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>
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Pilot

Extension of Time Period for Commission Action

Date Expires

Rule

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

Description

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

The Exchanges proposed to adopt Phlx Rule 185A

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.

<table>
<thead>
<tr>
<th>First Name</th>
<th>Last Name</th>
<th>Title</th>
<th>E-mail</th>
<th>Telephone</th>
<th>Fax</th>
</tr>
</thead>
<tbody>
<tr>
<td>John</td>
<td>Dayton</td>
<td>Director and Counsel</td>
<td><a href="mailto:john.dayton@phlx.com">john.dayton@phlx.com</a></td>
<td>(215) 496-5162</td>
<td></td>
</tr>
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</table>

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 11/13/2006

By John Dayton Director and Counsel

(Note)

Detect: 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.

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.
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 adopt Phlx Rule 185A, Intermarket Sweep Orders – Temporary, which describes the obligations of the Exchange sending orders to other market centers and XLE Participants sending Intermarket Sweep Orders ("ISOs")³ or IOC Cross Orders that are marked as meeting the requirement to route to other market centers⁴ (both types of orders hereinafter, "Incoming Sweep Orders"). Specifically, before Rule 611 of Regulation NMS⁵ is operative on the Exchange (the "Trading Phase Date"), Phlx would use away market obligations instead of immediate-or-cancel intermarket sweep orders. An away market obligation is an immediate or cancel limit order for an NMS stock generated by Phlx in connection with the execution of an order by Phlx and routed to one or more away market centers to execute against all better-priced protected quotations displayed by the other market centers up to their displayed size. If the away market center is capable of receiving an intermarket sweep order, the Exchange may generate and utilize an intermarket sweep order as the away market obligation. In addition, before the Trading Phase Date, the new rule would expressly require XLE Participants sending Incoming Sweep Orders to simultaneously send an intermarket sweep order (or

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³ See Phlx Rule 185(b)(2)(C).
⁴ See Phlx Rule 185(c)(2)(D).
⁵ 17 CFR 242.611.
comparable order) for the full displayed size of the top of book of every other market center displaying a better-priced protected quotation.

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

Underling indicates additions

**Rule 185A.**

**Intermarket Sweep Orders - Temporary**

An away market obligation is an immediate or cancel limit order for an NMS stock generated by Phlx in connection with the execution of an order by Phlx and routed to one or more away market centers to execute against all better-priced protected quotations displayed by the other market centers up to their displayed size. In the event that an away market that trades a particular security is capable of receiving intermarket sweep orders, then the Exchange may choose to generate and utilize intermarket sweep orders as the away market obligations for that market. Before Rule 611 of Regulation NMS is operative on the Exchange (the “Trading Phase Date”), the words “immediate-or-cancel intermarket sweep orders” in Rule 185(b)(1)(C)(i)-(ii) and (b)(2)(B) shall mean “away market obligations.”

In addition, before the Trading Phase Date, a XLE Participant may submit an ISO or an IOC Cross Order marked by the XLE Participant entering the order as meeting the requirements of an intermarket sweep order to XLE only if it has simultaneously sent an intermarket sweep order (or comparable order) for the full displayed size of the top of book of every other ITS Participant displaying a better-priced quotation.

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 clarify the operation of XLE’s outbound routing and Incoming Sweep Orders before the Trading Phase Date. Currently, Phlx Rules 185(b)(1)(C)(i)-(ii) and (b)(2)(C) state that when routing out to away market centers, Phlx will use “immediate-or-cancel intermarket sweep orders” to satisfy any away market centers with better-priced quotations. However, prior to the Trading Phase Date, not all away market centers will accept intermarket sweep orders. Therefore, in order to implement away routing before the Trading Phase Date, Phlx will use away market obligations instead of immediate-or-cancel intermarket sweep orders. In addition, before the Trading Phase Date, Phlx will require XLE Participants who send Incoming Sweep Orders to the Exchange to simultaneously send an intermarket sweep order (or comparable order) for the full displayed size of the top of book of every other market center displaying a better-priced protected quotation. This requirement is intended to mirror the requirement, which will be operative after the Trading Phase Date, that all such Incoming Sweep Orders meet the requirement of intermarket sweep orders in Rule 600(b)(30) of Regulation NMS.  

Finally, Phlx has requested an exemption from the provisions of the Intermarket Trading System Plan to allow, among other things, the Exchange and its XLE Participants to implement outbound routing and Incoming Sweep Orders in this manner prior the Trading Phase Date.

6 17 CFR 242.600(b)(30).

7 See Letter from John Dayton, Director and Counsel, Phlx to Nancy M. Morris, Secretary, Commission, dated November 9, 2006.
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:

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

(ii) Impose any significant burden on competition; and

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(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\textsuperscript{10} and Rule 19b-4(f)(6) thereunder.\textsuperscript{11} The Phlx requests that the Commission waive 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 American Stock Exchange LLC (“AMEX”).\textsuperscript{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 AMEX.\textsuperscript{13}

9. Exhibits

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


\textsuperscript{11} 17 CFR 240.19b-4(f)(6).


\textsuperscript{13} Id.
Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\), and Rule 19b-4\(^2\) 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 Act\(^3\) and Rule 19b-4 thereunder,\(^4\) proposes to adopt Phlx Rule 185A, Intermarket Sweep Orders – Temporary, which describes the obligations of the Exchange sending orders to other market centers and XLE Participants sending Intermarket Sweep Orders ("ISOs")\(^5\) or IOC Cross Orders that

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\(^5\) See Phlx Rule 185(b)(2)(C).
are marked as meeting the requirement to route to other market centers\(^6\) (both types of orders hereinafter, “Incoming Sweep Orders”). Specifically, before Rule 611 of Regulation NMS\(^7\) is operative on the Exchange (the “Trading Phase Date”), Phlx would use away market obligations instead of immediate-or-cancel intermarket sweep orders. An away market obligation is an immediate or cancel limit order for an NMS stock generated by Phlx in connection with the execution of an order by Phlx and routed to one or more away market centers to execute against all better-priced protected quotations displayed by the other market centers up to their displayed size. If the away market center is capable of receiving an intermarket sweep order, the Exchange may generate and utilize an intermarket sweep order as the away market obligation. In addition, before the Trading Phase Date, the new rule would expressly require XLE Participants sending Incoming Sweep Orders to simultaneously send an intermarket sweep order (or comparable order) for the full displayed size of the top of book of every other market center displaying a better-priced protected quotation.

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

Underlining indicates additions

**Rule 185A.**

**Intermarket Sweep Orders - Temporary**

An away market obligation is an immediate or cancel limit order for an NMS stock generated by Phlx in connection with the execution of an order by Phlx and routed to one or more away market centers to execute against all better-priced protected quotations displayed by the other market centers up to their displayed size. In the event that an away market that trades a particular security is capable of receiving intermarket sweep orders, then the Exchange may choose to generate and utilize intermarket sweep orders.\(^6\) See Phlx Rule 185(c)(2)(D).

\(^6\) See Phlx Rule 185(c)(2)(D).

\(^7\) 17 CFR 242.611.
orders as the away market obligations for that market. Before Rule 611 of Regulation NMS is operative on the Exchange (the “Trading Phase Date”), the words “immediate-or-cancel intermarket sweep orders” in Rule 185(b)(1)(C)(i)-(ii) and (b)(2)(B) shall mean “away market obligations.”

In addition, before the Trading Phase Date, a XLE Participant may submit an ISO or an IOC Cross Order marked by the XLE Participant entering the order as meeting the requirements of an intermarket sweep order to XLE only if it has simultaneously sent an intermarket sweep order (or comparable order) for the full displayed size of the top of book of every other ITS Participant displaying a better-priced quotation.

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 clarify the operation of XLE’s outbound routing and Incoming Sweep Orders before the Trading Phase Date. Currently, Phlx Rules 185(b)(1)(C)(i)-(ii) and (b)(2)(C) state that when routing out to away market centers, Phlx will use “immediate-or-cancel intermarket sweep orders” to satisfy any away market centers with better-priced quotations. However, prior to the Trading Phase Date, not all away market centers will accept intermarket sweep orders. Therefore, in order to implement away routing before the Trading Phase Date, Phlx will use away market obligations instead of immediate-or-cancel intermarket sweep orders. In addition, before the Trading Phase Date, Phlx will require XLE Participants who send Incoming
Sweep Orders to the Exchange to simultaneously send an intermarket sweep order (or comparable order) for the full displayed size of the top of book of every other market center displaying a better-priced protected quotation. This requirement is intended to mirror the requirement, which will be operative after the Trading Phase Date, that all such Incoming Sweep Orders meet the requirement of intermarket sweep orders in Rule 600(b)(30) of Regulation NMS. Finally, Phlx has requested an exemption from the provisions of the Intermarket Trading System Plan to allow, among other things, the Exchange and its XLE Participants to implement outbound routing and Incoming Sweep Orders in this manner prior the Trading Phase Date.

2. **Statutory Basis**

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

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8 17 CFR 242.600(b)(30).

9 See Letter from John Dayton, Director and Counsel, Phlx to Nancy M. Morris, Secretary, Commission, dated November 9, 2006.


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 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 American Stock Exchange LLC ("AMEX").\(^\text{14}\)

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-2006-76 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-2006-76. 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-2006-76 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.15

Nancy M. Morris
Secretary