

equivalent rebates and fees for ISE member and non-member subscribers. In addition, because the proposal will apply the revised rebates and fees retroactively to April 1, 2010, the revised rebates and fees will have the same effective date, thereby promoting consistency in the DECN's fee schedule. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-ISE-2010-24) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61834; File No. SR-BATS-2010-006]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.9(c)(12), entitled "Destination Specific Order"

April 2, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 30, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 11.9(c)(12), entitled "Destination Specific Order."

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, on the Commission's Web site at <http://www.sec.gov>, 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 parts of such statements.

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

##### 1. Purpose

The purpose of the proposed rule change is to provide an additional option to Users of the Exchange with respect to the designation of a "Destination Specific Order". Destination Specific Orders are market or limit orders that are routed by BATS to an away trading center after first being exposed to the BATS order book ("BATS Book"). As currently written, the Rule 11.9(c)(12) requires the specification of a particular away trading center to which an order will route after checking the BATS Book. Accordingly, BATS currently offers Users options to route to a single trading center designated by the User after first being exposed to the BATS Book. For instance, a User can currently send an order that first checks the BATS Book for liquidity and then routes to the New York Stock Exchange. The Exchange also currently offers Users with the option to send a "Modified Destination Specific Order," defined in BATS Rule 11.9(c)(13), which routes to one or more away trading centers without first checking the BATS Book. The only form of Modified Destination Specific Order

currently offered by the Exchange routes to multiple Alternative Trading Systems disclosed by the Exchange prior to checking the BATS Book (referred to by the Exchange as a "Dark Scan" order). Although the identity of the Alternative Trading Systems to which a Dark Scan order may route is disclosed to Exchange Users, Users cannot designate the specific Alternative Trading System or Systems, but rather, rely on the Exchange's smart order router to determine the Alternative Trading System or Systems to which the order will be routed and the order of such routing.

The proposed rule change is being submitted by the Exchange so that BATS can offer Users the additional option to designate an order to route to various undisclosed Alternative Trading Systems selected by the Exchange after first being exposed to the BATS Book (a "BATS + DART Order"). Accordingly, as amended, a User will be able to designate an order that will first check the BATS Book for liquidity and then be routed to one or to multiple Alternative Trading Systems with which the Exchange has connections. Similar to a Dark Scan order, a User will not be able to designate any specific Alternative Trading System or Systems to which the order will be routed, but rather, the Exchange will make the routing decisions with respect to any BATS + DART Order that is not filled on the Exchange. Orders that are not executed in full after routing away would continue to be processed by the Exchange as described in BATS Rule 11.13(a)(2).

The Exchange is not proposing at this time to add functionality that would allow Users to designate multiple specific venues to which an order will route. Rather, a Destination Specific Order will continue to refer to an order that first checks the Exchange for liquidity and then routes to a specific venue or venues, with the only choice of multiple venues being the undisclosed list of Alternative Trading Systems offered through the DART routing program. Users that wish to have the Exchange first attempt to execute an order on the BATS Book and, if not executed, then route to multiple different venues, including Alternative Trading Systems, can use the Exchange's general best execution routing strategies, DART and CYCLE, but cannot specifically identify the venues to which the Exchange will route.

As occurs today, the routing performed in connection with this proposed change will be conducted by an affiliate of the Exchange, BATS

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

Trading, Inc. (the "Outbound Router"), which is regulated as a facility of the Exchange (as defined in Section 3(a)(2) of the Act),<sup>5</sup> subject to Section 6 of the Act.<sup>6</sup> The role and functions of the Outbound Router are set forth in BATS Rule 2.11, which has previously been approved by the Commission. Routing of Destination Specific Orders under this proposed amendment will be subject to the same requirements as other orders routed by the Outbound Router, which are contained in Rule 2.11. Accordingly, the Exchange believes that routing of Destination Specific Orders under this proposed amendment continues to be consistent with the previously approved functions of the Outbound Router, and the Exchange does not believe that such functions are expanded through this proposed amendment.

## 2. Statutory Basis

Approval of the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>7</sup> In particular, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. Specifically, the Exchange believes that the proposed amendment to the Destination Specific Order will enhance order execution opportunities for market participants by allowing such participants to access, at a potentially reduced fee, pools of liquidity in addition to orders resting on the Exchange.

### A. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

### B. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

### i. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

*Because the foregoing proposed rule change does not:* (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. In addition, the Exchange believes that the proposed rule change is consistent with other rules of the Exchange previously approved by the Commission, including (1) the Exchange's Modified Destination Specific Order<sup>13</sup> and (2) Rule 2.11, which governs the Outbound Router of the Exchange.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission believes that waiving the 30-day operative delay will immediately provide market participants with additional choices in order execution and access to additional pools of liquidity. For these reasons, the Commission designates the proposed rule change as operative upon filing.<sup>14</sup>

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> See BATS Rule 11.9(c)(13).

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

### ii. 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-BATS-2010-006 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-BATS-2010-006. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

<sup>5</sup> 15 U.S.C. 78c(a)(2).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

available publicly. All submissions should refer to File Number SR-BATS-2010-006 and should be submitted on or before April 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61828; File No. SR-Phlx-2010-52]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Order Price Protection

April 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 31, 2010, NASDAQ OMX PHLX, Inc. (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1080, Commentary .07, to provide for an Order Price Protection feature on Phlx XL, the Exchange’s enhanced electronic trading platform for options.<sup>3</sup>

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

In order to address risks to market participants of human error in entering orders at unintended prices, the Exchange has developed a program in the Phlx XL system known as Phlx XL Order Price Protection (“OPP”). OPP is a feature of Phlx XL that would prevent certain orders from executing or being placed on the book at prices outside pre-set standard limits. The Phlx XL system would reject such orders rather than executing them automatically. The operation of the Phlx XL system would be set forth in new Commentary .07 to Phlx Rule 1080, Phlx XL and Phlx XL II.

The OPP feature would prevent certain day limit, good til cancelled, immediate or cancel, and all-or-none orders at prices outside of certain pre-set limits from being accepted by the system. OPP would apply to all options, but would not apply to market orders, stop limit orders, Intermarket Sweep Orders, or complex orders. OPP would be operational each trading day after the opening until the close of trading, except during trading halts. The Exchange would also be able to temporarily deactivate OPP from time to time on an intraday basis at its discretion if it determined that volatility warranted deactivation. Members would be notified of intraday OPP deactivation due to volatility and any subsequent intraday reactivation by the Exchange through the issuance of system status messages.

The OPP will help users of Phlx XL control risk by checking each order, before it is accepted into the system, against certain parameters established by Rule 1080, Commentary .07. It would compare price instructions on the order against the current contra-side NBBO, and would automatically reject the order if it is priced outside the range established in Rule 1080, Commentary .07.

The range of permissible orders depends on whether the contra-side of an incoming order is greater than \$1.00,

or equal to or less than \$1.00. If the NBBO on the contra-side of an incoming order were greater than \$1.00, orders with a limit more than 50% through such contra-side NBBO would be rejected by Phlx XL upon receipt. For example, if the NBBO on the offer side were \$1.10, an order to buy options for more than \$1.65 would be rejected. Similarly, if the NBBO on the bid side were \$1.10, an order to sell options for less than \$0.55 would be rejected.

If the NBBO on the contra-side of an incoming order were less than or equal to \$1.00, orders with a limit more than 100% through such contra-side NBBO would be rejected by Phlx XL upon receipt. For example, if the NBBO on the offer side were \$1.00, an order to buy options for more than \$2.00 would be rejected. However, if the NBBO of the bid side of an incoming order to sell were less than or equal to \$1.00, the OPP limits set forth above would result in all incoming sell orders being accepted regardless of their limit. To illustrate, if the NBBO on the bid side were equal to \$1.00, the OPP limits provide protection such that all orders to sell with a limit less than \$0.00 would be rejected.

The Exchange anticipates implementing the OPP feature on May 1, 2010. The Exchange will notify members through the issuance of an Options Trader Alert when the feature becomes operational and the rule becomes operative.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act <sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act <sup>5</sup> in particular, in that it is designed 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, by mitigating risks to market participants of human error in entering orders at clearly unintended prices.

#### 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.

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

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

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).