Proposed Rule Change by Philadelphia Stock Exchange

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

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Pilot

Extension of Time Period for Commission Action

Date Expires

19b-4(f)(1) 19b-4(f)(4)
19b-4(f)(2) 19b-4(f)(5)
19b-4(f)(3) 19b-4(f)(6)

Description

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

The proposed rule change modifies the definition of Core Session in XLE.

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: 11/08/2006
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
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.
1. **Text of the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\) and Rule 19b-4 thereunder,\(^2\) proposes to modify the definition of Core Session in Phlx Rule 101, Supplementary Material .02(2) to state 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, which shall take place until 4:15:00 P.M.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the amended Exchange Rule is set forth below:

**Hours of Business**

**Rule 101** No Change.

Supplementary Material:

.01 No Change.

.02 XLE Trading Hours.

XLE shall have three trading sessions each day the Exchange is open for business unless otherwise determined by the Exchange:

(1) **Pre Market Session.** The Pre Market Session shall begin at 8:00:00 A.M. and conclude at the commencement of the Core Session.

(2) **Core Session.** The Core Session shall take place for each security from 9:30:00 A.M. until 4:00:00 P.M., except for specified exchange-traded funds, which shall take place until 4:15:00 P.M.\[^{[1]}\] during that security’s “regular trading hours” as that term is defined in Rule 600(b)(64) of Regulation NMS.\[^{[1]}\]

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(3) *Post Market Session*. The Post Market Session shall begin following the conclusion of the Core Session and conclude at 6:00:00 P.M.

2. **Procedures of the Self-Regulatory Organization**

   The Executive Committee, pursuant to delegated authority, approved the proposal for filing with the Securities and Exchange Commission ("SEC" or "Commission") on June 26, 2006 and July 31, 2006.

   Questions and comments on the proposed rule change may be directed to John Dayton, Director and Counsel, at (215) 496-5162 or Edith Hallahan, Senior Vice President and Deputy General Counsel, at (215) 496-5179.

3. **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

   a. **Purpose**

      The purpose of the proposed rule change is to ensure that exchange-traded funds that trade on the Exchange have the same primary or core trading hours as these securities have on their listing exchanges. When Phlx begins trading using its new equity trading system, XLE, 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 Hours are identical to the hours of trading for that security on its

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3 The Exchange will publish via an Exchange circular, the exchange-traded funds that will have a Core Session ends at 4:15:00 P.M.

primary market. Many exchange-traded funds trade on their primary market until 4:15:00 P.M.

In adopting XLE, Phlx intended to extend its trading hours, but did not intend to change the “primary” or “core” hours that securities are usually traded. Therefore, Phlx adopted its XLE Trading Hours with a Pre Market Session, Core Session and Post Market Session. The Core Session was intended to be coextensive with existing 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, Phlx did not make its Core Session coextensive with existing primary sessions employed by other exchanges, with respect to exchange-traded fund trading. While other exchanges have adopted rules extending their primary trading session until 4:15:00 P.M. for certain securities (i.e. exchange-traded funds), “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).”

The Exchange now proposes to modify its Core Session to allow the Exchange to set the ending time of the Core Session to 4:15:00 P.M. for certain exchange-traded funds. This will allow those exchange-traded funds that trade until 4:15:00 P.M. to trade

5 See the currently operative version of Phlx Rule 101, Supplementary .02(i).
6 17 CFR 600(b)(64).
7 See Division of Market Regulation: Response to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS Question 7.02.
until that time during XLE’s Core Session. This 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.

b. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^8\) in general, and furthers the objectives of Section 6(b)(5) of the Act\(^9\) 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.

4. **Self-Regulatory Organization's Statement on Burden on Competition**

The Phlx 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.

5. **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.

6. **Extension of Time Period for Commission Action**

The Exchange does not consent to an extension of the time period for Commission action.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Because the foregoing proposed rule change does not:

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(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, it has become effective pursuant to Section 19(b)(3)(A) of the Act\(^\text{10}\) and Rule 19b-4(f)(6) thereunder.\(^\text{11}\) The Phlx requests that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay and make the proposed rule change operative when Phlx commences operation of XLE. The Phlx believes that the earlier operative date is consistent with the protection of investors and the public interest because the proposed rule change is based upon a proposed rule change of the Chicago Stock Exchange, Inc. (“CHX”).\(^\text{12}\)

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is based on the rules of CHX.\(^\text{13}\)

9. **Exhibits**

1. Notice of proposed rule for publication in the *Federal Register*.

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\(^\text{13}\) Id.
SECURITIES AND EXCHANGE COMMISSION
(Release No.                  ; File No. SR-Phlx-2006-73)

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and
Rule 19b-4² thereunder, notice is hereby given that on ______________________ 2006,
the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities
and Exchange Commission ("SEC" or "Commission") the proposed rule change as
described in Items I, II, and III, below, which Items have been prepared by the Phlx. 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, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴
proposes to modify the definition of Core Session in Phlx Rule 101, Supplementary
Material .02(2) to state 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, which shall
take place until 4:15:00 P.M.

The text of the amended Exchange Rule is set forth below:

**Hours of Business**

**Rule 101** No Change.

Supplementary Material:

.01 No Change.

.02 XLE Trading Hours.

XLE shall have three trading sessions each day the Exchange is open for business unless otherwise determined by the Exchange:

1. **Pre Market Session.** The Pre Market Session shall begin at 8:00:00 A.M. and conclude at the commencement of the Core Session.

2. **Core Session.** The Core Session shall take place for each security from 9:30:00 A.M. until 4:00:00 P.M., except for specified exchange-traded funds, which shall take place until 4:15:00 P.M.[during that security’s “regular trading hours” as that term is defined in Rule 600(b)(64) of Regulation NMS.]

3. **Post Market Session.** The Post Market Session shall begin following the conclusion of the Core Session and conclude at 6:00:00 P.M.

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 exchange-traded funds\(^5\) that trade on the Exchange have the same primary or core trading hours as these securities have on their listing exchanges. When Phlx begins trading using its new equity trading system, XLE,\(^6\) 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 Hours are identical to the hours of trading for that security on its primary market.\(^7\) Many exchange-traded funds trade on their primary market until 4:15:00 P.M.

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

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\(^5\) The Exchange will publish via an Exchange circular, the exchange-traded funds that will have a Core Session ends at 4:15:00 P.M.


\(^7\) See the currently operative version of Phlx Rule 101, Supplementary .02(i).
defined in Rule 600(b)(64) of Regulation NMS,\(^8\) Phlx did not make its Core Session coextensive with existing primary sessions employed by other exchanges, with respect to exchange-traded fund trading. While other exchanges have adopted rules extending their primary trading session until 4:15:00 P.M. for certain securities (i.e. exchange-traded funds), “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).”\(^9\)

The Exchange now proposes to modify its Core Session to allow the Exchange to set the ending time of the Core Session to 4:15:00 P.M. for certain exchange-traded funds. This will allow those exchange-traded funds that trade until 4:15:00 P.M. to trade until that time during XLE’s Core Session. This 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\(^10\) in general, and furthers the objectives of Section 6(b)(5) of the Act\(^11\) 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.

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\(^8\) 17 CFR 600(b)(64).

\(^9\) See Division of Market Regulation: Response to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS Question 7.02.


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**

No written comments were either solicited or 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act\(^\text{12}\) and Rule 19b-4(f)(6) thereunder.\(^\text{13}\) The Phlx requests that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay and make the proposed rule change operative when Phlx commences operation of XLE. The Phlx believes that the earlier operative date is consistent with the protection of investors and the public interest because the proposed rule change is based upon a proposed rule change of the Chicago Stock Exchange, Inc. (“CHX”).\(^\text{14}\)

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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. 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.\textsuperscript{15}

Nancy M. Morris  
Secretary

\textsuperscript{15} 17 CFR 200.30-3(a)(12).