

away from the prevailing market price that they are not intended to be executed, the proposed rules should reduce the risk that trades will occur at irrational prices. As noted above, a large number of trades were executed at irrational prices on May 6, 2010 and were ultimately broken. In this respect, the proposals also should promote the goals of investor protection and fair and orderly markets. Finally, because the SROs are proposing uniform rules with respect to these market maker quoting obligations, the proposed rule changes as a whole will assure these baseline standards are applied throughout the equity markets.

The Commission also finds that the functionality proposed by BATS, BX and Nasdaq is consistent with Section 6(b)(5) of the Act,<sup>15</sup> which, among other things, requires that the rules of national securities exchanges be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The proposed functionality should assist market makers on BATS, BX and Nasdaq in maintaining continuous, two-sided limit orders within the prescribed limits in the securities in which they are registered to satisfy their new quoting obligations.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> for approving the proposed Amendments No. 1 on an accelerated basis. These amendments reflect the concern that the proposed market maker quoting obligations should not apply during times when market makers should be permitted to absorb material information affecting a security for which they are registered as a market maker, whether before or during the trading day, *i.e.*, until there has been a regular-way transaction on a security's primary listing market or during a trading halt. Approving these amendments on an accelerated basis would allow these provisions to be effective as of the implementation date of the new market maker requirements.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule changes (SR-BATS-2010-025; SR-BX-2010-66; SR-CBOE-2010-087; SR-CHX-2010-22; SR-

FINRA-2010-049; NASDAQ-2010-115; SR-NSX-2010-12; SR-NYSE-2010-69; SR-NYSEAmex-2010-96; SR-NYSEArca-2010-83), as modified by Amendment No. 1, be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

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

[FR Doc. 2010-28443 Filed 11-10-10; 8:45 am]

BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63208A; File No. SR-DTC-2010-13]

#### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement a Disincentive Fee Associated With the Deposit Automation Management System

November 5, 2010.

#### Correction

In FR Document No. 2010-27856 beginning on page 68013 for Thursday, November 4, 2010, the paragraph under which The Depository Trust Company ("DTC") filed the proposed rule change was incorrectly identified as section 19(b)(3)(A)(iii) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 19b-4(f)(3) thereunder. The correct paragraph under which DTC filed the proposed rule change is section 19(b)(3)(A)(ii) of the Exchange Act and Rule 19b-4(f)(2).

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

[FR Doc. 2010-28451 Filed 11-10-10; 8:45 am]

BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63252; File No. SR-Phlx-2010-150]

#### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Fee Schedule

November 5, 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 29, 2010, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been 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 to amend its Fee Schedule to: (i) Delete a symbol from the list of "Select Symbols" included in the "Rebates and Fees for Adding and Removing Liquidity in Select Symbols" section of the Fee Schedule; (ii) change the symbol of a Select Symbol to reflect a recent corporate action; (iii) add the KBW Bank Index ("BKX") to the list of symbols in the Equity Options Fees and assess an Options Surcharge on BKX; (iv) delete the Cancellation Fee for electronically delivered customer orders from Section I of the Fee Schedule; and (v) amend the fees for electronic auctions and opening process.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after November 1, 2010.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, 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.

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

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

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

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

*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 amend the Exchange's Fee Schedule, specifically Section I, Rebates and Fees for Adding and Removing Liquidity In Select Symbols, and Section II, Equity Options Fees.

Section I

BIDU and UUAU

The Exchange is proposing to amend Section I of the Fee Schedule to remove the symbol for Baidu Inc. ("BIDU") from the list of Select Symbols subject to the Rebates and Fees for Adding and Removing Liquidity. The Exchange also proposes to change the symbol for UAL Corporation from "UUAU" to "UAL" to reflect a recent corporate action.<sup>3</sup>

Cancellation Fee

Currently, the Exchange assesses a Cancellation Fee on electronically delivered customer and Professional AON orders that are submitted by a member. The Exchange assesses \$2.10 per order for each cancelled electronically delivered customer order and \$1.10 per order for each cancelled electronically delivered AON order submitted by a Professional in excess of the number of customer or AON orders submitted by a Professional executed on the Exchange by a member organization in a given month.<sup>4</sup> A Cancellation Fee is not assessed in a month in which fewer than 500 electronically delivered customer or AON orders submitted by a Professional, respectively, are cancelled.<sup>5</sup>

The Exchange is proposing to amend the Cancellation Fee in Section I so that the Cancellation Fee would not apply to customer orders in the Select Symbols.<sup>6</sup> The Cancellation Fee would continue to

<sup>3</sup> On October 1, 2010, UAL Corporation announced that as a result of a merger between UAL Corporation and Continental Airlines, Inc. that it would change its name and underlying symbol. UAL Corporation is now known as United Continental Holding, Inc.

<sup>4</sup> All customer and AON orders submitted by a Professional from the same member organization that are executed in the same series on the same side of the market at the same price within a 300 second period are aggregated and counted as one executed customer or AON option order submitted by a Professional.

<sup>5</sup> A Cancellation Fee does not apply to pre-market cancellations, Complex Orders that are submitted electronically, unexecuted Immediate-or-Cancel (IOC) customer orders or cancelled customer orders that improved the Exchange's prevailing bid or offer (PBBO) market at the time the customer orders were received by the Exchange.

<sup>6</sup> The Select Symbols are listed in Section I of the Fee Schedule.

apply to Professional All-or-None ("AON") orders in the Select Symbols. The Cancellation Fee for both customer and Professional AON orders would continue to apply for all other symbols.

The Exchange believes the Cancellation Fee is no longer required for customers in the Select Symbols to cover the cost of system utilization due to planned capacity investments. In addition, the requirement to mark Professional orders has also alleviated some of the capacity issues that resulted from customer cancel orders.<sup>7</sup> The Exchange believes that by removing the Cancellation Fee for customer orders in the Select Symbols only will encourage trading in those Select Symbols. The Exchange intends to evaluate the customer Cancellation Fee for non-Select Symbols as well to determine if the volume from cancelled customer orders contributes to the system congestion.

Electronic Auction and Opening Process

The Exchange proposes to amend and clarify its Fee Schedule with respect to electronic auctions. Currently, complex orders executed electronically in the Exchange's Complex Order Live Auction ("COLA")<sup>8</sup> are assessed the Fees set forth in Part B of the Fee Schedule. Orders other than complex orders executed in electronic auctions (such as the Exchange's Quote Exhaust and Market Exhaust Auctions)<sup>9</sup>, and in the Exchange's opening process, are currently assessed the fees set forth in

<sup>7</sup> See Securities Exchange Act Release No. 61802 (April 5, 2010), 75 FR 17193 (March 30, 2010) (SR-Phlx-2010-05).

<sup>8</sup> COLA is the automated Complex Order Live Auction process. A COLA may take place upon identification of the existence of a COLA-eligible order either: (1) Following a COOP, or (2) during normal trading if the Phlx XL II system receives a Complex Order that improves the cPBBO. See Exchange Rule 1080. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL."

<sup>9</sup> Market Exhaust occurs when there are no Phlx XL II participant (specialist, SQT or RSQT) quotations in the Exchange's disseminated market for a particular series and an initiating order in the series is received. In such a circumstance, the Phlx XL II system, using Market Exhaust, will initiate a Market Exhaust auction for the initiating order. Under Market Exhaust, any order volume that is routed to away markets will be marked as an Intermarket Sweep Order or "ISO." See Exchange Rule 1082. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL."

Part A of the Fee Schedule. The Exchange is proposing to assess all orders executed in any of the Exchange's electronic auctions, and the opening process, the fees set forth in Part B of the Fee Schedule.

BKX

The Exchange is proposing to add BKX to the list of symbols that are subject to: (i) The fees set forth in Section II, and (ii) the options surcharge.<sup>10</sup> The Exchange proposes to assess a \$.10 per contract Option Surcharge on Specialists<sup>11</sup>, Registered Option Traders<sup>12</sup>, Streaming Quote Trader<sup>13</sup>, Remote Streaming Quote Trader<sup>14</sup>, Broker-Dealers and Firms. The Exchange believes that the addition of BKX will encourage order flow to the Exchange.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after November 1, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>16</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The removal of one symbol from the Fee Schedule regarding Rebates and

<sup>10</sup> This footnote contained an inaccuracy and was deleted. See E-mail from Angela Saccomandi Dunn, Assistant General Counsel, Phlx to Ronesha A. Butler, Special Counsel, Division of Trading and Markets ("Division"), Commission dated November 2, 2010.

<sup>11</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>12</sup> A Registered Option Trader or ROT is defined in Exchange Rule 1014(b) as 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. A ROT includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. See Exchange Rule 1014 (b)(i) and (ii).

<sup>13</sup> A Streaming Quote Trader or SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned.

<sup>14</sup> A Remote Streaming Quote Trader or RSQT is defined Exchange Rule in 1014(b)(ii)(B) as 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 through AUTOM in eligible options to which such RSQT has been assigned.

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

<sup>16</sup> 15 U.S.C. 78f(b)(4).

Fees for Adding and Removing Liquidity will apply to all categories of participants in the same manner. Also, the amendment to the UUA symbol is for ease of reference in identifying symbols.

The Exchange believes that the proposed amendments to the customer Cancellation Fee, with respect to Select Symbols, are reasonable because they are no longer required to recover costs associated with excessive order cancellation activity. The Exchange believes that the proposed rule change will enable the Exchange to determine the impact, if any, on system capacity when there is no fee to cancel certain order types. The Exchange believes that there should not be increased system congestion as a result of removing the customer Cancellation Fee in the Select Symbols. The Exchange will assess the impact to the system after the removal of the fee to determine if the number of cancellations does not once again increase. The Exchange removed the customer Cancellation Fee only in Select Symbols to make such a determination.

The Exchange believes that the Cancellation Fee is still necessary with respect to Professional AON orders because those orders are treated as customer orders for purposes of priority. Member organizations must indicate whether orders are for Professionals. The Exchange believes that this requirement to mark an order as Professional has shifted the source of the system congestion from the customer orders to the Professional AON orders. By continuing to assess a Cancellation Fee for Professional AON orders in all symbols will continue to ease system congestion and allow the Exchange to recover costs associated with excessive order cancellation activity.

The Exchange's proposal to assess all electronic auctions and the opening process the fees in Part B will simplify the Fee Schedule so that all participants will equally be assessed the complex order fees. The fees in Part B are reasonable because they are equal to or lower than the fees currently assessed on the various market participants. Customers will receive a higher rebate as a result of amending the fees.<sup>17</sup>

The Exchange believes that assessing a \$.10 Options Surcharge on BKX and adding BKX to Section II, Equity Options, is equitable since it is similar to option surcharges<sup>18</sup> assessed by the

International Securities Exchange, LLC ("ISE")<sup>19</sup> and NYSEArca, Inc. ("NYSE Arca")<sup>20</sup>.

#### *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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>21</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-150 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.

ISE and NYSE Arca fees. See E-mail from Angela Saccamandi Dunn, Assistant General Counsel, Phlx to Ronessa A. Butler, Special Counsel, Division, Commission dated November 2, 2010.

<sup>19</sup> See ISE's Schedule of Fees.

<sup>20</sup> See NYSE Arca's Fee Schedule.

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2010-150. 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,<sup>22</sup> 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 website 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 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-2010-150 and should be submitted on or before December 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-28454 Filed 11-10-10; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>22</sup> The text of the proposed rule change is available on Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, on the Commission's Web site at <http://www.sec.gov>, at Phlx, and at the Commission's Public Reference Room.

<sup>23</sup> 17 CFR 200.30-3(a)(12).

<sup>17</sup> The Commission notes that firms and broker-dealers will also receive rebates under the proposed Fee Schedule.

<sup>18</sup> The Exchange revised the text to more accurately describe which Phlx fees were similar to