Proposed Rule Change by Philadelphia Stock Exchange

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

<table>
<thead>
<tr>
<th>Initial</th>
<th>Amendment</th>
<th>Withdrawal</th>
<th>Section 19(b)(2)</th>
<th>Section 19(b)(3)(A)</th>
<th>Section 19(b)(3)(B)</th>
<th>Rule</th>
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Pilot Extension of Time Period for Commission Action

<table>
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<th>Date Expires</th>
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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: Cynthia  
Last Name: Hoekstra

Title: Vice President  
E-mail: cynthia.hoekstra@phlx.com  
Telephone: (215) 496-5066  
Fax: (215) 496-6729

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: 12/12/2006

By: Cynthia Hoekstra  
Vice President

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.
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 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.

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).

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.

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.

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.

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.

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. (“Exchange”) submits the following Partial Amendment as Amendment No. 1 to SR-Phlx-2006-70. The Exchange has included a revised Exhibit 5A in this Partial Amendment No. 1, which for clarity and ease of reference, is intended to replace the Exhibit 5A contained in the original filing. The purpose of Amendment No. 1 is to clarify the assessment of the fees for the trading of equity securities on the Exchange in connection with its new equity trading system (“XLE”), as set forth in SR-Phlx-2006-70. No new fees are being proposed pursuant to Partial Amendment No. 1. To the extent applicable, the Exchange authorizes the Securities and Exchange Commission staff to make conforming changes to the Exhibit 1 text.

The fees proposed in SR-Phlx-2006-70 and clarified in Partial Amendment No. 1 thereto will be assessed on Exchange members or member organizations, which may include Sponsoring Member Organizations. Sponsoring Member Organizations are responsible for the fees generated by their Sponsored Participant(s).

1. Transaction Fees (beginning on page 5 of SR-Phlx-2006-70)

The following paragraph should be inserted after the first paragraph under the section Transaction Fees on page 5 of SR-Phlx-2006-70:

   The purpose of adopting the volume tiers in connection with the assessment of transaction fees is to encourage XLE Participant Organizations to send and execute orders on XLE. The volume tiers are based on the monthly shares executed per XLE Participant Organization; for Tier 1 (less than or equal to 10 million shares executed), the Exchange proposes to assess a fee of $0.003 per share executed to remove liquidity and give a credit of $0.002 per share executed for providing liquidity; for Tier 2 (greater than 10 million and less than or equal to 50 million shares executed), the Exchange proposes to assess a fee of $0.0028 per share executed to remove liquidity and give a credit of $0.0025 per share executed for providing liquidity; for Tier 3 (greater than 50 million and less than or equal to 200 million shares executed), the Exchange proposes to assess a fee of $0.0027 per share executed to remove liquidity and give a credit of $0.0026 per share executed for providing liquidity; for Tier 4 (greater than 200 million shares executed), the Exchange proposes to assess a fee of $0.0026 per share executed to remove liquidity and give a credit of $0.0026 per share executed for providing liquidity. For each of the four volume tiers described above, the Exchange proposes to charge a routing fee of $0.0036 per share executed when an order is routed via XLE to an away trading center and executed on that away trading center, as stated below.

   The following sentence should be added at the end of the second paragraph under the section Transaction Fees on page 5 of SR-Phlx-2006-70:

   Such executed volume for securities trading below $1.00 will accrete towards the volume tier breakpoint per XLE Participant Organization.
The following paragraph should replace the second paragraph on page 6 of SR-Phlx-2006-70 under the Transaction Fee section:

Additional transaction fees are set forth on the proposed fee schedule under the heading “Miscellaneous Transaction Fees.” Miscellaneous Transaction Fees are assessed in lieu of the general Transaction Fees described above. The Exchange proposes to adopt an execution fee of $0.0023 per share per side for IOC Cross Orders and Mid-Point Cross Orders entered over technology provided by Phlx. There will be no transaction fees (i.e. execution fee for removing liquidity or execution credit for providing liquidity) for executions of Immediate-or-Cancel (“IOC”) Cross Orders and Mid-Point Cross Orders with respect to orders entered over technology that is not provided by the Exchange. There will be no execution credit for any IOC Cross or Mid-Point Cross transactions, whether entered over technology provided by Phlx or not. In addition, in connection with IOC Cross Orders and Mid-Point Cross Orders entered over technology provided by Phlx, there will be a $50 maximum fee per trade side.

The following footnote should replace footnote 12 on page 7 of SR-Phlx-2006-70:

An Odd Lot Order means an order for less than a round lot, which is defined for purposes of XLE as a unit of trading that is 100 shares. See Exchange Rules 1(w) and 1(gg). Executed volume for orders initially entered as Odd Lot Orders and executed on XLE will accrete towards the volume tier breakpoint per XLE Participant Organization.

The following sentences should replace the last sentence on page 7 of SR-Phlx-2006-70 in the Transaction Fee section:

1 Phlx will provide optional technology to XLE Participants for the entry of two-sided orders into XLE.

2 IOC Cross Orders are two-sided orders that match immediately and automatically on XLE the identified buy-side with the identified sell-side. Specifically, an IOC Cross Order is a two-sided order that executes, in its entirety, at the specified price, provided that XLE will cancel an IOC Cross Order at the time of order entry under certain conditions. See Exchange Rules 185(c) and 185(c)(2).

3 A Mid-Point Cross Order is a two-sided order that executes, in its entirety, at the midpoint of the best Protected Bid and the best Protected Offer in a security. These orders will match immediately and automatically on XLE the identified buy-side with the identified sell-side. See Exchange Rules 185(c) and 185(c)(1).

4 Executed volume for IOC Cross and Mid-Point Cross Orders whether entered over technology provided by the Exchange or not will accrete towards the volume tier breakpoint per XLE Participant Organization that is a party to the execution. There is no execution credit for IOC Cross and Mid-Point Cross executions entered through technology provided by Phlx.
Also, for incoming NMS Linkage Orders or ITS Commitments routed to Phlx and executed on XLE, the Exchange will charge $0.003 per share for removing liquidity.\(^5\) The Exchange is proposing to delete from its Summary of Equity Charges the Outbound ITS fee and Net Inbound ITS Credit. Therefore, the Exchange will no longer assess an Outbound ITS fee or give a Net Inbound ITS Credit.

2. Covered Sale Fee (page 7 of SR-Phlx-2006-70)

The following paragraph should replace the paragraph under the Covered Sale Fee Section:

The Exchange will continue to charge a Covered Sale Fee. Each member and member organization engaged in executing sale transactions on the Exchange or executing transactions, which were routed over the Intermarket Trading System or pursuant to the NMS Linkage Plan, on another exchange or on a Participant in NASD’s Alternative Display Facility (“ADF Participant”) during any computational period shall pay a Covered Sale Fee equal to (i) the Section 31 fee rate multiplied by (ii) the member’s aggregate dollar amount of covered sales.\(^6\)

Corresponding changes will be made to the Covered Sale Fee on the XLE Fee Schedule. The purpose of amending the Covered Sale Fee language is to more closely track the language set forth in Exchange Rule 607.

3. System Fees (page 8 of SR-Phlx-2006-70)

The following footnote should replace footnote 20 on page 8 of SR-Phlx-2006-70:

The Depth of Book feed displays every order, except the undisplayed portion of a Reserve Order, within XLE at each price level and will be provided, on a subscription basis, at no charge to anyone who subscribes to receive this information.

\(^5\) This fee will be assessed on the member organization sponsoring the NMS Linkage Order or ITS Commitment or, if there is no member organization sponsoring the NMS Linkage Order or ITS Commitment, on the exchange or the Participant in the National Association of Securities Dealers, Inc. Alternative Display Facility (“ADF Participant”) sending the ITS Commitment or NMS Linkage Order. The arrangement to charge other exchanges or ADF Participants was part of separate proposed rule changes that were approved by the Commission. See Securities Exchange Act Release Nos. 54548 (September 29, 2006), 71 FR 59159 (October 6, 2006) (SR-Phlx-2006-58) and 54555 (October 2, 2006), 71 FR 59577 (October 10, 2006) (SR-Phlx-2006-60).

4. The following paragraphs should be inserted in the Purpose Section of SR-Phlx-2006-70, under a proposed section titled Deleting Obsolete Fees

Deleting Obsolete Fees

In connection with adopting the XLE fee schedule for the trading of equity securities on the Exchange, the Exchange proposes to delete the obsolete fees currently listed on the Summary of Equity Charges, which includes deleting references to license fees assessed in connection with the trading of certain products. Although the Exchange may currently, or in the future, be a party to a license fee agreement with a licensor in connection with the trading of certain products, the Exchange does not propose to assess license fees in connection with XLE at this time. The Exchange would submit a separate proposed rule change if it decides to assess license fees in the future.

The Exchange also proposes to delete references to SCCP customer and specialist fees on the Exchange’s Nasdaq-100 Index Tracking Stock Fee Schedule to reflect changes proposed in a separate SCCP fee filing.

5. Appendix A (beginning on page 9 of SR-Phlx-2006-70)

The fourth sentence in the second paragraph on page 9 of SR-Phlx-2006-70 should be replaced with the following sentence:

Specifically, the Exchange will charge an order flow provider a permit fee of $200 per month to submit orders to XLE only and $300 per month to submit orders to more than one trading venue (i.e. XLE, foreign currency options trading floor or options trading floor).

7 The Covered Sale Fee, however, will continue to be assessed in connection with XLE.

8 The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 SharesSM, Nasdaq-100 TrustSM, Nasdaq-100 Index Tracking StockSM and QQQSM are trademarks or service marks of The Nasdaq Stock Market, Inc. (Nasdaq) and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the Index) is determined, composed and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 TrustSM, or the beneficial owners of Nasdaq-100 SharesSM. Nasdaq has complete control and sole discretion in determining, comprising or calculating the Index or in modifying in any way its method for determining, comprising or calculating the Index in the future.

9 See SR-SCCP-2006-04.
The last sentence in the same paragraph should be replaced with the following sentence:

If a member organization only sponsors a Sponsored Participant and does not have any other trading functions, the permit holder associated with that member organization will be charged a permit fee of $1,200 per month and $1,000 per month for additional permits for members in the same member organization.

The third sentence in the third paragraph under the Appendix A section on page 10 of SR-Phlx-2006-70 should be replaced with the following sentence:

In addition, permits may not be transferred from one permit holder associated with one member organization to a permit holder associated with a different member organization, thus a Transfer fee is inapplicable for permits relating to XLE trading.10

The third sentence in the fifth paragraph under the Appendix A section on page 11 of SR-Phlx-2006-70 should be replaced with the following sentence:

Currently, the Exchange charges member organizations a monthly fee of $50.00 for each account beyond the number of permits billed to that member organization.11

6. Examination Fee  (pages 12-14 of SR-Phlx-2006-70)

Any references to the “off-floor trader fee” should be replaced with the “Off-Floor Examinations fee.” The second sentence in the third paragraph on page 12 of SR-Phlx-2006-70 should be replaced with the following sentence:

The implementation of a tiered monthly examinations fee will replace the Off-Floor Examinations fee.

The first sentence in the first full paragraph on page 13 of SR-Phlx-2006-70 should be replaced with the following sentence:

To address the unintended consequences that XLE would now cover additional traders that were previously not covered under the Off-Floor Examinations fee, the

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11 Each account may have 22 suffixes or sub-accounts. For example, account number 202 can actually be used as accounts 202-A, 202-B, etc. There is no additional charge for suffixes assigned within the same account. See Securities Exchange Act Release No. 53046 (January 3, 2006), 71 FR 1459 (January 9, 2006) (SR-Phlx-2005-89).
Exchange is proposing to delete the Off-Floor Examinations fee and adopt a tiered examinations fee based on the number of off-floor traders in the member organization.  

In addition, the first full paragraph on page 14 of SR-Phlx-2006-70 should be replaced with the following:

The proposed revised examinations fee, which would apply to many of the members currently covered by the Off-Floor Examinations fee, should more efficiently and effectively assess member organizations for recovery of regulatory-related costs related to conducting examinations and clarify how the examinations fee will be assessed in connection with the member organizations that trade equity securities on XLE.  

For purposes of assessing the proposed tiered examination fee, Sponsored Participants are not included in the calculation of the number of off-floor traders in a Sponsoring Member Organization.

The proposed examination fee will be implemented the first full month after XLE is launched. For example, if XLE is launched in mid-November, the current off-floor trader fee and examination fee will apply for the month of November and the examination fee set forth in this proposal will be assessed beginning with the month of December.
## XLE Fee Schedule

### Transaction Fees

<table>
<thead>
<tr>
<th>XLE Participant Organization Tier</th>
<th>Monthly Shares Executed</th>
<th>Execution Fees *</th>
<th>Routing Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Less than or equal to 10 million shares executed</td>
<td>$0.003</td>
<td>$0.002</td>
</tr>
<tr>
<td>2</td>
<td>Greater than 10 million and less than or equal to 50 million shares executed</td>
<td>$0.0028</td>
<td>$0.0025</td>
</tr>
<tr>
<td>3</td>
<td>Greater than 50 million and less than or equal to 200 million shares executed</td>
<td>$0.0027</td>
<td>$0.0026</td>
</tr>
<tr>
<td>4</td>
<td>Greater than 200 million shares executed</td>
<td>$0.0026</td>
<td>$0.0026</td>
</tr>
</tbody>
</table>

* Securities executed on XLE with a per share price below $1.00 that remove liquidity, will be charged 0.1% (i.e., 10 basis points) of total dollar value of the transaction. There is no execution fee credit for providing liquidity for shares with a per share price below $1.00.²

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¹ Per XLE Participant Organization. Sponsoring Member Organizations are responsible for the fees generated by their Sponsored Participant(s).

² The total monthly shares executed includes executions resulting from removing and providing liquidity on XLE and crosses executed on XLE, as well as shares executed when routed via XLE to an away trading center and executed on that away trading center, except for liquidity provided by NMS Linkage Orders or ITS Commitments. The total monthly shares will be calculated separately per XLE Participant Organization, which, for purposes of these fees, refers to Sponsored Participants, Sponsoring Member Organizations, and member organizations without Sponsored Participants. Thus, Sponsored Participant activity will accrete towards that Sponsored Participant’s volume tier and not towards the Sponsoring Member Organization’s volume tier. Once a specific tier has been reached in a month, all transactions that month will be subject to the fee that corresponds with that volume tier.

² Executed volume in such shares will accrete towards the volume tier breakpoint per XLE Participant Organization.
**Miscellaneous Transaction Fees**

Execution Fee for IOC Cross and Mid-Point Cross Orders entered over technology provided by the Phlx\(^4\): For All Tiers – $0.0023 per share per side, maximum charge of $50.00 per trade side

Execution Fee for All Other IOC Cross and Mid-Point Cross Orders: For All Tiers – No Charge

Execution Fee for Odd Lot Orders: For All Tiers – $0.003 per share

Execution Fee for Incoming NMS Linkage Orders or ITS Commitments: For All Tiers – $0.003 per share

**Covered Sale Fee**

Each member and member organization engaged in executing sale transactions on the Exchange or executing transactions, which were routed over the Intermarket Trading System or pursuant to the NMS Linkage Plan, on another exchange or on a Participant in NASD’s Alternative Display Facility ("ADF Participant") during any computational period shall pay a Covered Sale Fee equal to (i) the Section 31 fee rate multiplied by (ii) the member’s aggregate dollar amount of covered sales.\(^3\)

**System Fees**

Monthly FIX Computer-to-Computer Interface (CTCI) Port Fee\(^9\): $100 per port

Monthly Drop Copy Feed Fee\(^10\): No Charge

Monthly Phlx Systems Fee\(^11\): No Charge

Depth of Book Data Feed Fee\(^12\): No Charge

**Quarterly Market Data Revenue Sharing for Tape A (NYSE), Tape B (Amex and other non-NASDAQ, non-NYSE exchanges), and Tape C (Nasdaq) Securities**

50% of gross market data revenue for trades executed on XLE will be shared with the member organization responsible for providing the liquidity portion of the trade. Sponsored Participant trades will be credited to the applicable Sponsoring Member Organization.

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\(^4\) Phlx provides optional technology to XLE Participants for the entry of two-sided orders into XLE. Executed volume will accrue towards the volume tier breakpoint for each XLE Participant Organization that is a party to the execution. There is no execution credit for IOC Cross and Mid-Point Cross executions entered through technology provided by Phlx.

\(^5\) Executed volume will accrue towards the volume tier breakpoint per XLE Participant Organization. There is no execution credit for IOC Cross and Mid-Point Cross executions.

\(^6\) Applicable to orders initially entered as odd-lot orders and executed on XLE. Executed volume will accrue towards the volume tier breakpoint per XLE Participant Organization. There is no execution credit for orders initially entered as odd-lot orders and executed on XLE.

\(^7\) Applicable to Incoming NMS Linkage Orders or ITS Commitments routed to the Phlx and executed on XLE. Activity will not accrue towards the XLE Participant Organization’s volume tier.

\(^8\) A Sponsoring Member Organization is responsible for the fees generated in connection with its Sponsored Participant’s sale transactions.

\(^9\) A port is defined as an IP address assigned by the Exchange for connectivity to XLE.

\(^10\) The drop copy feed will be provided on a subscription basis. The feed will provide real-time information concerning trades executed by an XLE Participant Organization.

\(^11\) Per device, for use of optional Phlx technology to enter in two-sided orders and related clearing information.

\(^12\) The Depth of Book feed will be provided on a subscription basis. The feed will display every order, except the undisplayed portion of a Reserve Order, within XLE at each price level.