

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-54788; File No. SR-Phlx-2006-77)**

**November 20, 2006**

**Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Intermarket Sweep Orders in Nasdaq Securities**

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 November 15, 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. On November 17, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which rendered the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the amended 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, Intermarket Sweep Orders – Temporary, to describe the obligations of the XLE Participants sending Intermarket Sweep Orders (“ISOs”)<sup>6</sup> or IOC Cross Orders that are marked as meeting the requirement to route to other market centers<sup>7</sup>

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

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

<sup>3</sup> Partial Amendment No. 1 corrected a typographical error in the original filing.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> See Phlx Rule 185(b)(2)(C).

<sup>7</sup> See Phlx Rule 185(c)(2)(D).

(both types of orders hereinafter are referred to as “Incoming Sweep Orders”) in Nasdaq Global Market Securities and Nasdaq Capital Market Securities (“Nasdaq Securities”). Specifically, before Rule 611 of Regulation NMS<sup>8</sup> is operative on the Exchange (the “Trading Phase Date”),<sup>9</sup> the amended rule would expressly require XLE Participants sending Incoming Sweep Orders in Nasdaq Securities to simultaneously send an intermarket sweep order (or comparable order) for the full displayed size of the top of book of every national securities exchange or national securities association 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.

**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 Incoming Sweep Orders in Nasdaq Securities before the Trading Phase Date. Before the Trading Phase Date, Phlx will require XLE Participants who send Incoming Sweep Orders to the Exchange in Nasdaq

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<sup>8</sup> 17 CFR 242.611.

<sup>9</sup> 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).

Securities to simultaneously send an intermarket sweep order (or comparable order) for the full displayed size of the top of book of every national securities exchange or national securities association 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.<sup>10</sup> Phlx recently adopted Rule 185A<sup>11</sup> to deal with, among other things, the obligations of XLE Participants sending Incoming Sweep Orders, but now seeks to more clearly state how Rule 185A applies to Nasdaq Securities because the reference to ITS Participant in the rule could be ambiguous.

## **2. Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>13</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.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>10</sup> 17 CFR 242.600(b)(30) (defining “intermarket sweep order”).

<sup>11</sup> See SR-Phlx-2006-76.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

**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 Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup> As required under Rule 19b-4(f)(6)(iii) under the Act,<sup>16</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.

A proposed rule change filed under Rule 19b-4(f)(6) under the Act<sup>17</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>18</sup> permits the Commission to designate a shorter time if such action is consistent with the

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

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

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

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

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 the proposed rule change clarifies the operation of Phlx Rule 185A with respect to the protection of better-priced quotations in Nasdaq Securities. Accordingly, the Commission designates the amended proposal to be effective and operative upon filing with the Commission.<sup>19</sup>

At any time within 60 days of the filing of the proposed rule change, as amended, 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>20</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, as amended, 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-2006-77 on the subject line.

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<sup>19</sup> 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).

<sup>20</sup> 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-2006-77. 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-2006-77 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>21</sup>

Nancy M. Morris  
Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).