

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55860; File No. SR-Phlx-2007-41)

June 5, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Modification of Phlx Rule 185A

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 May 25, 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 filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which rendered 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 amend Phlx Rule 185A, which clarified the entry, routing and other requirements of certain orders on XLE, the Exchange’s electronic equity trading system, prior to March 5, 2007, the Trading Phase Date,<sup>5</sup> to make certain provisions of the rule applicable until

---

<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).

<sup>5</sup> The Trading Phase Date was the “[f]inal date for full operation of Regulation NMS-compliant trading systems [by exchanges] that intend[ed] to qualify their quotations for trade-through protection under Rule 611 [during the roll-out of Regulation NMS].” See Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007).

the All Stocks Phase Date.<sup>6</sup> The text of the proposed rule change is available on Phlx's Web site, <http://www.phlx.com>, at Phlx's principal office, 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 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 clarify the obligation of XLE Participants when submitting certain XLE order types before the All Stocks Phase Date. Phlx Rule 185A, Orders and Order Execution – Temporary, was adopted in November 2006, to clarify the entry, routing and other requirements of certain orders on XLE in the period before the Trading Phase Date.<sup>7</sup> Phlx Rule 185A was subsequently amended twice.<sup>8</sup> Each amendment addressed the

---

<sup>6</sup> The All Stocks Phase Date is the date that full industry compliance with Rules 610 and 611 of Regulation NMS, 17 CFR 242.610 and 611, begins. Currently, the All Stocks Phase Date is scheduled to be August 20, 2007. See Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007). However, should the Commission change the All Stocks Phase Date, the changes to Phlx Rule 185A adopted in this proposed rule change will remain in effect until that new date.

<sup>7</sup> See Securities Exchange Act Release No. 54760 (November 15, 2006), 71 FR 67687 (November 22, 2006) (SR-Phlx-2006-76).

<sup>8</sup> See Securities Exchange Act Release Nos. 55044 (January 5, 2007), 72 FR 1361 (January 11, 2007) (SR-Phlx-2006-92) and 54788 (November 20, 2006), 71 FR 68877 (November 28, 2006) (SR-Phlx-2006-77).

period before the Trading Phase Date.

Phlx Rule 185A clarified the routing of orders from XLE to other marketplaces,<sup>9</sup> the entry of Intermarket Sweep Orders and IOC Cross Orders marked by the XLE Participant entering the order as meeting the requirement of an intermarket sweep order,<sup>10</sup> the requirements for certain IOC Cross Orders marked as Benchmark,<sup>11</sup> and the requirements for certain IOC Cross Orders marked as Qualified Continent Trades.<sup>12</sup> At this time, Phlx proposes to delete the provisions of Phlx Rule 185A that applied to routing and modify the remaining provisions of the rule to make them applicable to the period prior to the All Stocks Phase Date.

Specifically Phlx Rule 185A(a) is being modified to delete provisions regarding routing of orders on XLE since intermarket sweep orders have been available at all venues to which XLE will route an order since the Trading Phase Date. In its place, Phlx Rule 185A(a) will define the term “All Stocks Phase Date.” Additionally, Phlx Rule 185A(b)-(d) are being amended to substitute the term “All Stocks Phase Date” for “Trading Phase Date” as the provisions of these sections of the rule will apply until the All Stocks Phase Date. At that time, Phlx will delete Phlx Rule 185A from its rulebook as it will no longer have any effect.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>14</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect

---

<sup>9</sup> See Phlx Rule 185A(a).

<sup>10</sup> See Phlx Rule 185A(b).

<sup>11</sup> See Phlx Rule 185A(c).

<sup>12</sup> See Phlx Rule 185A(d).

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

<sup>14</sup> 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.

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

Because the foregoing rule (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not 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, provided that the Exchange has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup> As required under Rule 19b-4(f)(6)(iii) under the Act,<sup>17</sup> Phlx provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, prior to the date of the filing of the proposed rule change.

---

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

A proposed rule change filed under Rule 19b-4(f)(6) under the Act<sup>18</sup> normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) under the Act<sup>19</sup> permits the Commission to 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, which would make the rule change effective and operative upon filing. In its filing, the Exchange stated its belief that waiver of the operative delay would be consistent with the protection of investors and the public interest because the amended temporary rule should eliminate potential confusion relating to orders on XLE and clarify XLE Participant obligations when submitting certain order types to the Exchange.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change clarifies the obligations of XLE Participants when submitting certain order types to the Exchange before the All Stocks Phase Date. In particular, the proposal amends the text of Phlx Rule 185A, which had previously been applicable to the Trading Phase Date, to reflect the applicability of the those provisions which will remain in effect until the All Stocks Phase Date. Once the All Stocks Phase Date arrives, the applicable provisions of Phlx Rule 185 will be operative and the Exchange will no longer need temporary Rule 185A.<sup>20</sup> Accordingly, consistent with the

---

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>20</sup> As the Exchange has made clear in its filing, it intends to delete Phlx Rule 185A from its rulebook upon the All Stocks Phase Date. Given the definitively limited application of the amended rule and the specified removal date, the Exchange does not intend to file a separate proposed rule change to remove the rule text from its rulebook, but rather will remove the rule as specified.

protection of investors and the public interest, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>21</sup>

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.<sup>22</sup>

#### 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-2007-41 on the subject line.

##### 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-2007-41. 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

---

<sup>21</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>22</sup> See 15 U.S.C. 78s(b)(3)(C).

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-2007-41 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.<sup>23</sup>

Florence E. Harmon  
Deputy Secretary

---

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