

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56443; File No. SR-Phlx-2007-64)

September 14, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Throughs for IOC Cross Orders on the XLE

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 August 30, 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 substantially by Phlx. Phlx filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it 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 remove the trade through restrictions for IOC Cross Orders⁵ entered during the Pre Market Session⁶ or the Post Market Session⁷ on XLE, Phlx’s electronic equity trading platform. In addition, Phlx proposes to re-organize Phlx Rule 185(c)(2)(D), which should make it more readable.

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(c)(2).

⁶ See Phlx Rule 101 Supplementary Material .02(1).

⁷ See Phlx Rule 101 Supplementary Material .02(3).

The text of the proposed rule change is available at www.phlx.com, the Exchange, and 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, 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. 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 increase the competitiveness of XLE by allowing an additional circumstance in which IOC Cross Orders may trade through. In addition, Phlx proposes to make Phlx Rule 185(c)(2)(D) more readable by dividing the rule into subsections. Phlx accepts IOC Cross Orders on XLE during all three XLE trading sessions, from 8:00 a.m. until 6:00 p.m. An IOC Cross Order is a two-sided order that matches, immediately and automatically on XLE, the buy side and sell side identified in the order, unless the price of the order would impermissibly trade at or through other orders on XLE or at away markets.⁸ Currently, IOC Cross Orders may trade through the Protected NBBO⁹ in four different situations

⁸ See Phlx Rule 185(c)(2)

⁹ See Phlx Rule 1(dd).

as described in Phlx Rule 185(c)(2)(D). These four situations correspond with either exceptions¹⁰ to or an exemption¹¹ from Rule 611(a) of Regulation NMS.¹²

At this time, Phlx proposes to add to Phlx Rule 185(c)(2)(D) another situation in which IOC Cross Orders may trade through the Protected NBBO. Proposed Phlx Rule 185(c)(2)(D)(v) would allow IOC Cross Orders that are entered during the Pre Market or Post Market Sessions to trade through the Protected NBBO. The Pre Market and Post Market Sessions take place outside of the hours 9:30 a.m. to 4:00 p.m. Rule 611(a) of Regulation NMS does not apply to trade throughs of, among other things, the Protected NBBO, outside of regular trading hours, which are 9:30 a.m. until 4:00 p.m.¹³ Therefore, Rule 611(a) of Regulation NMS would not prohibit IOC Cross Orders from trading through the Protected NBBO during the Pre Market or Post Market Sessions on XLE.¹⁴

¹⁰ Renumbered Phlx Rule 185(c)(2)(D)(i) corresponds with Rule 611(b)(4) of Regulation NMS, 17 CFR 242.611(b)(4). Renumbered Phlx Rule 185(c)(2)(D)(ii) corresponds with Rule 611(b)(5) of Regulation NMS, 17 CFR 242.611(b)(5). Renumbered Phlx Rule 185(c)(2)(D)(iii) corresponds with Rule 611(b)(7) of Regulation NMS, 17 CFR 242.611(b)(7).

¹¹ Renumbered Phlx Rule 185(c)(2)(D)(iv) corresponds with Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006).

¹² 17 CFR 242.611(a).

¹³ As used in Rule 611(a) of Regulation NMS, 17 CFR 242.611(a), the term “trade through” only applies during regular trading hours. 17 CFR 242.600(b)(77). Rule 600(b)(64) of Regulation NMS, 17 CFR 242.600(b)(64), defines regular trading hours as “the time between 9:30 a.m. and 4:00 p.m. Eastern Time, or such other time as is set forth in the procedures established pursuant to § 242.605(a)(2).” At this time, no such other time has been set forth, therefore the regular trading hours for all purposes is 9:30 a.m. until 4:00 p.m.

¹⁴ Although Rule 611(a) of Regulation NMS does not prohibit trade throughs during these times, a broker’s duty of best execution still applies. See Securities Exchange Act Release No. 51808 (June 9, 2005) 70 FR 37496 (June 29, 2005) (text at footnote 338).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁶ 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 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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) 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 public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

Normally, a proposed rule change filed under 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁹ 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 set forth in Rule 19b-4(f)(6)(iii) under the Act²⁰ because it permits activity that is currently permitted by the Chicago Stock Exchange (“CHX”) pursuant to CHX Article 20, Rule 5(a).²¹ The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest because the proposed rule change permits the Exchange to implement without further delay a proposal that is similar to the trade through protection currently effective on CHX. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.²²

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

¹⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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 Commission notes that Phlx has satisfied the five-day pre-filing notice requirement.

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ CHX Article 20, Rule 5(a) permits orders submitted to CHX to trade through orders on markets other than CHX if such trade through is not prohibited by Rule 611 of Regulation NMS, 17 CFR 242.611. Therefore, orders submitted to CHX outside of regular trading hours would be permitted to trade through orders on markets other than CHX.

²² For purposes only of waiving the 30-day operative delay of 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.

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-2007-64 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-2007-64. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00

pm. Copies of such filing also will be available for inspection and copying at the principal office of 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-2007-64 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.²³

Florence E. Harmon
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).