15, etc. For each spread, specify the percentage of contracts in orders of fewer than 50 contracts submitted to the PIXL Auction that were traded by: (a) The Initiating Member that submitted the order to the PIXL; (b) PHLX Market Makers assigned to the class; (c) other PHLX members; (d) Public Customer Orders; and (e) unrelated orders (orders in standard increments entered during the PIXL Auction). For each spread, also specify the percentage of contracts in orders of 50 contracts or greater submitted to the PIXL Auction that were traded by: (a) the Initiating Member that submitted the order to the PIXL Auction; (b) PHLX market makers assigned to the class; (c) other PHLX members; (d) Public Customer Orders; and (e) unrelated orders (orders in standard increments entered during the PIXL Auction);

Regarding PIXL auto-match, the Exchange will provide the following monthly information:

(1) The percentage of all PHLX trades effected through the PIXL Auction in which the Initiating Member has chosen the auto-match feature, and the average amount of price improvement provided to the PIXL Order when the Initiating Member has chosen the auto-match feature vs. the average amount of price improvement provided to the PIXL Order when the Initiating Member has chosen a stop price submission.

Regarding competition, the Exchange will provide the following monthly information:

(1) For the first Wednesday of each month: (a) The total number of PIXL auctions on that date; (b) the number of PIXL auctions where the order submitted to the PIXL was fewer than 50 contracts; (c) the number of PIXL auctions where the order submitted to the PIXL was 50 contracts or greater; (d) the number of PIXL auctions (for orders of fewer than 50 contracts) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc., and (e) the number of PIXL auctions (for orders of 50 contracts or greater) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc.; and

(2) For the third Wednesday of each month: (a) The total number of PIXL auctions on that date; (b) the number of PIXL auctions where the order submitted to the PIXL was fewer than 50 contracts; (c) the number of PIXL auctions where the order submitted to the PIXL was 50 contracts or greater; (d) the number of PIXL auctions (for orders of fewer than 50 contracts) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc., and (e) the number of PIXL auctions (for orders of 50 contracts or greater) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc.

Deployment

The Exchange anticipates that it will deploy PIXL floor-wide at or before the end of August 2010. Members will be notified of the deployment date by way of an Options Trader Alert posted on the Exchange's Web site.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[23] in general and with Section 6(b)(5) of the Act,[24] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act[25] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that the proposal will result in increased liquidity available at improved prices, with competitive final pricing out of the Initiating Member's complete control. PIXL should promote and foster competition and provide more options contracts with the opportunity for price improvement. As a result of the increased opportunities for price

[23] 15 U.S.C. 78f.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(8).

improvement, the Exchange believes that participants will use PIXL to increase the number of customer orders that are provided with the opportunity to receive price improvement over the NBBO.

The Exchange further believes that the proposal is consistent with the requirements of Section 11(a) of the Act [26] and Rule 11a2–2(T) [27] thereunder. Section 11(a) prohibits a member of a national securities exchange from effecting transactions on the exchange for its own account, the account of an associated person, or an account in which it or an associated person exercises investment discretion, unless an exception applies. In enacting this provision, Congress was concerned about members benefiting in their principal transactions from special "time and place" advantages associated with floor trading—such as the ability to "execute decisions faster than public investors." The Commission, however, has adopted a number of exceptions to the general statutory prohibition for situations in which the principal transactions contribute to the fairness and orderliness of exchange markets or do not reflect any time and place trading advantages.[28]

One such exception is Rule 11a2–2(T) under the Act, known as the "Effect Versus Execute Rule." Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect a transaction for such accounts, utilizing an unaffiliated member to execute transactions on an exchange floor. The Rule requires that: (1) The order must be transmitted from off the exchange floor; (2) once the order has been transmitted, the exchange member that transmitted the order may not participate in the execution; (3) the transmitting member may not be affiliated with the executing member; and (4) neither the member or the associated person may retain any compensation in connection with effecting such a transaction respecting accounts over which either has investment discretion without the express written consent of the person authorized to transact business in the account.

The Exchange believes that the instant proposal is consistent with Rule 11a2–2(T), and that therefore the exception should apply in this case.

First, there is no mechanism or system that would enable an Exchange member to transmit a PIXL Order from on the floor of the Exchange. All PIXL Orders will be transmitted from off the floor of the Exchange.

Second, once the PIXL Order has been transmitted, the Exchange Initiating Member that transmitted the order will not participate in the execution of the PIXL Order. Initiating Members submitting PIXL Orders will relinquish control of their PIXL Orders upon transmission to the Exchange's automated options trading platform, PHLX XL,[29] and will not be able to influence or guide the execution of their PIXL Orders.

Third, although Rule 11a2–2T contemplates having an order executed by an exchange member who is unaffiliated with the member initiating the order, the Commission has recognized that the requirement is not applicable when automated exchange facilities are used. Because the design of these systems (such as PHLX XL) ensures that members do not possess any special or unique trading advantages in handling orders after transmitting them to exchange floors, the commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2T.[30] The Exchange believes that the design of PHLX XL ensures that members do not possess any special or unique trading advantages in the handling of their orders.

Finally, respecting non-retention of compensation for discretionary accounts, the Exchange represents that members who intend to rely on Rule 11a2–2(T) in connection with transactions in PIXL Orders must comply with the requirements of Section (a)(2)(iv) of the rule.

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 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/wro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–108 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–2010–108. 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

[26] 15 U.S.C. 78k(a).

[27] 17 CFR 240.11a2–2(T).

[28] *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978); Securities Exchange Act Release No. 14713 (April 28, 1978), 43 FR 18557 (May 1, 1978); Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6093 (Jan. 31, 1979). The 1978 and 1979 Releases cite the House Report at 54–57.

[29] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). For branding purposes, references to "PHLX XL" are synonymous with references to "Phlx XL II" in other filings.

[30] *See, e.g.,* Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979).

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 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–108 and should be submitted on or before September 7, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–20100 Filed 8–13–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62682; File No. SR–EDGX–2010–09]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to a Revenue Sharing Program with Correlix, Inc.

August 10, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, July 28, 2010, EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 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

EDGX proposes to establish a revenue sharing program with Correlix, Inc. ("Correlix"). There is no new proposed rule text.

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 self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is filing a proposed rule change to establish a revenue sharing program with Correlix effective upon filing with the Commission. Pursuant to an agreement with Correlix, Correlix will provide to users of the Exchange real-time analytical tools to measure the latency of orders to and from that System. Under the agreement, the Exchange will receive 30% of the total monthly subscription fees received by Correlix from parties who have contracted directly with Correlix to use their RaceTeam latency measurement service for the Exchange. The Exchange will not bill or contract with any Correlix RaceTeam customer directly.

Pricing for the Correlix RaceTeam product for the Exchange varies depending on the depth of latency information requested, the number of unique MPIDs subscribed by the customer, and the number of ports available for monitoring by Correlix. For boundary-level Exchange latency information,[4] the fee will be an initial $1,500 monthly base fee for the first 25 ports associated in aggregate with any of the MPIDs selected by the Member for latency monitoring. For each additional 25 ports associated in aggregate with any of the MPIDs selected by the Member for latency monitoring, an additional monthly charge of $750 will be assessed. For match-level Exchange latency information,[5] the fee will be an initial $2,000 monthly base fee for the first 25 ports associated in aggregate with any of the MPIDs selected for latency monitoring, and an additional $1,000 per month for each additional 25 ports associated in aggregate with any of the MPIDs selected for latency monitoring.

Under the program, Correlix will see an individualized unique Exchange-generated identifier that will allow Correlix RaceTeam to determine round trip order time,[6] from the time the order reaches the Exchange extranet, through the Exchange matching engine, and back out of the Exchange extranet. The RaceTeam product offering does not measure latency outside of the Exchange extranet. The unique identifier serves as a technological information barrier so that the RaceTeam data collector will only be able to view data for Correlix RaceTeam subscriber firms related to latency. Correlix will not see subscriber's individual order detail such as security, price or size. Individual RaceTeam subscribers' logins will restrict access to only their own latency data. Correlix will see no specific information regarding the trading activity of non-subscribers.

The Exchange believes that above arrangement will provide users of the Exchange greater transparency into the processing of their trading activity and allow them to make more efficient trading decisions.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[7] which requires the rules of an exchange to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. In particular, the proposal will provide greater transparency into trade and information processing and thus allow market participants to make better-informed and more efficient trading decisions.

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The time that elapses from an order message's receipt by an Exchange device until the time that a matching engine acknowledgement with respect to such order message is transmitted from the Exchange device back to the user. For market data, the time measurement will be from the time that the market data engine receives a market data update until the time that the market data update is transmitted from the Exchange device back to the user.

[5] In addition to the boundary-level Exchange latency information, match level information will also provide further elapsed time detail for messaging between Exchange internal systems.

[6] The product measures latency of orders whether the orders are rejected, executed, or partially executed.

[7] 15 U.S.C. 78f(b)(5).