Proposed Rule Change by Philadelphia Stock Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial Amendment Withdrawal Section 19(b)(2) Section 19(b)(3)(A) Section 19(b)(3)(B)

Rule


Pilot Extension of Time Period for Commission Action Date Expires

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name John Last Name Dayton

Title Director and Counsel

E-mail john.dayton@phlx.com

Telephone (215) 496-5162 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 09/22/2006

By John Dayton Director and Counsel

(Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

John DAyton, john.dayton@phlx.com
The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

### Exhibit 1 - Notice of Proposed Rule Change

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3).

### Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

### Exhibit 3 - Form, Report, or Questionnaire

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

### Exhibit 4 - Marked Copies

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

### Exhibit 5 - Proposed Rule Text

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

### Partial Amendment

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.
The Philadelphia Stock Exchange, Inc. submits the following Partial Amendment as Amendment No. 3 to SR-Phlx-2006-43. The purpose of Amendment No. 3 is to make the following changes (set forth below) to the rule text contained in Exhibit 5 to Amendment No. 2, as well as to make the following changes to the purpose section discussion contained in Amendment No. 1 and the Exhibit 1 thereto.

1. Please replace Phlx By-Law Article X, Section 10-11(h) on page 9 of 178 in Exhibit 5 to Amendment No. 2 of the proposed rule change with the following, which correctly indicates that the letter “I” in “Independent Governors” is capitalized in the current text:

   (h) The Business Conduct Committee shall consist of nine (9) members as follows: three (3) Independent Governors; one (1) Member or person associated with a Member Organization whose business is principally carried out on XLE [the equity floor]; one (1) Member whose business is principally carried out on the equity options floor; and four (4) persons who are Members or persons associated with a Member Organization.

2. Please replace proposed Phlx Rule 1(x) on page 14 of 178 in Exhibit 5 to Amendment No. 2 of the proposed rule change with the following, which makes the word “order” in the second line of the definition plural:

   Participant Authorized User or PAU

   (x) The term “Participant Authorized User” or “PAU” shall mean an individual authorized by a member organization or a Sponsored Participant to enter orders, on its behalf, on XLE.

3. Please replace Phlx Rule 98 on page 21 of 178 in Exhibit 5 to Amendment No. 2 of the proposed rule change with the following, which underlines the comma after the word “Options” and before the word “and” in the third line of the rule to indicate that the comma is added text to the rule:

   Rule 98. Emergency Committee

   An Emergency Committee, consisting of the Chairman of the Board of Governors, the On-Floor Vice Chairman of the Exchange, the Off-Floor Vice Chairman of the Exchange, and the Chairmen of the [Floor Procedure, ]Options, and Foreign Currency Options Committees, shall be established and authorized to determine the existence of extraordinary market conditions or other emergencies. When the Committee determines that such an emergency condition exists, the Committee may take any action regarding the following: 1) operation of [PACE]XLE, AUTOM, or any other Exchange quotation, transaction reporting, execution, order routing or other systems or facility; 2) operation of, and trading on, any Exchange floor; 3) trading in any securities traded on the
Exchange; and 4) the operation of members' or member organizations' offices or systems. Any member of the Emergency Committee may request the Committee to determine whether an emergency condition exists. If the Committee determines that such an emergency exists and takes action, the Committee shall prepare a report of this matter and submit it promptly to the Securities and Exchange Commission and submit it to the Board of Governors at the Board's next regular meeting.

4. Please replace Phlx Rule 108 on page 24 of 178 in Exhibit 5 to Amendment No. 2 of the proposed rule change with the following, which removes the underlining before the word “post” because the space that appears there exists in the current text of the rule:

Rule 108.

Bids and Offers to Be Made Within Six Feet of Post

All bids and offers in any security on the floor shall be made within six feet of the post assigned to such security by the appropriate floor Committee.

5. Please replace Phlx Rule 119 on page 28 of 178 in Exhibit 5 to Amendment No. 2 of the proposed rule change with the following, which adds the existing language before subsection (a) to show that the language is not changed:

Rule 119.

Precedence of Highest Bid

The highest bid shall have precedence in all cases. Where bids are made at the same price, the priority and precedence shall be determined in accordance with the following rules:

(a)-(f) No Change.

(g) This Rule shall not apply to any bid on XLE.

6. Please replace the first paragraph of Phlx Rule 124(a) on page 29 of 178 in Exhibit 5 to Amendment No. 2 of the proposed rule change with the following, which correctly indicates that the words “summoned to the trading crowd” do not appear in the current text:

Disputes

Rule 124. (a) Disputes occurring on and relating to the trading floor, if not settled by agreement between the members interested, shall be settled, if practicable, by vote of the members knowing of the transaction in question; if not so settled, they shall be settled by a Floor Official designated by Market Surveillance to rule on the dispute.
7. Please replace proposed Phlx Rule 171(b)(5) on page 43 of 178 in Exhibit 5 to Amendment No. 2 of the proposed rule change with the following, which corrects the name of the Series 7 Examination and replaces the semicolon at the end of the text with a period:

   To be eligible for registration as a MMAT, a person must have served as a dealer-specialist or market maker on a registered national securities exchange or association (or be deemed to have similar experience from having functioned as a trader) for at least one year within three years of the date of application, or, in the alternative, must successfully complete the General Securities Registered Representative Examination (Series 7).

8. Please replace proposed Phlx Rule 188 on page 57 of 178 in Exhibit 5 to Amendment No. 2 of the proposed rule change with the following, which replaces the words “exception or exemption to Rule 611 of Regulation NMS” in the third line of the rule with “exception to or exemption from Rule 611 of Regulation NMS” and adds the sentence “If a trade is executed pursuant to both the intermarket sweep order exception of Rule 611(b)(5) or (6) of Regulation NMS and the self-help exception of Rule 611(b)(1) of Regulation NMS, such trade shall be identified as executed pursuant to the intermarket sweep order exception.”:

   Rule 188. Trade Execution and Reporting

   Executions occurring as a result of orders matched on XLE shall be reported by the Exchange to an appropriate consolidated transaction reporting system. XLE will identify trades executed pursuant to an exception to or exemption from Rule 611 of Regulation NMS in accordance with specifications approved by the operating committee of the relevant national market system plan for an NMS Stock. If a trade is executed pursuant to both the intermarket sweep order exception of Rule 611(b)(5) or (6) of Regulation NMS and the self-help exception of Rule 611(b)(1) of Regulation NMS, such trade shall be identified as executed pursuant to the intermarket sweep order exception. Executions occurring as a result of orders routed away from the Exchange shall be reported to an appropriate consolidated transaction reporting system by the relevant self-regulatory organization. The Exchange shall promptly notify XLE Participants of all executions of their orders as soon as the Exchange is notified that such executions have taken place.

9. Please replace proposed Phlx Rule 185(b)(3) on page 53 of 178 in Exhibit 5 to Amendment No. 2 of the proposed rule change with the following, which adds the words “provided, however that the display price will not lock or cross Protected Bids or Offers in a manner that would violate Rule 186”:

   (3) Pegged Order. A round or mixed lot limited price order to buy or sell, only on XLE, a stated amount of a security at a display price set to track (up, down or at) the current best Protected Bids or Offers (on either side of the market) in an amount specified by the XLE Participant in an increment permitted by Rule 125, provided, however that the display
price will not lock or cross Protected Bids or Offers in a manner that would violate Rule 186. The tracking of the relevant Protected Bid or Offer for Pegged Orders will occur on a real-time basis, except that when the calculated price for the Pegged Order would exceed its limit price, it will no longer track and will remain displayed at its limit price. A Pegged Order must have at least a round lot portion of the size that is displayable and may have at least a round lot portion of the size that is not displayable by XLE, provided that the portion of the Pegged Order that is not displayable shall have the same price as the portion that is displayable. A XLE Participant may indicate during which contiguous XLE Trading Session(s) a Pegged Order shall remain eligible for execution. A XLE Participant may not submit any Pegged Order marked sell short unless the applicable short sale test for that security has been suspended or is otherwise not in effect.

10. Please replace the second sentence of the first full paragraph on page 15 of 463 in Amendment No. 1 of the proposed rule change and on page 72 of 463 in Exhibit 1 to Amendment No. 1 of the proposed rule change with the following, which indicates that the display price of Pegged Orders will not lock or cross the market in a manner that would violate Phlx Rule 186:

Pegged Orders are round or mixed lot limited price orders to buy or sell, only on XLE, a stated amount of a security at a display price set to track (up, down or at) the current best Protected Bids or Offers on either side of the market by an amount specified by the XLE Participant in an increment permitted by new Phlx Rule 125, provided, however that the display price will not lock or cross the market in a manner that would violate Phlx Rule 186.¹

11. Please add the following, proposed Phlx Rule 185(h), on page 56 of 178 in Exhibit 5 to Amendment No. 2 of the proposed rule change, which adds language in Phlx’s proposed Orders and Order Execution Rule related to XLE’s implementation of “self-help,” pursuant to Reg NMS Rule 611(b)(1):

(h) Pursuant to Reg NMS Rule 611(b)(1), if another trading center providing a Protected Bid, Offer or Quotation repeatedly fails to respond within one second to incoming orders attempting to access its Protected Bid, Offer or Quotation, XLE may disregard those Protected Bids, Offers or Quotations when routing, displaying, canceling or executing orders on XLE by:

(1) Notifying the non-responding trading center immediately after (or at the same time as) electing self-help; and

(2) Assessing whether the cause of the problem lies with its own system and, if so, taking immediate steps to resolve the problem instead of invoking self-help.

12. Please replace proposed Phlx Rule 1(cc)(1) on page 15 of 178 in Exhibit 5 to Amendment No. 2 of the proposed rule change with the following, which removes

¹ See Phlx Rule 185(b)(3).
language relating to XLE’s implementation of “self-help” from the definition of Protected Bid, Offer or Quotation:

(cc) The terms “Protected Bid, Offer or Quotation” shall:

(1) have, after Rule 611 of Regulation NMS is operative on the Exchange, the same meaning as Rule 600(b)(57) and (58), as appropriate, of Regulation NMS.

(2)-(3) No Change

13. Please note that the change from the original filing in the proposed language to Phlx By-law Article I, Section 1-1(ii), which is noted in Exhibit 4 of Amendment No. 1, was approved by the Board of Governors on September 6, 2006.

14. Please add the following footnote after the words “physical equity trading floor” in the second sentence of the first full paragraph on page 5 of 463 in Amendment No. 1 of the proposed rule change and on page 62 of 463 in Exhibit 1 to Amendment No. 1 of the proposed rule change:

The Exchange would not operate a physical trading floor after it begins trading on XLE. However, the Exchange anticipates that it would continue to allow current floor members and member organizations who become XLE Participants to remain in their current locations within the trading floor space, paying current rates for trading post/booth space rental (Phlx may choose to eliminate this fee during the transition subject filing a proposed rule change with the Commission), for thirty (30) days, at which time the equity trading floor space will be reassigned to other uses. The Exchange believes that it would be appropriate to allow current floor members to remain in their current locations on the floor and to pay the current rates for trading post/booth space rental during, and for a short time after, the transition to XLE so that firms are not unnecessarily required to disrupt their operations by both the transition to XLE and a physical relocation.

15. Please replace footnote 55 on page 15 of 463 in Amendment No. 1 of the proposed rule change and footnote 56 on page 72 of 463 in Exhibit 1 to Amendment No. 1 of the proposed rule change with the following indicating that the Exchange will seek an exemption from applicable provisions of the ITS Plan to implement ISO Orders before the operative date of Regulation NMS:

See Phlx Rule 185(b)(2)(C). Phlx intends that the ISO Order is equivalent to the Intermarket sweep order defined in Rule 600(b)(30) of Regulation NMS, 17 CFR 242.600(b)(30). XLE Participants entering an ISO must ensure that the ISO meets the requirements of Reg NMS Rule 600(b)(30). The Exchange intends to request the appropriate exemptive relief to accommodate these orders prior to the operative date of Regulation NMS.
16. Please replace footnote 60 on page 16 of 463 in Amendment No. 1 of the proposed rule change and footnote 61 on page 73 of 463 in Exhibit 1 to Amendment No. 1 of the proposed rule change with the following indicating that the Exchange will seek an exemption from applicable provisions of the ITS Plan to implement IOC Cross Orders marked as meeting the requirements of an intermarket sweep order before the operative date of Regulation NMS:

IOC Cross Orders so marked are intended to meet the definition of an intermarket sweep order in Rule 600(b)(30) of Regulation NMS, 17 CFR 242.600(b)(30), because the order has a limit price and the XLE Participant sending the order is responsible to send the other orders required in Rule 600(b)(30)(ii), 17 CFR 242.600(b)(30)(ii). The Exchange intends to request the appropriate exemptive relief to accommodate these orders prior to the operative date of Regulation NMS.

17. Please replace footnote 61 on page 16 of 463 in Amendment No. 1 of the proposed rule change and footnote 62 on page 73 of 463 in Exhibit 1 to Amendment No. 1 of the proposed rule change with the following indicating that the Exchange will seek an exemption from applicable provisions of the ITS Plan to implement Orders marked Benchmark before the operative date of Regulation NMS which revises the statement in Amendment No. 1 indicating that the Exchange would seek an exemption for both Orders marked Benchmark and Orders marked Qualified Contingent Trade:

See Phlx Rule 185(c)(3). Orders marked Benchmark must meet the requirements of Rule 611(b)(7) of Regulation NMS, 17 CFR 242.611(b)(7). Orders marked “Qualified Contingent Trade” must meet the requirements of an exemption to Rule 611 of Regulation NMS, 17 CFR 242.611. The Exchange intends to request the appropriate exemptive relief to accommodate Orders marked Benchmark prior to the operative date of Regulation NMS.

18. Please replace proposed Phlx Rule 163(b)-(e) beginning on page 38 of 178 in Exhibit 5 to Amendment No. 2 of the proposed rule change with the following, which changes the term “Exchange Official” to “Equity Exchange Official”:

**Rule 163.**

**Clearly Erroneous Executions**

(b) Request for Phlx Review. A XLE Participant that receives an execution on an order that was submitted erroneously to XLE for its own or customer account may request that Phlx review the transaction under this Rule. Such request for review shall be made via telephone, facsimile or e-mail and, absent unusual circumstances, submitted within twenty (20) minutes of the trade in question. Upon receipt, the counterparty to the trade, if any, shall be notified by Phlx as soon as practicable. Thereafter, an officer of Phlx or such other designee of Phlx ("Equity Exchange Official") shall review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Each party to the transaction shall provide, within thirty (30) minutes of the
request for review, any supporting written information as may be reasonably requested by the Equity Exchange Official to aid resolution of the matter. Either party to the disputed trade may request the supporting written information provided by the other party on the matter.

(c) Review Procedures.

(1) Unless both parties (or party, in the case of a cross order) to the disputed transaction agree to withdraw the initial request for review, the transaction under dispute shall be reviewed, and a determination shall be rendered by the Equity Exchange Official. If the Equity Exchange Official determines that the transaction is not clearly erroneous, the Equity Exchange Official shall decline to take any action in connection with the completed trade. In the event that the Equity Exchange Official determines that the transaction in dispute is clearly erroneous, the Equity Exchange Official shall declare the transaction null and void or modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they would have been in, had the error not occurred. The parties shall be promptly notified of the determination.

(2) If a party affected by a determination made under this Rule so requests within the time permitted in Rule 124(d)(i), the Referee will review decisions made by the Equity Exchange Official under this Rule, including whether a clearly erroneous execution occurred and whether the correct adjustment was made, pursuant to Rule 124(d) as if the decision of the Equity Exchange Official was a Floor Official ruling.

(d) System Disruption and Malfunctions. In the event of any disruption or a malfunction in the use or operation of any electronic communications and trading facilities of the Phlx, or extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, the Equity Exchange Official, on his or her own motion, may review such transactions and declare such transactions arising out of the use or operation of such facilities during such period null and void or modify the terms of these transactions if the Equity Exchange Official determines that the transaction(s) is clearly erroneous, or that such actions are necessary for the maintenance of a fair and orderly market or for the protection of investors and the public interest. Absent extraordinary circumstances, any such action of the Equity Exchange Official pursuant to this subsection (d) shall be taken within thirty (30) minutes of detection of the erroneous transaction. Each XLE Participant involved in the transaction shall be notified as soon as practicable, and the XLE Participant aggrieved by the action may appeal such action in accordance with the provisions of subsection (c)(2).

(e) Trade Nullification and Price Adjustments for UTP Securities that are Subject of Initial Public Offerings ("IPOs"). Pursuant to SEC Rule 12f-2, as amended, the Phlx may extend unlisted trading privileges to a security that is the subject of an initial public offering when at least one transaction in the subject security has been effected on the national securities exchange or association upon which the security is listed and the
A clearly erroneous error may be deemed to have occurred in the opening transaction of the subject security if the execution price of the opening transaction on XLE is more than the lesser of $1.00 or 10% away from the opening price on the listing exchange or association. In such circumstances, the Equity Exchange Official shall declare the opening transaction null and void or adjust the transaction price to the opening price on the listing exchange or association. Clearly erroneous executions of subsequent transactions of the subject security will be reviewed in the same manner as the procedure set forth in (c)(1). Absent extraordinary circumstances, any such action of the Equity Exchange Official pursuant to this subsection (e) shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. Each party involved in the transaction shall be notified as soon as practicable by Phlx, and the party aggrieved by the action may appeal such action to the Referee in accordance with the provisions of subsection (c)(2) above.

19. The Exchange requests accelerated approval for Amendment No. 3 to SR-Phlx-2006-43 because the changes proposed in Amendment No. 3 are meant to clarify the proposed rule change and further, the Exchange believes these changes do not raise new regulatory issues.