

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-54749; File No. SR-Phlx-2006-73)**

**November 14, 2006**

**Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Definition of Core Session for XLE**

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 9, 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 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 modify the definition of “Core Session” in Phlx Rule 101, Supplementary Material .02(2), to state that the Core Session shall take place for each equity security from 9:30:00 a.m. until 4:00:00 p.m., except for specified exchange-traded funds (“ETFs”) in which case the Core Session shall continue until 4:15:00 p.m. 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.

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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).

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

## **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 ensure that ETFs<sup>5</sup> that trade on the Exchange have the same primary or core trading hours as these securities have on their listing exchanges. When the Phlx begins trading using its new equity trading system, XLE,<sup>6</sup> the hours of operation will change from the current hours of operation used on the physical equity trading floor. Currently, for any given security, the Primary Trading Session hours on Phlx are identical to the hours of trading for that security on its primary market.<sup>7</sup> Many ETFs trade on their primary market until 4:15:00 p.m.

In adopting XLE, Phlx intended to modify its trading hours for equities, but did not intend to change the “primary” or “core” hours that securities are usually traded. Specifically, Phlx adopted its XLE Trading Hours with a Pre Market Session, a Core Session, and a Post Market Session. The Exchange intended the Core Session to be coextensive with existing

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<sup>5</sup> The Exchange represents that it will publish, via an Exchange circular, a list of the exchange-traded funds that will have a Core Session that ends at 4:15:00 p.m.

<sup>6</sup> XLE is the new equity trading system on Phlx for trading NMS Stocks. See Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR-Phlx-2006-43).

<sup>7</sup> See the pre-XLE version of Phlx Rule 101, Supplementary .02(i).

primary sessions that are employed by other exchanges. Phlx defined the Core Session as taking place “for each security during that security’s ‘regular trading hours’ as that term is defined in Rule 600(b)(64) of Regulation NMS.” However, by using the term “regular trading hours” as defined in Rule 600(b)(64) of Regulation NMS,<sup>8</sup> Phlx inadvertently failed to make its Core Session coextensive with existing primary sessions employed by other exchanges with respect to ETF trading. The Exchange notes that while other exchanges have adopted rules extending their primary trading session until 4:15:00 p.m. for certain securities (i.e., ETFs), “the Commission has not approved an [exchange] rule modifying the definition of regular trading hours [to some time other 4:00:00 p.m] for purposes of Rule 600(b)(64).”<sup>9</sup>

The Exchange now proposes to modify the definition of its Core Session for XLE to allow the Exchange to set the ending time of the Core Session to 4:15:00 p.m. for certain ETFs.<sup>10</sup> This will allow those ETFs that trade until 4:15:00 p.m. to trade until that time during XLE’s Core Session. The Exchange believes that this proposed rule change should reduce confusion among market participants who enter orders on multiple exchanges in these products by allowing for the harmonization of trading times across Phlx and other exchanges.

## **2. Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect

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<sup>8</sup> 17 CFR 600(b)(64).

<sup>9</sup> See Division of Market Regulation: Response to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS Question 7.02.

<sup>10</sup> See supra note 5 (noting that the Exchange will publish a circular listing the applicable ETFs).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</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**

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule does not (i) 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>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> As required under Rule 19b-4(f)(6)(iii) under the Act,<sup>15</sup> Phlx provided the Commission with written notice of its intent to file the proposed rule change, along with a brief

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

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

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>16</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>17</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. 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 operations of XLE. The Commission notes that the Exchange has represented that its proposed rule change is based upon a similar rule of the Chicago Stock Exchange, Inc. ("CHX").<sup>18</sup> For these reasons, the Commission designates the 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, 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>

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

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

<sup>18</sup> See Securities Exchange Act Release No. 54550 (September 29, 2006), 71 FR 59563 (October 10, 2006) (SR-CHX-2006-05) (approval order for CHX's new electronic trading system).

<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).

#### **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-2006-73 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-2006-73. 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-2006-73 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).