

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55333; File No. SR-Phlx-2007-13)

February 22, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to 100 Share Away Markets in Non-Nasdaq Securities on XLE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 20, 2007, the Philadelphia Stock Exchange, Inc. (“Phlx” or “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 Phlx. The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal 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 Phlx proposes to modify XLE, Phlx’s equity trading system, so as to prevent XLE from trading through 100 share away quotations in non-Nasdaq securities. In addition, XLE will be modified to route to 100 share away quotations in non-Nasdaq securities. Accordingly, Phlx Rule 1(cc)(3) will be modified to include 100 share away quotations in the definition of Protected Bids, Offers and Quotations for non-Nasdaq securities before the Trading Phase Date.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available at the Phlx, the Commission's Public Reference Room, and www.phlx.com.

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 Phlx 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 Phlx 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 reflect the impending elimination of the Intermarket Trading System ("ITS") Plan in favor of the Trading Phase Date of Regulation NMS on March 5, 2007 by protecting additional away quotations in XLE. This would be accomplished by modifying XLE to consider 100 share bids, offers and quotations in non-Nasdaq securities in other markets as Protected Bids, Offers and Quotations beginning on February 26, 2007. Therefore, XLE would route to 100 share away quotations in non-Nasdaq securities and would not trade-through or quote through such quotations unless simultaneously routing to those quotations, pursuant to Phlx Rules.

Currently, XLE trades and quotes through 100 share away quotations in non-Nasdaq securities. Additionally, XLE does not route to 100 share away quotations in non-Nasdaq securities. This is because in the ITS Plan, which applies to non-Nasdaq securities, and the Phlx Rules adopted pursuant to the ITS Plan, provide an exemption from trade-through and from

locking and crossing protection for 100 share bids and offers of away markets. In contrast, commencing with the Trading Phase Date of Regulation NMS, which is currently March 5, 2007, the exemption for 100 share away quotation in the ITS Plan will not be available to Phlx (or any other exchange) under the new Order Protection Rule, Rule 611.⁵ XLE will be ready for the Trading Phase Date in that it will not, among other things, trade or quote through 100 share away markets. However, Phlx believes that it is appropriate to modify its trading system, XLE, on February 26, 2007, to take 100 share away markets in non-Nasdaq securities into account for trading, quoting and routing because Phlx is currently rolling out XLE's routing functionality in non-Nasdaq securities.

Phlx has observed that other markets trading non-Nasdaq securities pursuant to the ITS Plan have modified or adapted their systems to provide for very rapid or immediate execution of their displayed quotations, including quotations of 100 shares. Phlx believes that the system modification in this proposed rule change could provide more opportunities for executions of orders that XLE routes away pursuant to Phlx Rules, since XLE would begin routing to 100 share away quotations, in addition to larger quotations. Finally, Phlx would modify Phlx Rule 1(cc)(3) to clarify the change to XLE by stating that a Protected Bid, Offer or Quotation in non-Nasdaq securities includes a 100 share bid, offer or quotation.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect

⁵ 17 CFR 242.611.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by increasing the category of Protected Bids, Offers and Quotations in non-Nasdaq securities to include 100 share away bids, offers and quotations.

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 that is 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder⁹ because the proposal 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 if consistent with the protection of investors and the public interest.¹⁰

The Exchange has requested that the Commission waive the 30-day operative delay and make the proposed rule change operative on February 26, 2007. The Commission hereby grants

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ Rule 19b-4(f)(6)(iii) under the Act requires that a self-regulatory organization submit to the Commission written notice of its 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. Phlx has satisfied the pre-filing requirement.

the request.¹¹ The Commission believes that such waiver is consistent with the protection of investors and the public interest because the earlier operative date would enhance the protection of quotations in non-Nasdaq exchange-listed securities displayed in away markets in that, pursuant to the proposal, the Phlx would no longer trade or quote though 100 share away quotations in non-Nasdaq securities. Further, the earlier operative date will allow XLE Participants to gain additional experience with the expanded XLE trading environment and functionality prior to its full implementation on the Trading Phase Date.

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.¹²

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-2007-13 on the subject line.

¹¹ For purposes only of waiving the 30-day operative delay of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² See 15 U.S.C. 78s(b)(3)(C).

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2007-13. 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 inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. 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-2007-13 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).