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
□ □ 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).


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 officer.

Date 03/27/2007
By John Dayton (Name)
Director and Counsel (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**


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 Rules is attached hereto as Exhibit 5a and Exhibit 5b.

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 February 20, 2007.

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.

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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 conform Phlx’s rules to the recent elimination of the ITS Plan. Phlx Rules 2000-2002 were adopted to implement the ITS Plan on the Exchange. Those rules contain the trade-through and locked/crossed market rules that governed trading in certain securities pursuant to the ITS Plan. Those rules are now obsolete with the elimination of the ITS Plan. Trade-through and locked/crossed market rules are now mandated by Regulation NMS and codified in Phlx Rules 185 and 186. In addition, references to the ITS Plan are being removed from Phlx Rules 452 and 607 and the XLE Fee Schedule.

   b. **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, by conforming Phlx rules to recent Commission action regarding a national market system plan.

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

   The Phlx does not believe that the proposed rule change will impose any

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4 17 CFR 242.610-611.


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

   (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\(^7\) and Rule 19b-4(f)(6) thereunder.\(^8\) The Phlx requests that the Commission waive the 30-day operative delay and make the proposed rule change effective upon filing. The Phlx believes that the earlier operative date is consistent with the protection of investors and the public interest because the Commission has eliminated the ITS Plan, which makes the various Phlx rules that refer to and implement the trading rules of the ITS Plan obsolete.

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

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. **Exhibits**

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


SECURITIES AND EXCHANGE COMMISSION
(Release No. _______ ; File No. SR-Phlx-2007-31)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of
Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the
Elimination of the Intermarket Trading System Plan

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 ______________________ 2007,
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 amend Phlx Rules 452 and 607 and the XLE Fee Schedule to remove
references to the Intermarket Trading System ("ITS") Plan and to delete Phlx Rules

The text of the proposed rule change is available on the Exchange’s Website at


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 conform Phlx’s rules to the recent elimination of the ITS Plan.⁵ Phlx Rules 2000-2002 were adopted to implement the ITS Plan on the Exchange. Those rules contain the trade-through and locked/crossed market rules that governed trading in certain securities pursuant to the ITS Plan. Those rules are now obsolete with the elimination of the ITS Plan. Trade-through and locked/crossed market rules are now mandated by Regulation NMS⁶ and codified in Phlx Rules 185 and 186. In addition, references to the ITS Plan are being removed from Phlx Rules 452 and 607 and the XLE Fee Schedule.

2. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular, in that

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⁶ 17 CFR 242.610-611.

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, by conforming Phlx rules to recent Commission action regarding a national market system plan.

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\(^9\) and Rule 19b-4(f)(6) thereunder.\(^10\) The Phlx requests that the Commission waive the 30-day operative delay and make the proposed rule change effective upon filing. The Phlx believes that the earlier operative date is

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consistent with the protection of investors and the public interest because the Commission has eliminated the ITS Plan, which makes the various Phlx rules that refer to and implement the trading rules of the ITS Plan obsolete.

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-2007-31 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-2007-31. 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-2007-31 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.\footnote{17 CFR 200.30-3(a)(12).}

Nancy M. Morris
Secretary
Exhibit 5a

Underlining indicates additions; brackets indicate deletions

**Rule 452. Limitations on Members' Trading Because of Customers' Orders**

(a)-(c) No Change

Supplementary Material:

.01-.05 No Change

[.06 A member who issues a commitment or obligation to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or sale of a security on the Exchange as referred to in this Rule 452.]

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**Rule 607. Covered Sale Fee**

Under Section 31 of the Securities Exchange Act of 1934, the Exchange must pay certain fees to the Securities and Exchange Commission ("Commission"). To help fund the Exchange's obligations to the Commission under Section 31, a Covered Sale Fee is assessed by the Exchange to members and member organizations. To the extent there may be any excess monies collected under this Rule, the Exchange may retain those monies to help fund its general operating expenses.

Each member and member organization engaged in executing sale transactions on the Exchange or executing transactions on another exchange or on a Participant in NASD's Alternative Display Facility ("ADF Participant"), which were routed through the Exchange’s Routing Facility, as described in Rule 185(g) [or over the Intermarket Trading System], 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.

The Exchange may enter into arrangements with other exchanges or ADF Participants to pass the Covered Sale Fee among the applicable exchanges or ADF Participants where the Exchange has collected the Covered Sale Fee from its members and member organizations for sale transactions executed on another exchange or ADF Participant through [the Intermarket Trading System or] the NMS Linkage Plan and when other exchanges or ADF Participants have collected the Covered Sale Fee from their members for sale transactions executed on the Exchange through [the Intermarket Trading System or] the NMS Linkage Plan.

* * * * *

[Applicability. The Rules of this Part shall be applicable to the trading of securities through the Intermarket Trading System. Except to the extent that specific Rules in this Part govern or unless the context otherwise requires, the provisions of the By-Laws and of all other Rules and Policies of the Board of Governors shall be applicable to trading through the Intermarket Trading System.]


[(a) Definitions ]

[(i) "CTA Plan" means the plan filed with the Securities and Exchange Commission ("SEC") pursuant to SEC Rule 17a-15 (subsequently amended and redesignated as Rule 11Aa3-1), approved by the SEC and declared effective as of May 17, 1974, as from time to time amended.]

[(ii) "Eligible Listed Security" means any security listed on the Exchange that can be traded through the System.]

[(iii) "Intermarket Trading System" ("ITS") means the application of the System that permits intra-day trading in Eligible Listed Securities between Participant markets as set forth in the ITS Plan.]

[(iv) "ITS Plan" means the plan pursuant to which the Exchange, other national securities exchanges and the National Association of Securities Dealers, Inc. ("NASD") (collectively, the "Participants") act jointly in planning, developing and operating the System and its applications, as from time to time amended in accordance with its provisions, and that has been approved by the SEC pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934, as amended, and SEC Rule 11Aa3-2.]

[(v) "Network A Eligible Security" has the meaning assigned to that term in the CTA Plan.]

[(vi) "Network B Eligible Security" has the meaning assigned to that term in the CTA Plan.]

[(vii) "Pre-Opening Application" means the application of the System that permits a market-maker in one Participant market who wishes to open his market in an Eligible Listed Security to obtain from other market-makers registered in that security in other Participant markets any pre-opening interests such other market-makers might decide to disclose as set forth in the ITS Plan.]

[(viii) "Previous day's consolidated closing price" means the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which a transaction in the stock was reported by the New York Stock Exchange, Inc. ("NYSE") or the American Stock Exchange, Inc. ("AMEX"), if, because of unusual market conditions, the NYSE or AMEX price is designated as such pursuant to the ITS Plan.]

[(ix) "System" means the communications network and related equipment that links electronically the Participant markets as described in the ITS Plan.]

[(x) "Stopped" means an agreement by a member to "stop" securities at a specified price constituting a guarantee of the purchase or sale by him of the securities at that price or its equivalent.]

[(b) Provisions of the Plan—By subscribing to and submitting the ITS Plan for filing with the Securities and Exchange Commission, the Exchange has agreed to comply to the best of its ability, and, absent reasonable justification or excuse, to enforce compliance by
its members, with the provisions of the ITS Plan. In this connection, the following shall
apply:

**[Intermarket Trading System ("ITS")]**

[(1) All transactions effected through ITS shall be on a "regular way" basis. Each
transaction effected through ITS shall be cleared and settled through a clearing
agency registered with the Securities and Exchange Commission which maintains
facilities through which ITS transactions may be compared and settled and which
agrees to supply each participating market center with data reasonably requested in
order to permit such market center to enforce compliance by its members with the
provisions of the Act, the rules and regulations thereunder, and the rules of such
market center.]

[(2) Any "commitment to trade", which is transmitted by a member to another
participating market center through ITS, shall be firm and irrevocable for the period
of time following transmission as is chosen by the sender of the commitment. All
such commitments to trade shall, at a minimum:]

[(i) identify one or more clearing members;]
[(ii) direct the commitment to a particular participating market center;]
[(iii) specify the security which is the subject of the commitment;]
[(iv) designate the commitment as either a commitment to buy or a commitment to
sell;]
[(v) specify the amount of the security to be bought or sold, which amount shall be
for one unit of trading or any multiple thereof;]
[(vi) specify the price at or below which the security is to be bought or the price at or
above which the security is to be sold, or specify that the commitment is a
commitment to trade "at the market";]
[(vii) designate the commitment "short" or "short exempt" whenever it is a
commitment to sell which, if it should result in an execution in the market of the
receiving market center, would result in a short sale to which the provisions of
paragraph (a) of Rule 10a-1 under the Act would apply;]
[(viii) specify the time period during which the commitment shall be irrevocable, but
if the time period is not specified in the commitment, the longer of the three
options available under the Plan shall be assumed by ITS.]

[(3) Each commitment to trade sent through ITS (other than a commitment to trade "at
the market"), if a commitment to buy, shall be priced at the offer price then being
displayed from the market center to which the commitment is sent and, if a
commitment to sell, shall be priced at the bid price then being displayed from such
market center.]

[(i) A "commitment to trade" received on the Floor through ITS shall be treated in
the same manner, and entitled to the same privileges, as would an immediate or
cancel order that reaches the Floor at the same time except as otherwise provided
in the Plan and except further that such a commitment may not be "stopped" and
the commitment shall remain irrevocable for the time period chosen by the sender
of the commitment.]

[(4) The member on the Floor who made the bid or offer which is sought by a
commitment to trade received on the Floor through ITS, shall accept such
commitment to trade up to the amount of the bid or offer if the bid or offer is still
available on the Floor when the commitment to trade is received by such member,
unless acceptance is precluded by the rules of the Exchange. In the event that the bid 
or offer which is sought by a commitment to trade is no longer available on the 
Floor when the commitment is received but a new bid or offer is available on the 
Floor which would enable the commitment to trade to be executed at a price which 
is as or more favorable than the price specified in such commitment, then the 
member who has made such new bid or offer shall accept such commitment at the 
price, and up to the amount of, his bid or offer, unless acceptance is precluded by the 
rules of the Exchange.]

[(5) Any member to whom a commitment to trade received through ITS is 
communicated and who intends to reject that commitment shall notify the market 
center from which the commitment was sent of such rejection as promptly as 
possible.]

[(6) Any commitment to trade received on the Floor through ITS and any execution 
thereof and any commitment to trade issued by a member through ITS, shall be 
subject to such rules as the Exchange may from time to time determine.] 

[Pre-Opening Application ]

[(7) The provisions of subparagraph (1) above shall also be applicable to any 
transaction effected through the Pre-Opening Application. The Pre-Opening 
Application applied in the following two instances:]

[(i) whenever a market maker in any Participant market, in arranging an opening 
transaction in that market in a System security, anticipates that the opening 
transaction will be at a price that represents a change from the security's "previous 
day's closing price" at more than the "applicable price range;" and]

[(ii) whenever an "indication of interest" (an anticipated opening price range) is sent 
to the CTA Plan Processor as required or permitted by the CTA Plan or a 
Participant market's rules.] 

[(c) Openings on the Exchange ]

[(i) Notification Requirement ]

[(A) Applicable Price Changes ]

[(1) Initial Notification—Whenever an Exchange specialist, in arranging an 
opening transaction on the Exchange in any Eligible Listed Security, 
anticipates that the opening transaction on the Exchange will be at a price that 
represents a change from the security's previous day's consolidated closing 
price of more than the "applicable price change" (as defined below), he shall 
notify the other Participant markets of the situation by sending a "pre-opening 
notification" through the System. Thereafter, the specialist shall not open the 
security in his market until not less than three minutes after his transmission of 
the pre-opening notification. The "applicable price changes" are:

<table>
<thead>
<tr>
<th>Security</th>
<th>Consolidated Closing Price</th>
<th>Applicable Price Change ($) (More Than)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Network A</td>
<td>Under $15</td>
<td>1/8 point or, for stocks trading in decimals, .10</td>
</tr>
<tr>
<td>$15 or over*</td>
<td></td>
<td>1/4 point or, for stocks trading in decimals, .25</td>
</tr>
</tbody>
</table>
If the previous day's consolidated closing price of a Network A Eligible Listed Security exceeded $100 and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price change" is two dollars.

If the previous day's consolidated closing price of a Network B Eligible Listed Security exceeded $75 and the Security does not a Portfolio Depositary Receipt, Index Fund Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price change" is two dollars.

The price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a 1/8-5/8 or, for stocks

<table>
<thead>
<tr>
<th>Security</th>
<th>Consolidated Closing Price</th>
<th>Applicable Price Range ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Network A</td>
<td>Under $50</td>
<td>1/2 point or, for stocks trading in decimals, .50</td>
</tr>
<tr>
<td></td>
<td>$50 or over *</td>
<td>1 point or, for stocks trading in decimals, 1.00</td>
</tr>
<tr>
<td>Network B</td>
<td>Under $10</td>
<td>1/2 point or, for stocks trading in decimals, .50</td>
</tr>
<tr>
<td></td>
<td>$10 or over **</td>
<td>1 point or, for stocks trading in decimals, 1.0</td>
</tr>
</tbody>
</table>

*If the previous day's consolidated closing price of a Network A Eligible Listed Security exceeded $100 and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price range" is two dollars.

**If the previous day's consolidated closing price of a Network B Eligible Listed Security exceeded $75 and the Security does not a Portfolio Depositary Receipt, Index Fund Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price change" is two dollars.]
trading in decimals, 40.15—40.65 price range would be permissible if the previous day's consolidated closing price were 1/8 or 5/8 or for stocks trading in decimals 40.15 or 40.65, but not if the closing price were 1/4, 3/8 or 1/2, or, for stocks trading in decimals, within the price range of 40.16—40.64).

[(3) Subsequent Notifications—If, after sending a pre-opening notification, the situation in an Exchange specialist's market changes he may have to issue a subsequent pre-opening notification. The three situations requiring subsequent notifications are described below. Subsequent pre-opening notifications shall be standardized pre-opening administrative messages. After sending a subsequent notification, the specialist shall wait either (1) one minute or (2) until the balance of the original three-minute waiting period expires, whichever is longer, before opening his market (i.e., if more than one minute of the initial waiting period has not yet expired at the time the subsequent notification is sent, the specialist must wait for the rest of the period to pass before opening his market).

[(A) Increase or Decrease in Applicable Price Range—Where, prior to the specialist's opening of his market in the security, his anticipated opening price shifts so that it (1) is outside of the price range specified in his pre-opening notification but (2) still represents a change from the previous day's consolidated closing price of more than the applicable price change, he shall issue a replacement pre-opening notification (an "additional" notification) before opening his market in the security. An additional notification contains the same kind of information as is required in an original pre-opening notification.

[(B) Shift to within Applicable Price Change Parameter—]

[(a) The specialist shall, by issuing a "cancellation" notification through the System, notify the Participant market(s) of the receiving market-maker(s) prior to opening the security if the price at which he anticipates opening his market shifts so that it (1) is outside of the price range specified in his pre-opening notification but (2) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.

[(b) Notwithstanding the preceding sentence, in situations where the price range in an initial or additional notification includes price variations equal to or less than the applicable price change parameters, the "cancellation" notification signifies that the anticipated opening price: (1) may or may not be outside of the price range specified in the pre-opening notification and (2) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.]*

[(C) Participation as Principal Precluded ("Second Look")—If a responding market-maker who has shown in his pre-opening response interest as principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (e.g.), his responding principal interest is to sell at a price 1/8 or more, or, for stocks trading in decimals, .01 or more below the opening price established by paired agency orders), the specialist shall send a "second look" notification notifying such responding market-maker of the price and size at which he
could participate as principal (i.e., in the parenthetical example above, the total amount of the security that he would have to sell at the 1/8-better, or, for stocks trading in decimals, at the .01-better price to permit the opening transaction to occur at that price).]  

[(B) **Tape Indications**—If the CTA Plan or Exchange's rules require or permit that an "indication of interest" (i.e., an anticipated opening price range) in a security be furnished to the consolidated last sale reporting system prior to the opening of trading, or the reopening of trading following a halt or suspension in trading in one or more Eligible Listed Securities, then the furnishing of an indication of interest in such situations shall, without any other additional action required of the specialists, (1) initiate their Pre-Opening process, and, (2) if applicable, substitute for and satisfy the requirements of sub-paragraph (c)(i)(A) concerning Applicable Price Changes. (While the furnishing of an indication of interest to the consolidated last sale reporting system satisfies the notification requirements of this Rule, a specialist should also transmit the indication through the System in the format of a standardized pre-opening administrative message.) In any such situation, the specialist shall not open or reopen the security until not less than three minutes after his transmission of the opening and reopening indication of interest. For the purposes of this Rule, "pre-opening application" includes an indication of interest furnished to the consolidated last sale reporting service.]  

[(ii) **Pre-Opening Responses**]  

[(A) **Decision on Opening Transaction**—If an Exchange specialist who has issued a pre-opening notification receives "pre-opening responses" through the system containing "obligations to trade" from market-makers in other Participant markets ("responding market-makers"), he shall combine those obligations with orders he already holds in the security and, on the basis of this aggregated information, decide upon the opening transaction in the security. If the specialist has received more than one pre-opening response from a Participant market, he shall include in such combination only those obligations to trade from suchParticipant market as are specified in the most recent response, whether or not the most recent response expressly cancels the preceding response(s). An original or revised response received after the specialist has effected his opening transaction shall be to no effect.]  

[(B) **Pre-Opening Responses from Open Markets**—An Exchange specialist must accept only those pre-opening responses sent to the Exchange by market-makers in other Participant Markets prior to the opening of their markets for trading in the security. Following a halt or suspension in trading on the Exchange, a specialist must accept only those pre-opening responses sent by market-makers to the Exchange from other Participant Markets that halted trading in the security contemporaneously with the Exchange and that had not resumed trading in the security at the time the pre-opening response was sent. In the event that one or more market-makers from Participant Markets that have already opened trading in a security or, with respect to a halt or suspension in trading, either did not halt trading in a security contemporaneously with the Exchange, or has already resumed trading in a security, respond to a pre-opening notification in that security, the specialist need not, but may in his discretion, accept such responses for the purpose of inclusion in the opening or re-opening transaction. In the event that a Participant Market opens or, with respect to a halt
or suspension in trading, resumes trading in a security subsequent to a market-
maker in that Participant Market sending a pre-opening response but prior to the
opening or re-opening transaction on the Exchange, the market-maker who sent
the pre-opening response to the Exchange must confirm the pre-opening response
by sending an administrative message through the System stating that the
response remains valid; if the market-maker fails to so confirm the pre-opening
response, the specialist need not, but may in his discretion, accept the original
response for the purpose of inclusion in the opening or re-opening transaction.]

[(C) Allocation of Imbalances—Whenever pre-opening responses from one or more
responding market-makers include obligations to take or supply as principal more
than 50 percent of the opening imbalance, the Exchange specialist may take or
supply as principal 50 percent of the imbalance at the opening price, rounded up
or down as may be necessary to avoid the allocation of odd lots. In any such case,
where the pre-opening response is from more than one responding market-maker,
the specialist shall allocate the remaining imbalance (which may be greater than
50 percent if the specialist elects to take or supply less than 50 percent of the
imbalance) among them in proportion to the amount each obligated himself to
take or supply as principal at the opening price in his pre-opening response,
rounded up or down as may be necessary to avoid the allocation of odd lots. For
the purpose of this paragraph (c)(v), multiple responding market-makers in the
same Eligible Listed Security in the same Participant market shall be deemed to be
a single responding market maker.]

[(D) Treatment of Obligations to Trade—In receiving a pre-opening response, an
Exchange specialist shall accord to any obligation to trade as agent included in the
response the same treatment as he would to an order entrusted to him as agent on
the Exchange at the same time such obligation was received.]

[(E) Responses Increasing the Imbalance—An Exchange specialist shall not reject a
pre-opening response that has the effect of further increasing the existing balance
for that reason alone.]

[(iii) Reports of Participation—Promptly following the opening in any security as to
which an Exchange specialist issued a pre-opening notification, the specialist shall
report to each Participant responsible for a market in which one or more responding
market-makers are located (A) the amount of the security purchased and/or sold, if
any, by the responding market-maker(s) in the opening transaction and the price
thereof or (B) if the responding market-maker(s)'s response included principal
interest at the opening price that did not participate in the opening transaction, the
fact that such interest did not so participate.]

[(d) Openings in Other Participant Markets ]

[(i) Pre-Opening Responses—Whenever an Exchange specialist who has received a
pre-opening notification as provided in the ITS Plan in any Eligible Listed Security
as to which he is registered as a specialist wishes to participate in the opening of that
security in the Participant market from which the pre-opening notification was
issued, he may do so by sending obligations to trade through the System to such
Participant market in a pre-opening response. A pre-opening response shall]

[(A) be designated as a pre-opening response ("RES"),]

[(B) identify the Exchange ("X"), the specialist and the security ("XYZ"), and]

[(C) show the specialist's interest (if any), both as principal for his own account
("P") and as agent for orders left with him ("A"), at each price level within the
price-range indicated in the pre-opening notification (e.g., 403/8 or, for stocks trading in decimals, 40.40), reflected on a netted share basis by being formatted as a standardized pre-opening administrative message as follows:]

[RES X/XYZ BUY [SELL] A-P 403/8 (or, for stocks trading in decimals, 40.40)

The response may also show market orders separately. For the purposes of this paragraph (d), "pre-opening notification" includes an "indication of interest" received through the System in compliance with the counterpart to paragraph (c)(x) in another Participant Market's rule pertaining to the Pre-Opening Application.]

[(ii) Responses When the Exchange is Open—Notwithstanding paragraph (b)(i), an Exchange specialist who has received a pre-opening notification in an Eligible Listed Security in which he is registered as a specialist should not send a pre-opening response to the originator of such notification if (A) the market for trading in the security is open on the Exchange or (B) the Participant Market from which the notification emanated had declared a halt or suspension in trading in such security, and the Exchange either had not halted trading in the security reasonably contemporaneously with the Participant Market or had resumed trading during the halt or suspension in trading.]

[(iii) Revised Responses—An Exchange specialist may cancel or modify his pre-opening response by sending through the System a revised response that cancels the obligations to trade contained in his original response and, if a modification is desired, that substitutes new obligations to trade stating the specialist's aggregate interest (i.e., his interest reflected in the original response plus any additional interest and/or minus any withdrawn interest) at each price level. Each succeeding response, even if it fails to expressly cancel its predecessor response, shall supersede the predecessor response in its entirety. Any revised response shall be to no effect if received in the Participant market from which the pre-opening notification was issued after the security has opened in such Participant market.]

[(iv) Sole Means of Pre-Opening Routing—Once a pre-opening notification as to any security is received on the Exchange, the one or more Exchange specialists in such security shall submit any obligations to trade that security as principal for his or their own accounts to the Participant market from which the pre-opening notification was issued only through the Pre-Opening Application and shall not send orders to trade that security for his or their own accounts to such Participant market for participation at the opening in that market by any other means. The foregoing sentence shall have no application to orders sent to that market by the specialist(s) prior to the issuance of a pre-opening notification.]

[(v) Use of System before Opening—No Exchange member, whether acting as principal or agent, shall send an obligation to trade, commitment to trade or order in any security from the Exchange through the System to any other Participant market prior to the opening of trading in the security in the Participant market (or prior to the resumption of trading in the security in the Participant market following the initiation of a halt or suspension in trading in the security as referred to in section X of the CTA Plan if, as described in paragraph (c)(ii), the Pre-Opening Application applies) until a pre-opening notification in the security has been issued from the other Participant market or, if no pre-opening notification is required, until the market in the security has opened in such other participant market.]
[[vi] Duration of Obligations to Trade—Responses to pre-opening notifications shall be voluntary, but each obligation to trade that an Exchange specialist includes in any pre-opening response, or in any modification of a pre-opening response, shall remain binding on him, and on any person for whom he is acting, until the security has opened in the Participant market from which the pre-opening notification was issued or until a cancellation or modification of such obligation has been received in such Participant market, and any such modification shall itself be binding on the Exchange specialist until a subsequent cancellation or modification thereof has been received in such Participant market.]

[(vii) Request for Participation Report—The ITS Plan anticipates that an Exchange member who has sent one or more obligations to trade in response to a pre-opening notification will request a report through the System as to this participation if he does not receive a report as required promptly following the opening. If, on or following trade date, he does request a report through the System as to his participation before 4:00 PM eastern time, and he does not receive a response by 9:30 AM eastern time on the next trading day, he need not accept a later report. If he fails to so request a report, he must accept a report until 4:00 PM eastern time on the third trading day following the trade date (i.e., on T+ 3). The Exchange does not intend this paragraph to relieve him of the obligation, when he does not receive a report, to request a report as soon as he reasonably should expect to have received it.]

[Supplementary Material:]

[.10 No member shall buy against a commitment or obligation to sell designated as "short" which is received on the Floor through ITS or any other Application of the System if the resulting transaction would violate the short selling rules as in effect on the Exchange.]

Rule 2001A. [ITS "Trade-Throughs" and "Locked Markets"] Reserved

[(a) Definitions—]

[(1) An "Exchange trade-through", as that term is used in this Rule, occurs whenever a member on the Exchange initiates the purchase on the Exchange of a security traded through ITS ("an ITS Security") at a price which is higher than the price at which the security is being offered (or initiates the sale of such a security at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed on the Exchange from such other market center. The member described in the foregoing sentence is referred to in this Rule as the "member who initiated an Exchange trade-through."]

[(2) A "third participating market center trade-through", as that term is used in this Rule, occurs whenever a member on the Exchange initiates the purchase of an ITS Security by sending a commitment to trade through the System and such commitment results in an execution at a price which is higher than the price at which the security is being offered (or initiates the sale of such a security by sending a commitment to trade through the System and such commitment results in an execution at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed on the Exchange from such other market center. The member described in the foregoing sentence is referred to in this Rule as the "third participating market center trade-through."}
market center. The member described in the foregoing sentence is referred to in this Rule as the "member who initiated a third participating market center trade-through."

[(3) A "trade-through", as that term is used in this Rule, means either an Exchange trade-through or a third participating market center trade-through.]

[(4) A "locked market", as that term is used in this Rule, occurs whenever the Exchange disseminates a bid (offer) for an ITS Security at a price which equals or exceeds (is less than) the price of the offer (bid) for the security then being displayed from another ITS participating market center (the "locked offer (bid)"). This Rule refers to the bid (offer) that causes the locked market as the "locking bid (offer)".]

[(5) As used in this Rule in reference to the Cincinnati Stock Exchange, Inc. ("CSE"), a contra party shall be "within another ITS participating market center" if he is a "User" (which has the meaning assigned to it in CSE Rule 11.9 as in effect on January 26, 1981) participating in the transaction through the CSE's "National Securities Trading System".]

[(6) "ITS/CAES Market Maker", as that term is used in this Rule, means a NASD member that is registered as a market maker with the NASD for the purposes of the Applications with respect to one or more specified "ITS/CAES securities" as more fully described in the ITS Plan.]

[(b) Trade-Throughs—(1) When purchasing or selling, either as principal or agent, any ITS Security on the Exchange or by issuing a commitment to trade through the System, members on the Exchange should avoid initiating a trade-through unless one or more of the provisions of paragraph (b)(3) below are applicable.]

[(2)(A) Except as provided in paragraph (b)(3) below, if a trade-through occurs and a complaint thereof is received by the Exchange through the System from the party whose bid or offer was traded-through (the "aggrieved party"), then:

[(i) except as provided in paragraph (b)(2)(A)(ii) below, (a) the member who initiated the trade-through shall satisfy, or cause to be satisfied, through the System the bid or offer traded-through in its entirety either at the price of such bid or offer or at the price that caused the trade-through (as determined in accordance with paragraph (b)(2)(B) below), or (b) if he elects not to do so (and, in the case of a third participating market center trade-through, he obtains the agreement of the contra party within the ITS participating market center that received the commitment that caused the trade-through), then the price of the transaction that constituted the trade-through shall be corrected to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system; or

[(ii) in the case of an Exchange trade-through only, if the member who initiated the trade-through and the member on the contra side of the transaction had each originated his side of the transaction while on the Exchange for his own account or for any account in which he has an interest, the transaction shall be deemed void and a cancellation thereof shall be reported through the consolidated last sale reporting system.]

[(B) The price at which the bid or offer traded-through shall be satisfied pursuant to clause (a) of paragraph (b)(2)(A)(i) shall be the price of such bid or offer except if (i) the transaction that constituted the trade-through was of "block size" but did not constitute a "block trade" (as those terms are defined in the Exchange's ITS Block Trade Policy) and (ii) the member who initiated the trade-through did not make every reasonable effort to
satisfy, or cause to be satisfied, through the system the bid or offer traded-through at its
price and in its entirety within two (2) minutes from the time the report of the transaction
that constituted the trade-through was disseminated over the high speed line of the
consolidated last sale reporting system. In the case of such exception, the price at which
the bid or offer traded-through shall be satisfied shall be the price that caused the trade-
through.

[(C) Whenever paragraph (b)(2)(A)(i) applies, if the member who initiated the trade-
through, or the member (or the broker-dealer within another ITS participating market
center) on the contra side of the transaction, was, or if both such parties were, executing
(in whole or in part) orders that originated from off their respective floors (or, in the case
of a contra party who is a User or an ITS/CAES Market Maker, as to which he acts as
agent for another person), each such order or portion thereof that was executed in the
transaction that constituted the trade-through (whether such order or portion thereof was
executed by the member who initiated the trade-through or by the member (or the broker-
dealer within another ITS participating market center) on the contra side of the
transaction) shall receive the price that caused the trade-through, or the price at which the
bid or offer traded-through was satisfied, if it was satisfied, pursuant to clause (a) of
paragraph (b)(2)(A)(i), or the adjusted price, if there was an adjustment, pursuant to
clause (b) of paragraph (b)(2)(A)(i), whichever price is most beneficial to the order or
portion. Resulting money differences shall be the liability of the member who initiated
the trade-through.

[(3) Paragraph (b)(2) above shall not apply under the following conditions:

[(A) the size of the bid or offer traded-through was for 100 shares;]

[(B) the member who initiated the trade-through made every reasonable effort to avoid
the trade-through, but was unable to because of a systems/equipment failure or
malfunction;]

[(C) the transaction which constituted the trade-through was not a "regular way"
contract;]

[(D) the trade-through was an Exchange trade-through and occurred during a period
when, with respect to the ITS security which was the subject of the trade-through,
members on the Exchange were relieved of their obligations under paragraph (c)(2)
of Rule 11Ac-1 pursuant to the "unusual market" exception of paragraph (b)(3) of
Rule 11Ac1-1; provided, however, that, unless one of the conditions of paragraph
(b)(3) of this Rule (other than that of this subparagraph (D)) applies, during any such
period members shall make every reasonable effort to avoid trading-through any bid
or offer displayed on the Exchange from another ITS participating market center
whose members are not so relieved of their obligations with respect to such bid or
offer under paragraph (c)(2) of Rule 11Ac1-1;]

[(E) the bid or offer traded-through was being displayed from another ITS participating
market center whose members were relieved of their obligations with respect to such
bid or offer under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual
market" exception of paragraph (b)(3) of Rule 11Ac1-1;]

[(F) the bid or offer traded-through had caused a locked market in the ITS Security
which was the subject of such bid or offer; or]

[(G) a complaint with respect to the trade-through was not received by the Exchange
through the System from the aggrieved party promptly following the trade-through
and, in any event,]
[(i) in the case of an Exchange trade-through, within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system, or]

[(ii) in the case of a third participating market center trade-through, within ten (10) minutes from the time the aggrieved party sent a complaint through the System to the ITS participating market center that received the commitment to trade that caused the trade-through, which first complaint must have been received within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system.]

[(H) in the case of a third participating market-center trade-through, either:]

[(i) the member who initiated the trade-through (a) had sent a commitment to trade promptly following the trade-through that satisfies the bid or offer traded-through and (b) preceded the commitment with an administrative message stating that the commitment was in satisfaction of a third participating market center trade-through, or]

[(ii) a complaint with respect to the trade-through was not received by the Exchange through the System from the aggrieved party promptly following the trade-through, and, in any event, within ten (10) minutes from the time the aggrieved party sent a complaint through the system to the ITS participating market center that received the commitment to trade that caused the trade-through, which first complaint must have been received within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system.]

[(c) Responsibilities and Rights following Trade-Through Complaints—(1) When a trade-through complaint is received by the Exchange, the member who initiated the trade-through shall respond as promptly as practicable to the aggrieved party. Such a response shall notify the aggrieved party either]

[(A) that one of the conditions specified in paragraph (b)(3) of this Rule is applicable (specifying the particular condition), or]

[(B) that the complaint is valid and appropriate corrective action is being taken pursuant to paragraph (b)(2) of this Rule.]  

[(2) If it is ultimately determined that there was a trade-through, that the corrective action required by either paragraph (b)(2)(A)(i) or (b)(2)(A)(ii) above was not taken, and that none of the conditions of paragraph (b)(3) above was applicable, the member who initiated the trade-through shall be liable to the aggrieved party for the lesser of:]

[(A) the amount of the actual loss proximately caused by the trade-through and suffered by the aggrieved party, or]

[(B) the loss proximately caused by the trade-through that would have been suffered by the aggrieved party had he purchased or sold the security subject to the trade-through so as to mitigate his loss and had such purchase or sale been effected at the "loss basis price".]

[For purposes of this paragraph (c)(2), the "loss basic price" shall be the price of the next transaction, as reported by the high speed line of the consolidated last sale reporting system, in the security in question after one hour has elapsed from the time the complaint is received by the Exchange (or, if the complaint is so received within the last hour of trading on the Exchange on any day, then the price of the opening transaction in that security on the Exchange on the next day on which the Exchange trades that security).]
[(3) Any member who is an aggrieved party under the trade-through rule of another ITS participating market center may at any time at his discretion take steps to establish and mitigate any loss he might incur as a result of the trade-through of his bid or offer. If so, he shall give prompt notice to such other market center of any such action.]

[(4) If a complaint of a purported trade-through is received by the Exchange and the complained-of transaction resulted from a member's execution on the Exchange of a commitment to trade received from another ITS participating market center, the member should, if circumstances permit, make reasonable efforts to notify the complaining party, as promptly as practicable following receipt of the complaint, (A) that the transaction was not initiated on the Exchange and (B) of the identity of the ITS participating market center that originated the commitment. Neither compliance nor noncompliance with the preceding sentence shall be the basis for any liability of the member for any loss associated with the complained-of transaction.]

[(5) If a transaction that resulted from a member's execution on the Exchange of a commitment to trade constitutes a trade-through under the rules of the originating ITS participating market center, then:]

[(A) if the broker-dealer on such market center who initiated the transaction requests that the Exchange member correct the price of such transaction in accordance with the counterpart in such market center's trade-through rule to paragraph (b)(2)(A)(i)(b) of this Rule, the Exchange member may, but need not, acquiesce and so correct the price; and]

[(B) paragraph (b)(2)(C) of this Rule shall apply as if the Exchange member were a contra party within the meaning of that paragraph.]

[(d) Locked Markets—(1) Except as provided in paragraphs (d)(1)(B) below, if a locked market occurs and the Exchange receives a complaint through the System from the party whose bid (offer) was locked (the "aggrieved party"), the member responsible for the locking offer (bid) (the "locking member") shall, as specified in the complaint, either promptly "ship" (i.e., satisfy through the System the locked bid (offer) up to the size of his locking offer (bid)) or "unlock" (i.e., adjust his locking offer (bid) so as not to cause a locked market). If the complaint specifies "unlock", he may nevertheless ship instead.]

[(2) Paragraph (d)(1) above shall not apply under the following conditions:

[(A) the locked bid or offer was for 100 shares;]

[(B) the locking bid or offer no longer prevails on the Floor at the time the complaint is received on the Floor;]

[(C) the rules of the Exchange would prohibit the issuance of a commitment to trade to satisfy the locked bid or offer;]

[(D) the locking member makes every reasonable effort to comply with paragraph (d)(1) above, but is unable to comply because of a systems/equipment failure or malfunction;]

[(E) the locking bid or offer was not for a "regular way" contract; or]

[(F) the locked market occurred at a time when, with respect to the affected ITS Security, members either on the Exchange or in the ITS participating market center in which the aggrieved member is located were relieved of their obligations under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 1Ac1-1.]

[(e) Opening and Block Trades—This Rule shall not apply to (1) purchases and sales effected by members participating in an opening (or reopening) transaction on the
Exchange in an ITS Security or (2) any "block trade" as defined in the Exchange's ITS Block Trade Policy.]

[Supplementary Material:]

.10 A specialist utilizing an automatic quotation system for quote changes cannot quote ("track") a size greater than 1 round-lot bid and offer.

.20 Nothing in paragraph (d)(2)(B) above is intended to discourage a locking member from electing to ship if the complaint requests him to do so.

.30 The fact that a transaction may be cancelled or the price thereof may be adjusted pursuant to the provisions of paragraph (b)(2) of this Rule 2001A, shall not have any effect, under the rules, on other transactions or the execution of orders not involved in the original transaction.

.40 The provisions of this Rule 2001A shall supersede the provisions of any other Exchange Rule which might be construed as being inconsistent with Rule 2001A.


[As used in this Rule the term "System Transaction": shall mean any purchase or sale of a security which results from the acceptance of a commitment to trade received on the Floor through ITS or the Pre-Opening Application or from the acceptance in another market of a commitment to trade sent from the Floor through ITS or the Pre-Opening Application. Every commitment to trade which is issued or accepted through ITS shall be entered into the system by the specialist or specialist unit in such security at the specialist terminal or by any other member on the floor at the floor broker terminal. When a member on the floor directly instructs a specialist or ITS clerk to issue or accept a commitment to trade such member, for the purpose of this rule, is the "instructing member".]

[For the convenience of members on the floor other than specialists, the Exchange shall furnish employees known as "ITS clerks" who will, solely on behalf of such instructing members, enter the appropriate trade information into the floor broker terminal for sending commitments and obligations to trade. All such information must be placed in writing with the ITS clerk before the commitment or obligation to trade is entered into the floor broker terminal by the ITS clerk. Such an instructing member, after satisfying himself that the appropriate trade information has been accurately entered into the floor broker terminal by the ITS clerk for the sending of the desired commitment or obligation to trade, shall activate the key which effects the issuance of such commitment or obligation to trade. It shall be the responsibility of the member on the floor who places the instruction with an ITS clerk to keep abreast of the status of that instruction. The ITS clerk shall only be responsible to respond, as promptly as possible, to the member's inquiry concerning the status of his instruction. The Exchange shall not be liable for any loss resulting from or claimed to have resulted from the errors or omissions of an ITS clerk or clerks.]

[Each System Transaction shall be reported on the clearing tape generated by the System at the end of each trading day and such tape shall also identify the member who is
reported in the System as having issued or accepted the commitment to trade which resulted in the System Transaction on the clearing tape.]

[(A) Whenever a comparison or ticket is received pertaining to any System Transaction reported by the clearing tape and of which the recipient has no knowledge and which Transaction continues to be unresolved at the close of the second business day following the trade date, notwithstanding the routine comparison procedures employed by the clearing agency to which such Transaction was reported, the Exchange shall be notified immediately of the uncompared System Transaction so as to be able to conduct appropriate inquiries. If the inquiries conducted by the Exchange fail to identify the member or member organization who knows the uncompared System Transaction, but the inquiries confirm to the satisfaction of the Exchange the identification of the instructing member, and that the instructing member did instruct the specialist or specialist unit to issue or accept the commitment to trade which resulted in the uncompared system transaction or through use of the floor broker terminal issued the commitment to trade which resulted in the uncompared system transaction, then the instructing member shall accept and honor the transaction or shall cause a member organization to do so in his behalf.]

[If the inquiries conducted by the Exchange identify to the satisfaction of the Exchange a member, other than the instructing member, as the person who instructed the specialist or specialist unit to issue or accept the commitment to trade which resulted in the uncompared System Transaction as included on the clearing tape, or through use of the floor broker terminal issued the commitment to trade which resulted in the uncompared System Transaction, then such other member shall accept and honor the transaction or shall cause a member organization to do so in his behalf.]

[If the inquiries conducted by the Exchange fail to identify the member or member organization who knows the uncompared System Transaction, and also fail to satisfy the Exchange as to the identity of the member who instructed the specialist or specialist unit to issue or accept the commitment to trade which resulted in the uncompared System Transaction as included on the clearing tape, or through use of the floor broker terminal issued the commitment to trade which resulted in the uncompared System Transaction, then the Exchange shall, for its own account and risk, accept and honor the uncompared System Transaction and may take such action in the market to close out or offset its position as it may deem appropriate.]

[(B)]

(a) No claim against a specialist or specialist unit shall arise as to errors or omissions resulting in loss, cost, damage or expense (hereinafter called "loss") suffered by a member or member organization if such errors or omissions are found to have resulted from any failure by a member or member organization (whether or not such member is a party to a claim pursuant to this paragraph (B)) to place or cancel an instruction with the specialist unit or to effect the placement of a commitment or obligation through use of the floor broker terminal on a timely basis, or to communicate clearly and accurately, in writing, to the specialist or specialist unit as prescribed by the Rules of the Exchange.]

[In addition, no claim shall arise as to errors or omissions resulting in loss suffered by a member or member organization through use of the floor-broker terminal if such errors or omissions result from the effecting of a commitment or obligation to trade which has not been accurately input by the ITS clerk.]
[Further, no claim shall be allowed if, in the opinion of the Committee on Floor Procedure, the member or member organization making such claim did not take promptly, upon discovery of the error or omission, all proper steps to correct such error or omission and to establish and mitigate the loss resulting therefrom.]

[Further, it shall be the responsibility of the member or member organization who places an instruction with the specialist or specialist unit to keep abreast of the status of that instruction. The specialist or specialist unit shall only be responsible to respond, as promptly as possible, to the member or member organization's inquiry concerning the status of such instruction. No claim shall be allowed which is based on a member or member organization's assertion that he was not made aware of the status of his instruction and thus failed to take further appropriate action.]

[(b) Any claim for loss arising from errors or omissions of a specialist or specialist unit shall be presented in writing to the Committee on Floor Procedure no later than the opening of trading on the next business day following the day on which the error or omission giving rise to the loss occurred or within such longer period as the Committee shall consider equitable under the circumstances. Each party to the claim may make oral and written submissions and present witnesses. The decision of the Committee shall be final and may not be appealed.]

[(c) Whenever a clearing agency to which a System Transaction has been reported excludes such System Transaction from the clearance procedures conducted by such agency, either because such agency ceases to act (either with respect to transaction generally or as to a particular transaction) for a member or member organization, or because of the insolvency of such member or member organization, the Exchange may, but shall not be obligated to, assume and honor any one or more or all of such excluded System Transactions for the account of and on behalf of the member or member organization for which the clearing agency ceased to act or which is insolvent and, in any such case, the Exchange shall have a claim against such member or member organization in the amount of the loss incurred by the Exchange as a result of such assumption of such excluded System Transaction(s). The Exchange may assert such claim against such member or member organization in any appropriate forum.]

* Example: CTA close at 30. Pre-Opening Notification sent with any one of the following price ranges: 301/2; 301/8-5/8; or, 301/4-3/4, or, for stocks trading in decimals, a price range of 30.10—30.60, etc. It is then determined that the stock will open at 293/4 or 297/8, or, for stocks trading in decimals, a price within the range of 29.75 to 29.99. Under paragraph (II)(a), the specialist "shall" send cancellation notification. If it is subsequently determined that the stock will open at 30, 301/8, or 301/4, or, for stocks trading in decimals, a price within the range of 30 to 30.25, the specialist need not reindicate stock pursuant to paragraph (II)(b).]
**Exhibit 5b**

*New text underlined; deleted text bracketed.*

**XLE Fee Schedule**

**Transaction Fees**

<table>
<thead>
<tr>
<th>XLE Participant Organization Tier</th>
<th>Monthly Shares Executed</th>
<th>Fee to Remove Liquidity (Per Share Executed)</th>
<th>Credit for Providing Liquidity (Per Share Executed)</th>
<th>Fee for Routing Liquidity (Per Share Executed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Less than or equal to 10 million shares executed</td>
<td>$0.003</td>
<td>$0.002</td>
<td>$.0036</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>$0.0025</td>
<td>$.0036</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>$0.0026</td>
<td>$.0036</td>
</tr>
<tr>
<td>4</td>
<td>Greater than 200 million shares executed</td>
<td>$0.0026</td>
<td>$0.0026</td>
<td>$.0036</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 $1.00.³

+ Excluding single-sided odd lot orders executed at an away market. See Miscellaneous Transaction Fees.

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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.

³ Executed volume in such shares will accrete towards the volume tier breakpoint per XLE Participant Organization.
Miscellaneous Transaction Fees
Execution Fee for all IOC Cross and Mid-Point Cross Orders entered over technology provided by the Phlx, including odd lot IOC and Mid-Point Cross Orders: 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, including all other odd lot IOC Cross and Mid-Point Cross Orders: 5 * .......................... For All Tiers – No Charge

Execution Fee for Single-Sided Odd Lot Orders executed on XLE against another XLE Participant: 6 * .......................... For All Tiers – $0.003 per share
Routing Fee for Single-Sided Odd Lot Orders executed at an away market: 6 * .......................... For All Tiers – $0.03 per share

Execution Fee for Incoming NMS Linkage Orders [or ITS Commitments]: 7 .......................... For All Tiers – $0.003 per share

* Applicable to orders initially entered as odd-lot orders

Covered Sale Fee
Each member and member organization engaged in executing sale transactions on the Exchange or executing transactions on another exchange or on a Participant in NASD’s Alternative Display Facility (“ADF Participant”), which were routed through the Exchange’s Routing Facility, as described in Rule 185(g) [or over the Intermarket Trading System], 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. 8

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

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.

4 Phlx provides optional technology to XLE Participants for the entry of two-sided orders into XLE. Executed volume will accrete 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 accrete towards the volume tier breakpoint per XLE Participant Organization. There is no execution credit for IOC Cross and Mid-Point Cross executions.
6 Executed volume will accrete 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 accrete 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.