

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63252; File No. SR-Phlx-2010-150)

November 5, 2010

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website 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.

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 UAUA

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 "UAUA" to "UAL" to reflect a recent corporate action.³

³ 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.

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.⁴ 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.⁵

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.⁶ The Cancellation Fee would continue to 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

⁴ 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.

⁵ 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.

⁶ The Select Symbols are listed in Section I of the Fee Schedule.

issues that resulted from customer cancel orders.⁷ 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")⁸ 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)⁹, and in the Exchange's opening process, are currently

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

⁸ 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."

⁹ 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."

assessed the fees set forth in 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.¹⁰ The Exchange proposes to assess a \$.10 per contract Option Surcharge on Specialists¹¹, Registered Option Traders¹², Streaming Quote Trader¹³, Remote Streaming Quote Trader¹⁴, 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.

¹⁰ This footnote contained an inaccuracy and was deleted. See Email 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.

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

¹² 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).

¹³ 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.

¹⁴ 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.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁶ 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 Fees for Adding and Removing Liquidity will apply to all categories of participants in the same manner. Also, the amendment to the UAUA 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 cancellation 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

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

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.¹⁷

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 surcharges¹⁸ assessed by the International Securities Exchange, LLC ("ISE")¹⁹ and NYSEArca, Inc. ("NYSE Arca")²⁰.

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.

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

¹⁸ The Exchange revised the text to more accurately describe which Phlx fees were similar to ISE and NYSE Arca fees. See Email from Angela Saccomandi Dunn, Assistant General Counsel, Phlx to Ronsha A. Butler, Special Counsel, Division, Commission dated November 2, 2010.

¹⁹ See ISE's Schedule of Fees.

²⁰ See NYSE Arca's Fee Schedule.

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.²¹ 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. 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.

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

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,²² 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 10:00 a.m. and 3:00 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

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

to File Number SR-Phlx-2010-150 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

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

Florence E. Harmon
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).