

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55273; File No. SR-Phlx-2007-11)

February 12, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Trading Phase Date of Regulation NMS

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 6, 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 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 clarify the operation of XLE, the Exchange’s new equity trading system, and various Phlx Rules in light of the Commission’s extension of the Trading Phase Date of Regulation NMS from February 5, 2007 until March 5, 2007.⁵ There is no change to Phlx Rule text.

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 Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007).

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 effect on XLE and various Phlx Rules of the Commission's extension of the Trading Phase Date of Regulation NMS from February 5, 2007 until March 5, 2007.⁶ The Trading Phase Date is significant to the Exchange because that is the "[f]inal date for full operation of Regulation NMS-compliant trading systems [by exchanges] that intend to qualify their quotations for trade-through protection under Rule 611 [during the roll-out of Regulation NMS]."⁷ The Phlx intends to qualify its quotations for trade-through protection under Rule 611 during the roll-out of Regulation NMS and therefore intends to operate a Regulation NMS-compliant trading system no later than the Trading Phase Date.⁸

A number of Phlx Rules or portions of Rules adopted by Phlx in connection with XLE were approved with delayed effectiveness by the Commission until the Trading Phase Date that

⁶ Id.

⁷ Id. at 4203.

⁸ See Phlx Rule 160.

was in effect at that time, which was February 5, 2007.⁹ With this proposed rule change, the Exchange clarifies that the effectiveness of these rules or portions of rules is tied to the Trading Phase Date, currently March 5, 2007, not to February 5, 2007. The Phlx Rules that are affected by this clarification include, but are not necessarily limited to the following: Phlx Rule 1(cc), Definition of Protected Bid, Offer or Quotation; Phlx Rule 185(b)(2)(C), regarding Intermarket Sweep Orders (“ISOs”);¹⁰ Phlx Rule 185(c)(2)(D), regarding IOC Cross Orders marked by the XLE Participant entering the order as meeting the requirements of an intermarket sweep order in Regulation NMS Rule 600(b)(30);¹¹ Phlx Rule 185(c)(3), regarding IOC Cross Orders marked Benchmark or Qualified Contingent Trade;¹² Phlx Rule 185(h), regarding the “self-help” exemption to Rule 611; and Phlx Rule 186, Locking or Crossing Quotations in NMS Stocks. The Exchange also clarifies that the use of the term “Trading Phase Date” in Phlx Rule 185A means the Trading Phase Date, currently March 5, 2007, not February 5, 2007.

Finally, the XLE Approval Order noted that the certain features of XLE would be rolled out in three phases. Phases 1 and 2, concerning two-sided orders and “Do Not Route” orders, are

⁹ See Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (“XLE Approval Order”).

¹⁰ Phlx notes, however, ISOs and IOC Cross Orders marked by the XLE Participant entering the order as meeting the requirements of an intermarket sweep order in Regulation NMS Rule 600(b)(30) currently have a limited effectiveness pursuant to Phlx Rule 185A(b). See Securities Exchange Act Release Nos. 54788 (November 20, 2006), 71 FR 68877 (November 28, 2006) (SR-Phlx-2006-77) and 54760 (November 15, 2006), 71 FR 67687 (November 22, 2006) (SR-Phlx-2006-76).

¹¹ See supra note 10.

¹² Phlx notes, however, IOC Cross Orders marked Benchmark or Qualified Contingent Trade for Nasdaq securities currently are effective pursuant to Phlx Rule 185A(c) and (d). See Securities Exchange Act Release No. 55044 (January 5, 2007), 72 FR 1361 (January 11, 2007) (SR-Phlx-2006-92). In addition, Phlx may file additional proposed rule change(s) regarding IOC Cross Orders marked Benchmark or Qualified Contingent Trade for non-Nasdaq securities before March 5, 2007.

completed. Phase 3, routing functionally, is currently being rolled out and is scheduled to be completed before March 5, 2007.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁴ 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 clarifying the effect on Phlx Rules of the recent extension of the Trading Phase Date of Regulation NMS from February 5, 2007 until March 5, 2007.

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 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

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ As required under Rule 19b-4(f)(6)(iii) under the Act,¹⁷ 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 Act¹⁸ normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) under the Act¹⁹ 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 the proposed rule change clarifies the effect on Phlx Rules of the recent extension of the Trading Phase Date of Regulation NMS from February 5, 2007 until March 5, 2007.²⁰ Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.

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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

²⁰ For the purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.²¹

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-2007-11 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-2007-11. 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

²¹ See 15 U.S.C. 78s(b)(3)(C).

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-2007-11 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.²²

Florence E. Harmon
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).