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) ✔

Pilot ✔ Extension of Time Period for Commission Action ✔ Date Expires 07/31/2007

Section 19(b)(2) Rule
[ ] ✔ 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).

Relating to elimination of short sale price test.

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

E-mail john.dayton@phlx.com

Telephone (435) 783-6415 Fax (215) 496-6729

Signature

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

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

Date 07/31/2007

By Jurij Trypupenko Director and Counsel

(Note)

(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.
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<th>Section</th>
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<tr>
<td><strong>Form 19b-4 Information</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Exhibit 1 - Notice of Proposed Rule Change</strong></td>
<td>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).</td>
</tr>
<tr>
<td><strong>Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Exhibit 3 - Form, Report, or Questionnaire</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Exhibit 4 - Marked Copies</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Exhibit 5 - Proposed Rule Text</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Partial Amendment</strong></td>
<td>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.</td>
</tr>
</tbody>
</table>
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 amend Phlx Rules 185, 455, 785 and 1072 to reflect the elimination of the short sale price test, including any tick or bid test of any self-regulatory organization ("Price Test") and the elimination of the “short exempt” marking requirement.\(^3\)

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 Phlx Rules are attached hereto as **Exhibit 5**.

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 July 10, 2007.

Questions and comments on the proposed rule change may be directed to John Dayton, Director and Counsel, at (435) 783-6415 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 Rules to Rules 200(g) and 201(b) of Regulation SHO. The Commission added Rule 201 of Regulation SHO and eliminated Rule 10a-1 under the Act. Rule 201 of Regulation SHO states that no Price Test shall apply to short sales in any security. It further states that self-regulatory organizations shall not have any rule that applies a Price Test. Rule 200(g) of Regulation SHO was modified to remove the requirement upon broker-dealers to mark sell orders as “short exempt.”

Phlx Rules 185, 455, 785 and 1072 contain language regarding the Price Test and the “short exempt” marking requirement. Phlx Rule 185 contains language regarding the entry, display and execution of sell short orders on XLE, Phlx electronic equity trading system, that are subject to the Price Test. With the elimination of the Price Test, sell short orders will not be handled any differently by XLE and the amendments to this rule will so reflect. Phlx Rule 455 stated that XLE will not execute a sell order unless effected in compliance with Rule 10a-1. Rule 10a-1 contained the Price Test and is being eliminated. The amendments to Phlx Rule 455 will reflect this.

Phlx Rule 785 requires member organizations to make an automated submission of trading data, including marking orders as short exempt, where appropriate. With the elimination of the “short exempt” marking requirement, Phlx Rule 785 will be amended to reflect this. Phlx Rule 1072 outlined the requirements on options specialists and

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4 17 CFR 242.200(g) and 17 CFR 242.201(b).

5 17 CFR 240.10a-1.
Registered Options Traders (“ROTs”) regarding their use of an exception to the NASD bid test (which is a type of Price Test) available to hedging options transactions. The elimination of the Price Test will extend to the NASD bid test and therefore options specialist and ROTs will not need the exemption outlined in Phlx Rule 1072. Phlx Rule 1072 will be deleted.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^6\) in general, and furthers the objectives of Section 6(b)(5) of the Act\(^7\) 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.

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\(^7\) 15 U.S.C. 78f(b)(5).
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\(^8\) and Rule 19b-4(f)(6) thereunder.\(^9\) At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

   Phlx requests that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay of the proposal. Phlx represents that such waivers are consistent with the protection of investors and the public interest because the proposed rule change conforms to Commission Rules and should eliminate potential confusion relating to orders on XLE.

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.

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9. **Exhibits**

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

5. Proposed Rule Text
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 185, 455, 785 and 1072 to reflect the elimination of the short sale price test, including any tick or bid test of any self-regulatory organization ("Price Test") and the elimination of the "short exempt" marking requirement.\(^5\)


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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 Rules to Rules 200(g) and 201(b) of Regulation SHO. The Commission added Rule 201 of Regulation SHO and eliminated Rule 10a-1 under the Act. Rule 201 of Regulation SHO states that no Price Test shall apply to short sales in any security. It further states that self-regulatory organizations shall not have any rule that applies a Price Test. Rule 200(g) of Regulation SHO was modified to remove the requirement upon broker-dealers to mark sell orders as “short exempt.”

Phlx Rules 185, 455, 785 and 1072 contain language regarding the Price Test and the “short exempt” marking requirement. Phlx Rule 185 contains language regarding the entry, display and execution of sell short orders on XLE, Phlx electronic equity trading system, that are subject to the Price Test. With the elimination of the Price Test, sell short orders will not be handled any differently by XLE and the amendments to this rule will so reflect. Phlx Rule 455 stated that XLE will not execute a sell order unless

\[6 \text{ 17 CFR 242.200(g) and 17 CFR 242.201(b).}\]
\[7 \text{ 17 CFR 240.10a-1.}\]
effected in compliance with Rule 10a-1. Rule 10a-1 contained the Price Test and is being eliminated. The amendments to Phlx Rule 455 will reflect this.

Phlx Rule 785 requires member organizations to make an automated submission of trading data, including marking orders as short exempt, where appropriate. With the elimination of the “short exempt” marking requirement, Phlx Rule 785 will be amended to reflect this. Phlx Rule 1072 outlined the requirements on options specialists and Registered Options Traders (“ROTs”) regarding their use of an exception to the NASD bid test (which is a type of Price Test) available to hedging options transactions. The elimination of the Price Test will extend to the NASD bid test and therefore options specialist and ROTs will not need the exemption outlined in Phlx Rule 1072. Phlx Rule 1072 will be deleted.

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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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\(^\text{10}\) and Rule 19b-4(f)(6) thereunder.\(^\text{11}\) At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Phlx requests that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay of the proposal. Phlx represents that such waivers are consistent with the protection of investors and the public interest because the proposed rule change conforms to Commission Rules and should eliminate potential confusion relating to orders on XLE.


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-2007-55 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-2007-55. 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-2007-55 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.\textsuperscript{12}

\begin{flushright}
Nancy M. Morris \\
Secretary
\end{flushright}

\textsuperscript{12} 17 CFR 200.30-3(a)(12).
Exhibit 5

Underlining indicates additions; brackets indicate deletions

Rule 185.

Orders and Order Execution

(a) No Change

(b) No Change

(1) No Change

(A)-(D) No Change

(E) [Except when otherwise mandated by the applicable short sale test, all Limit Orders and Reserve Orders, once displayable at a price, will not be displayable at an inferior price regardless of the movement of the away Protected Quotation.

(2) No Change

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

(c)-(d) No Change
(e) Reserved,[XLE will not execute nor display at a price at which it could not execute any order marked short in violation of the applicable short sale test, including any exemptions, applicable to that security.]

(f)-(h) No Change

Rule 455.

**Short Sales**

[XLE shall not effect a sell order or sale of any security, except Nasdaq Global Market and Nasdaq Capital Market securities, unless such sell order or sale is effected in compliance with Securities and Exchange Commission Rule 10a-1 promulgated under the Securities Exchange Act of 1934.] XLE shall not effect a sell order or sale of any security unless such sell order is effected in compliance with Regulation SHO promulgated under the Securities Exchange Act of 1934.

Rule 785.

**Automated Submission of Trading Data**

A member or member organization shall submit such of the following trade data elements specified below in such automated format as may be prescribed by the Exchange from time to time, in regard to such transaction or transactions as may be subject of a particular request for information made by the Exchange:

(a) If the transaction was a proprietary transaction effected or caused to be effected by the member or member organization for any account in which such member or member organization, or any member, allied member, approved person, partner, officer, director, or employee thereof, is directly or indirectly interested, such member or member organization shall submit or cause to be submitted the following information:

1)-4) No Change

5) Number of shares, or quantity of bonds or options contracts for each specific transaction and whether each transaction was a purchase, sale, short sale, [exempt short sale,] and if an options contract whether open long or short or close long or short;

6)-8) No Change

(b)-(d) No Change

Rule 1072. **Reserved.**

[Reporting Requirements Applicable to Short Sales in NASD/NM Securities]
[This Rule is adopted in conjunction with the adoption of an addition to the Rules of Fair Practice of the NASD which imposes a bid test on short sales of stocks traded on the Nasdaq National Market subject to certain exemptions including, during a pilot period, an exemption for certain transactions of options market makers. This Rule will continue in effect only so long as the options market maker exemption from the NASD bid test remains in effect.]

[(a) No member shall initiate, accept or transmit for execution, or execute a sale of a Nasdaq National Market ("NM") security for its own account or for the account of another member unless the sale is clearly identified in a form and manner prescribed by the Securities and Exchange Commission's ("SEC") Rule 200 under the Securities Exchange Act of 1934 promulgated pursuant to Regulation SHO ("SEC Rule 200").]

[(b) For purposes of this Rule, a short sale shall have the same meaning as set forth in SEC Rule 200.]

[(c) A short sale may be designated as a bid test exempt sale if:]

[(1) the sale qualifies for an exemption from the short sale bid test established in the NASD Rules of Fair Practice; or]

[(2) the sale is by or for the account of a Specialist or Registered Options Trader ("ROT"), provided that the short sale is an exempt hedge transaction by or for a "qualified options market maker" in a designated Nasdaq/NM security underlying a class of stock options or included in an index underlying a class of index options which the Specialist has been allocated pursuant to Rule 511 or the ROT has been assigned pursuant to Rule 1014.]

[(i) An "exempt hedge transaction" shall mean a short sale in a Nasdaq/NM security that was effected to hedge, and in fact serves to hedge, an existing offsetting options position or an offsetting options position that was created in one or more transactions contemporaneous with the short sale, provided that:]

[(A) in the case of a stock option, when establishing the short position, the Specialist or ROT receives or is eligible to receive good faith margin pursuant to Section 220.12 of Regulation T under the Securities Exchange Act of 1934 for that transaction;]

[(B) in the case of an index option, (1) the Nasdaq/NM security sold short is a component security of the index underlying such index option, (2) at least 10% of the value of the index underlying such index option is represented by one or more Nasdaq/NM securities, and (3) the current aggregate value of the Nasdaq/NM
securities sold short does not exceed the aggregate current index value of the index options position being hedged;]

[(C) Notwithstanding the foregoing, a transaction unrelated to normal options market making activity, such as index arbitrage or risk arbitrage that is in either case independent of a Specialist or ROT's market making functions, will not be considered an "exempt hedge transaction."

[(D) Transactions will be considered "contemporaneous" if they occur simultaneously or within the same brief period of time.]

[(ii) A "designated Nasdaq/NM security" shall mean a Nasdaq/NM security which the Specialist or ROT has designated as qualifying for the exemption provided in this subparagraph (c)(2). Each ROT may designate the Nasdaq/NM securities underlying no more than 20 of the options or index options, which the ROT has been assigned as designated Nasdaq/NM securities. Each Specialist may designate all of the Nasdaq/NM securities underlying the options or index options which the Specialist has been allocated as designated Nasdaq/NM securities. Such designations shall be made in writing, and shall be filed with the Exchange's Market Surveillance Department. Except:

[(A) With prior notification to an an Options Exchange Official, an ROT may facilitate an options order initiated from off-floor and contemporaneously hedge the resulting option position with a short sale in applicable Nasdaq/NM securities as if such securities are designated securities under subparagraph (c)(2)(ii). A report describing the transaction shall be filed with the Department of Market Surveillance in a time, form and manner prescribed by the Exchange, with written an Options Exchange Official approval indicated. The ROT must maintain a copy of the report as a record demonstrating that the sale was bid test exempt.]

[(B) Short sales of a security of a company involved in a publicly announced merger or acquisition by or for the account of a Specialist or ROT will be deemed to be an exempt hedge transaction, if the short sale was made to hedge existing or prospective positions (based on communicated indications of interest) in options on a security of another company involved in the merger or acquisition, where the option positions are or will be in a class of options for which the Specialist is registered or the ROT is assigned and were or will be an exempt hedge transaction as defined in subparagraph (c)(2) of this Rule.]
[(iii) A registered Specialist or ROT shall be considered to be a "qualified options market maker" in options on those Nasdaq/NM securities designated in accordance with subparagraph (c)(2)(ii) above for purposes of the exemption for qualified options market makers from the bid test established in the NASD Rules of Fair Practice, provided that the status of such Specialist or ROT as a qualified options market maker may be withdrawn, suspended or modified by the Exchange as the result of action of the Allocation, Evaluation and Securities Committee pursuant to Rule 511 or a proceeding by the Business Conduct Committee pursuant to Rule 960.]

[(A) An ROT may effect short sales as bid test exempt in a Nasdaq/NM security which the ROT has not designated as qualifying for the exemption provided in this Rule, if such security is a designated Nasdaq/NM security of an ROT of the same member organization and such affiliated ROT is not present on the trading floor or represented by a Floor Broker in the applicable trading crowd at the time of the bid test exempt sale.]

[(d) This Rule shall be in effect for an eighteen month pilot period commencing with its effective date, and may be modified or withdrawn upon termination of such pilot period however, if the exemption for options market makers from the short sale bid test contained in the NASD Rules of Fair Practice continues in effect, this rule will also continue in effect until it is modified or withdrawn.]

[(e) It will be deemed a violation of this rule when a member designates a sale for an account in which the member has no interest as a long sale where the member does not know or have reason to know that the beneficial owner of the account has, or as a result of such sale would have, a short position in the security, or when the member designates such a sale as a bid test exempt sale where the member does not know or have reason to know that the criteria for designating such sale as bid test exempt are not satisfied.]

[(f) If a member initiates, accepts for execution, transmits for execution or executes a short sale of a Nasdaq/NM security without clearly and properly identifying it as required by paragraph (a), or if a member designates a short sale as a bid test exempt sale under paragraph (c) but fails to satisfy all of the conditions of such designation, or even if all such conditions are satisfied, if the sale is made for the purpose of disrupting or manipulating the market in that security or a related option, such sale may constitute a violation of Exchange Rules 707 and 1014, as well as this Rule.]

[(g) Notwithstanding the foregoing, this Rule 1072 shall not be applicable to any short sales for which the SEC has suspended short sale price tests pursuant to its Rule 202T, including any short sales covered by the SEC's Pilot Program suspending certain short sale price provisions at Exchange Act Release No. 50104 (July 28, 2004), or any SEC amendment(s) of the same.]
[Commentary: ... ]

[.01 Once an underlying index has satisfied the 10% test in Section (c)(2)(i)(B)(2), the continued qualification of the index shall be reviewed at the end of each calendar quarter, and the index shall cease to qualify if the value of the index represented by the Nasdaq/NM securities is less than 8% at the end of any subsequent calendar quarter.]