

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55553; File No. SR-Phlx-2007-23)

March 29, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Phlx Rule 607 and the XLE Fee Schedule

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 March 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, II, and III, below, which Items have been substantially prepared by the Phlx. The Phlx has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 amend Phlx Rule 607,<sup>5</sup> Covered Sale Fee, and the XLE Fee Schedule to include sale transactions that are routed through the Exchange’s routing facility.

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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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> The Commission notes that the text of Phlx Rule 607 was incorrectly reflected in Exhibit 5A of the Exchange’s Form 19b-4 filing. Specifically, the Exchange did not include two references to the “Intermarket Trading System” that were contained in the third paragraph of Rule 607 (the third paragraph of the rule is not affected by this proposed rule change). These two references have subsequently been deleted as part of another immediately effective proposed rule change (see File No. SR-Phlx-2007-31), filed on March 27, 2007.

The Exchange also proposes to clarify and update the language in Phlx Rule 607 and on the XLE Fee Schedule that relates to the routing of orders over the NMS Linkage Plan.

This proposal is scheduled to become effective for transactions settling on or after March 20, 2007. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at [www.phlx.com](http://www.phlx.com), 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

Currently, pursuant to Phlx Rule 607, each Phlx member and member organization engaged in executing sale transactions on the Exchange or executing transactions on another exchange or on a Participant in NASD's Alternative Display Facility ("ADF Participant"), which were routed over the NMS Linkage Plan, pays a Covered Sale fee equal to (i) the Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales.<sup>6</sup>

A sale transaction may now be routed through the Exchange's outbound routing facility,<sup>7</sup> which is not covered by the language set forth above. The Exchange's outbound routing facility

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<sup>6</sup> The term "Covered Sale fee" describes the fee that Phlx imposes to recover what it owes pursuant to Section 31 of the Act (15 U.S.C. 78ee). Other exchanges may use different terms to describe the same fee (e.g., "Activity Assessment Fee" or "Sales Value Fee").

<sup>7</sup> See Phlx Rule 185(g).

sends outbound orders to an away market broker for execution on an away market. Any covered sale type-fee assessed by an away market and incurred by the away market broker is then passed back to Phlx for payment, through the Exchange's outbound routing facility. This proposal inserts language to reflect that sale transactions may be routed over the Exchange's routing facility. Also, the proposed language reflects that the Covered Sale fee may be collected by the Exchange for these transactions to help the Exchange recover the amounts paid to other exchanges.

Additionally, the Exchange proposes to delete the reference to transactions routed over the NMS Linkage Plan, as it is no longer applicable. As discussed above, the Exchange has contracted with its outbound routing facility to route the Exchange's outbound orders. Thus, these orders are no longer routed outbound through the NMS Linkage Plan. Deleting the language relating to outbound routing over the NMS Linkage Plan will update Phlx Rule 607 and the XLE Fee Schedule to reflect the Exchange's current outbound routing practices. The provisions of Phlx Rule 607 pertaining to arrangements with other exchanges remain unchanged because the Exchange accepts orders routed inbound through the NMS Linkage Plan.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and paragraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder because it establishes a due, fee, or other charge applicable only to a member. 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.

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-2007-23 on the subject line.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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-2007-23. 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-2007-23 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>12</sup>

Florence E. Harmon  
Deputy Secretary

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