

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54760; File No. SR-Phlx-2006-76)

November 15, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Rule 185A, Intermarket Sweep Orders – Temporary

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 November 13, 2006, 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 Act³ and Rule 19b-4(f)(6) thereunder,⁴ 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 adopt Phlx Rule 185A, Intermarket Sweep Orders – Temporary, which describes: (1) the obligations of the Exchange sending orders to other market centers, and (2) the obligations of XLE Participants sending Intermarket Sweep Orders (“ISOs”)⁵ or IOC Cross Orders that are marked as meeting the requirement to route to other market centers⁶ (both types of orders hereinafter are referred to as “Incoming Sweep Orders”). Specifically, before

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).

⁵ See Phlx Rule 185(b)(2)(C).

⁶ See Phlx Rule 185(c)(2)(D).

Rule 611 of Regulation NMS⁷ is operative on the Exchange (the “Trading Phase Date”),⁸ Phlx would use away market obligations instead of immediate-or-cancel intermarket sweep orders. An away market obligation is an immediate or cancel limit order for an NMS stock generated by Phlx in connection with the execution of an order by Phlx and routed to one or more away market centers to execute against all better-priced protected quotations displayed by the other market centers up to their displayed size. If the away market center is capable of receiving an intermarket sweep order, the Exchange may generate and utilize an intermarket sweep order as the away market obligation. In addition, before the Trading Phase Date, the proposed new rule would expressly require XLE Participants sending Incoming Sweep Orders to simultaneously send an intermarket sweep order (or comparable order) for the full displayed size of the top of book of every other market center displaying a better-priced protected quotation. 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.

⁷ 17 CFR 242.611.

⁸ The Trading Phase Date is February 5, 2007. See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006) (File No. S7-10-04).

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 operation of XLE’s outbound routing and Incoming Sweep Orders before the Trading Phase Date. Currently, Phlx Rules 185(b)(1)(C)(i)-(ii) and (b)(2)(B) state that when routing out to away market centers, Phlx will use “immediate-or-cancel intermarket sweep orders” to execute against any away market centers with better-priced quotations. However, prior to the Trading Phase Date, not all away market centers will accept intermarket sweep orders. Therefore, in order to implement away routing before the Trading Phase Date, Phlx will use “away market obligations” instead of “immediate-or-cancel intermarket sweep orders.” In addition, before the Trading Phase Date, Phlx will require XLE Participants who send Incoming Sweep Orders to the Exchange to simultaneously send an intermarket sweep order (or comparable order) for the full displayed size of the top of book of every other market center displaying a better-priced protected quotation. This requirement is intended to mirror the requirement, which will be operative after the Trading Phase Date, that all such Incoming Sweep Orders meet the requirement of intermarket sweep orders in Rule 600(b)(30) of Regulation NMS.⁹ The Exchange notes that it has requested an exemption from the provisions of the Intermarket Trading System Plan to allow, among other things, the Exchange and its XLE Participants to implement outbound routing and Incoming Sweep Orders in this manner prior the Trading Phase Date.¹⁰

⁹ 17 CFR 242.600(b)(30).

¹⁰ See Letter from John Dayton, Director and Counsel, Phlx, to Nancy M. Morris, Secretary, Commission, dated November 9, 2006. See also Letter from David Shillman, Associate Director, Division of Market Regulation, Commission, to John Dayton, Director and Counsel, Phlx, dated November 14, 2006.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² 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.

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 by the Exchange.

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 Act¹³ and Rule 19b-4(f)(6)

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(3)(A).

thereunder.¹⁴ As required under Rule 19b-4(f)(6)(iii) under the Act,¹⁵ 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.

A proposed rule change filed under Rule 19b-4(f)(6) under the Act¹⁶ normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) under the Act¹⁷ 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. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, because it allows the Exchange to implement this proposal without delay in order to accommodate the Exchange's plans to commence operation of XLE. The Commission notes that the Exchange has represented that the proposed rule change is based upon a proposed rule change of the American Stock Exchange LLC ("Amex").¹⁸ For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁹

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ See Securities Exchange Act Release No. 54709 (November 3, 2006), 71 FR 65847 (November 9, 2006) (SR-Amex-2006-72) (approval order for Amex's new electronic trading system on a pilot basis, specifically Amex Rules 126A-AEMI-One and 131-AEMI-One).

¹⁹ For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 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.²⁰

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-2006-76 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-2006-76. 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

²⁰ See 15 U.S.C. 78s(b)(3)(C).

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-2006-76 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.²¹

Nancy M. Morris
Secretary

²¹ 17 CFR 200.30-3(a)(12).