Proposed Rule Change by Philadelphia Stock Exchange

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

<table>
<thead>
<tr>
<th>Initial</th>
<th>Amendment</th>
<th>Withdrawal</th>
<th>Section 19(b)(2)</th>
<th>Section 19(b)(3)(A)</th>
<th>Section 19(b)(3)(B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>✔</td>
<td></td>
<td></td>
<td>✔</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

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

Proposed rule change relating to the listing of structured equity products.

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: (435) 783-6415
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: 08/14/2007
By: Richard S. Rudolph
Vice President 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.
The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3).

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e., partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.
1. **Text of the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\) and Rule 19b-4 thereunder,\(^2\) proposes to update its rules regarding the listing of equity securities. Specifically, the Exchange proposes to modify Phlx Rule 802, Rule 806, Initial Public Offerings, Rule 807, Registration under the Exchange Act, and Rule 837, Annual Reports. The Phlx Fee Schedule will also be amended to add Initial and Continued Listing Fees for certain structured equity securities on the Exchange ("Structured Equity Products").\(^3\)

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 Exchange Rules attached hereto as Exhibit 5a. The text of the amended Phlx Fee Schedule is attached hereto as 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 May 17, 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.


\(^3\) For purposes of this proposed rule change, Structured Equity Products are securities to be listed pursuant to the categories in Phlx Rule 803 entitled Other Securities, Equity Linked Notes, Basket Linked Notes, Index Linked Exchangeable Notes and Index Linked Securities. See Phlx Rule 803(f), (h), (k), (m) and (n).
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 permit the Exchange to update certain of its listing rules and fees in order to attract the listing of Structured Equity Products. Currently, the vast majority of equity securities that trade on Phlx are listed on other exchanges and traded on Phlx pursuant to unlisted trading privileges (“UTP”). This allows the Exchange to compete for the trading volume of a security. However, Phlx now intends to actively pursue serving as the listing market for certain Structured Equity Products.

   In order to facilitate the listing of equity securities, Phlx has long had a series of rules, the 800 series, which create standards regarding both the security to be listed and traded on Phlx, as well as regarding the issuer of the security. In order to attract the listing of the Structured Equity Products, Phlx proposes modifications to the 800 series of rules designed to accommodate the specific attributes that many Structured Equity Securities have.

   **Phlx Rule 802.** Phlx Rule 802 identifies factors to be evaluated by the Exchange when reviewing and preparing its confidential listing opinion as to the eligibility of an applicant’s securities. Among other things, Phlx Rule 802 currently states that the applicant company must be a “going concern.” The proposed rule change would delete the “going concern” requirement in order to remove uncertainty as to whether a Structured Equity Product qualifies as a “going concern.” The existing listing standards in Phlx Rule 803(a)(2) for traditional operating companies should sufficiently satisfy the
“going concern” requirement for such other equity products that may become listed on the Exchange.

**Phlx Rule 806.** Phlx Rule 806 permits new issues of securities to be listed on the Exchange on the day that the registration statement is effective with the SEC, or upon effectiveness of the registration statement or equivalent document if registration with the SEC is not required. However, the issuer must meet certain initial listing criteria.

The proposed rule change would classify the two paragraphs of Phlx Rule 806 as (a) and (b). In addition, the proposed rule change would provide an exclusion for Structured Equity Products from Phlx Rule 806(b), which includes certain requirements relating to the distribution of new issues. This amendment would reflect the fact that distributors of a Structured Equity Product generally make informal arrangements with dealers prior to going effective to provide assurance that sufficient creation units will be purchased from the issuer to meet the minimum listing requirements.

**Phlx Rule 807.** Phlx Rule 807 requires that securities approved for listing by the Exchange must be registered under Section 12(b) of the Act.\(^4\) In addition, Phlx Rule 807 provides that securities registered under 12(g) of the Act,\(^5\) or that have recently been the subject of a public offering registered under the Securities Act of 1933, may be registered for exchange trading under Section 12(b) of the Act through the filing of SEC Form 8-A. The proposed rule change would update Phlx Rule 807 to reflect the fact that registration of securities on Form 8-A automatically becomes effective within 30 days of filing. The proposed amendments to Phlx Rule 807 are substantially similar to a corresponding provision in Section 210 of the Amex Company Guide.

---


**Phlx Rule 837.** Phlx Rule 837 requires listed companies to provide their shareholders with annual reports containing audited financial statements of the company and its subsidiaries at least 10 days prior to the annual meeting of shareholders and not later than four months after the close of the company’s last preceding fiscal year. It further states that three copies of the report must be filed with the Exchange at the time it is distributed to shareholders. The proposed rule change would amend Phlx Rule 837 to provide that any annual report that is required to be sent to the Exchange will be deemed sent if it is filed on EDGAR. This amendment would make Phlx Rule 837 consistent with the corresponding provision in Section 1101 of the Amex Company Guide.

**Fees.** Additionally, for Structured Equity Products, the Exchange will charge an original listing fee of $5,000, then charge a $500 per month continuing listing fee for each month thereafter. For example, when an issuer lists a Structured Equity Products, the Exchange will bill the issuer $5,000 in the month of original listing. Beginning in the subsequent month, the Exchange will invoice the issuer $500 per month until such time as the product is delisted. Therefore, the maximum listing fee an issuer of a Structured Equity Products could pay in any one calendar year would be $10,500.\(^6\) The proposed

---

\(^6\) The Exchange currently lists two Structured Equity Products, Pharmaceutical Basket Opportunity Exchangeable Securities and Biotechnology Basket Opportunity Exchangeable Securities. The issuer for these securities, Morgan Stanley, was invoiced the current annual continuing listing fee of $1,250 for the first product and $250 for the second product in January 2007. The Exchange believes that for these two products, the proposed $500 per month continuing listing fee should begin in January 2008. The Exchange believes that it is reasonable and appropriate to begin charging the proposed continuing listing fee to Morgan Stanley for these two products in January 2008 (in contrast to new products that would begin to pay the proposed fee in the month subsequent to initial listing) because Morgan Stanley was invoiced the current annual continuing listing fee for 2007 and could reasonably expect that this current fee would cover their obligation for these two products through the end of 2007.
original listing fee and proposed continuing listing fee are reasonable in light of Amex’s original listing fee\(^7\) and annual fee\(^8\) for Structured Equity Products.

b. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^9\) in general, and furthers the objectives of Section 6(b)(5) of the Act\(^10\) 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 modifying Exchange rules relating to the listing of Structured Equity Products. In addition, the Exchange believes that its proposal furthers the objectives of Section 6(b)(4) of the Act\(^11\) in particular, in that the proposed original listing fee and proposed continuing listing fee are an equitable allocation of reasonable fees and other charges among Exchange members.

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.

---

\(^7\) Amex’s original listing fee corresponds to Phlx’s proposed original listing fee. Amex’s original listing fee for Structured Equity Products (Securities Listed under Section 107 (Other Products)) begins at $5,000 and may be as much as $45,000 based on the number of shares to be listed. See Section 140 of the Amex Company Guide.

\(^8\) Amex’s annual fee corresponds to Phlx’s proposed continuing listing fee. Amex’s annual fee for Structured Equity Products (Securities Listed under Section 107 (Other Products)) begins at $15,000 and may be as much as $30,000 based on the number of shares outstanding. See Section 141 of the Amex Company Guide.


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)**

Not applicable.

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

Certain aspects of the proposed rule change are based on the rules of Amex. Specifically, the amendments to Phlx Rule 807 are based on Section 210 of the Amex Company Guide, and the amendments to Phlx Rules 837 are based on Section 1101 of the Amex Company Guide.

9. **Exhibits**

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

   5a. Proposed Rule Text

   5b. Proposed Amendment to Phlx Fee Schedule
SECURITIES AND EXCHANGE COMMISSION  
(Release No.                  ; File No. SR-Phlx-2007-60)  

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Structured Equity Products  

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 update its rules regarding the listing of equity securities. Specifically, the Exchange proposes to modify Phlx Rule 802, Rule 806, Initial Public Offerings, Rule 807, Registration under the Exchange Act, and Rule 837, Annual Reports. The Phlx Fee  

---  

Schedule will also be amended to add Initial and Continued Listing Fees for certain structured equity securities on the Exchange ("Structured Equity Products").


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 permit the Exchange to update certain of its listing rules and fees in order to attract the listing of Structured Equity Products. Currently, the vast majority of equity securities that trade on Phlx are listed on other exchanges and traded on Phlx pursuant to unlisted trading privileges ("UTP"). This allows the Exchange to compete for the trading volume of a security. However, Phlx now intends to actively pursue serving as the listing market for certain Structured Equity Products.

---

5 For purposes of this proposed rule change, Structured Equity Products are securities to be listed pursuant to the categories in Phlx Rule 803 entitled Other Securities, Equity Linked Notes, Basket Linked Notes, Index Linked Exchangeable Notes and Index Linked Securities. See Phlx Rule 803(f), (h), (k), (m) and (n).
In order to facilitate the listing of equity securities, Phlx has long had a series of rules, the 800 series, which create standards regarding both the security to be listed and traded on Phlx, as well as regarding the issuer of the security. In order to attract the listing of the Structured Equity Products, Phlx proposes modifications to the 800 series of rules designed to accommodate the specific attributes that many Structured Equity Securities have.

**Phlx Rule 802.** Phlx Rule 802 identifies factors to be evaluated by the Exchange when reviewing and preparing its confidential listing opinion as to the eligibility of an applicant’s securities. Among other things, Phlx Rule 802 currently states that the applicant company must be a “going concern.” The proposed rule change would delete the “going concern” requirement in order to remove uncertainty as to whether a Structured Equity Product qualifies as a “going concern.” The existing listing standards in Phlx Rule 803(a)(2) for traditional operating companies should sufficiently satisfy the “going concern” requirement for such other equity products that may become listed on the Exchange.

**Phlx Rule 806.** Phlx Rule 806 permits new issues of securities to be listed on the Exchange on the day that the registration statement is effective with the SEC, or upon effectiveness of the registration statement or equivalent document if registration with the SEC is not required. However, the issuer must meet certain initial listing criteria.

The proposed rule change would classify the two paragraphs of Phlx Rule 806 as (a) and (b). In addition, the proposed rule change would provide an exclusion for Structured Equity Products from Phlx Rule 806(b), which includes certain requirements relating to the distribution of new issues. This amendment would reflect the fact that
distributors of a Structured Equity Product generally make informal arrangements with dealers prior to going effective to provide assurance that sufficient creation units will be purchased from the issuer to meet the minimum listing requirements.

**Phlx Rule 807.** Phlx Rule 807 requires that securities approved for listing by the Exchange must be registered under Section 12(b) of the Act.\(^6\) In addition, Phlx Rule 807 provides that securities registered under 12(g) of the Act,\(^7\) or that have recently been the subject of a public offering registered under the Securities Act of 1933, may be registered for exchange trading under Section 12(b) of the Act through the filing of SEC Form 8-A. The proposed rule change would update Phlx Rule 807 to reflect the fact that registration of securities on Form 8-A automatically becomes effective within 30 days of filing. The proposed amendments to Phlx Rule 807 are substantially similar to a corresponding provision in Section 210 of the Amex Company Guide.

**Phlx Rule 837.** Phlx Rule 837 requires listed companies to provide their shareholders with annual reports containing audited financial statements of the company and its subsidiaries at least 10 days prior to the annual meeting of shareholders and not later than four months after the close of the company’s last preceding fiscal year. It further states that three copies of the report must be filed with the Exchange at the time it is distributed to shareholders. The proposed rule change would amend Phlx Rule 837 to provide that any annual report that is required to be sent to the Exchange will be deemed sent if it is filed on EDGAR. This amendment would make Phlx Rule 837 consistent with the corresponding provision in Section 1101 of the Amex Company Guide.

---


\(^7\) 15 U.S.C. 78l(g).
Fees. Additionally, for Structured Equity Products, the Exchange will charge an original listing fee of $5,000, then charge a $500 per month continuing listing fee for each month thereafter. For example, when an issuer lists a Structured Equity Products, the Exchange will bill the issuer $5,000 in the month of original listing. Beginning in the subsequent month, the Exchange will invoice the issuer $500 per month until such time as the product is delisted. Therefore, the maximum listing fee an issuer of a Structured Equity Products could pay in any one calendar year would be $10,500. The proposed original listing fee and proposed continuing listing fee are reasonable in light of Amex’s original listing fee† and annual fee‡ for Structured Equity Products.

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

---

† The Exchange currently lists two Structured Equity Products, Pharmaceutical Basket Opportunity Exchangeable Securities and Biotechnology Basket Opportunity Exchangeable Securities. The issuer for these securities, Morgan Stanley, was invoiced the current annual continuing listing fee of $1,250 for the first product and $250 for the second product in January 2007. The Exchange believes that for these two products, the proposed $500 per month continuing listing fee should begin in January 2008. The Exchange believes that it is reasonable and appropriate to begin charging the proposed continuing listing fee to Morgan Stanley for these two products in January 2008 (in contrast to new products that would begin to pay the proposed fee in the month subsequent to initial listing) because Morgan Stanley was invoiced the current annual continuing listing fee for 2007 and could reasonably expect that this current fee would cover their obligation for these two products through the end of 2007.

‡ Amex’s original listing fee corresponds to Phlx’s proposed original listing fee. Amex’s original listing fee for Structured Equity Products (Securities Listed under Section 107 (Other Products)) begins at $5,000 and may be as much as $45,000 based on the number of shares to be listed. See Section 140 of the Amex Company Guide.

‡‡ Amex’s annual fee corresponds to Phlx’s proposed continuing listing fee. Amex’s annual fee for Structured Equity Products (Securities Listed under Section 107 (Other Products)) begins at $15,000 and may be as much as $30,000 based on the number of shares outstanding. See Section 141 of the Amex Company Guide.


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 modifying Exchange rules relating to the listing of Structured Equity Products. In addition, the Exchange believes that its proposal furthers the objectives of Section 6(b)(4) of the Act in particular, in that the proposed original listing fee and proposed continuing listing fee are an equitable allocation of reasonable fees and other charges among Exchange members.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission shall: (a) by order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

---

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-2007-60 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-2007-60. 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-2007-60 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.14

Nancy M. Morris
Secretary

---

Exhibit 5a

Underlining indicates additions; brackets indicate deletions

**Rule 802.**

The Exchange will evaluate and prepare a confidential listing opinion as to the eligibility of an applicant's securities for listing upon submission of the information listed in Rule 808. [The company must be a going concern or the successor to a going concern.] [Other factors the Exchange places great emphasis upon include but are not limited to: the nature of a company's business, the character of the market for its product, its stability and position in its industry, the reputation of its management, its history of growth and growth prospects for the future, its financial integrity and the voting rights for shareholders.

The Exchange does not rate or guarantee the quality of any security dealt in on the Exchange beyond the fact that it meets the Exchange's minimum financial criteria for listing. In making a determination concerning listing or delisting, the Exchange acts upon information furnished by the issuer which must verify the information by providing at least, independently audited financial statements and other disclosure documents.

For purposes of Rules 801-899, (i) "public shareholder" or "public holder" does not include officers, directors, controlling shareholders or other owners of family or concentrated holdings and (ii) beneficial holders rather than holders of record will be counted by the Exchange.

**Rule 806.**

**Initial Public Offerings**

(a) A new issue of securities shall be eligible for listing on the day that its registration statement is effective with the Securities and Exchange Commission, or where registration with Securities and Exchange Commission is not required, upon effectiveness of its registration statement or equivalent document filed with the appropriate regulatory authority, provided that the issuer has met the initial listing criteria as follows: prior to the offering, the issuer has met the initial listing criteria of Rules 803, 804 or 805 except that as a result of the offering, the criteria for shares outstanding, price per share and holder of record contained in Rules 803, 804 or 805 as applicable, were met for a majority of the trading days in the first month after the offering is complete.

(b) Prior to the offering the issuer must provide the Exchange with a letter from the principal investment bank which represents that, in their opinion, the company will attain the requisite level of shareholders, market value and price in order to be eligible for listing. Within one month after the offering has been completed and closed, the Exchange requires documentation from the company's transfer agent that the requisite criteria have been met for a majority of trading days during that month. If criteria has not been met,
the issue will be immediately delisted. A new issue of securities listed pursuant to Rule 803(f), (h), (k), (m) and (n) shall be exempt from the provisions of Rule 806(b).

**Rule 807.**

**Registration Under the Exchange Act**

A security approved for listing by the Exchange must be registered under Section 12(b) of the Exchange Act before it may be admitted to trading on the Exchange. Exchange Act registration is required even though the issuer may have previously registered all or part of the securities under the Securities Act of 1933 ("Securities Act"). However, a security which has already been registered under Section 12(g) of the Exchange Act, or has recently been the subject of a public offering registered under the Securities Act, may normally be registered under Section 12(b) of the Exchange Act for Exchange trading on SEC Form 8-A.

In addition, securities of an issuer which has another class or series of securities registered on another national securities exchange may also use SEC Form 8-A. If an applicant does not have a class of securities registered under Exchange Act Section 12(g) or another class of securities registered on a national securities exchange, SEC Form 10 may be required.

Applicants should prepare and file the SEC registration statement and exhibits concurrently with the Exchange listing application and exhibits. However, registration under Section 12(b) of the Exchange Act cannot become effective until after the issue has been approved for listing by the Exchange. Upon such approval, the Exchange is required to certify to the SEC that it has received its copy of the registration statement and has approved the particular securities for listing and registration. [Ordinarily, registration becomes effective automatically thirty days after receipt by the SEC of the Exchange's certification, but may become effective within a shorter period, by order of the Exchange's certification, and by order of the SEC, on request for acceleration of the effective date made by the issuer to the SEC.] Registration of a class of securities on Form 8-A becomes effective automatically upon the later of the filing of the Form 8-A with the SEC, the SEC’s receipt of certification from the Exchange, or (if the class of securities is concurrently being registered under the Securities Act) the effectiveness of the related Securities Act registration statement. Registration other than on Form 8-A becomes effective automatically 30 days after receipt by the SEC of the Exchange’s certification but may become effective within a shorter period, by order of the SEC, on request for acceleration of the effective date made by the company to the SEC.

One manually signed copy of the Exchange Act registration statement, including exhibits, must be filed with the listing application.
Rule 837.  

Annual Reports

(a) A listed company is required to publish and furnish to its shareholders (or to holders of any other listed security when its common stock is not listed on a national securities exchange) an annual report containing audited financial statements of the company and its subsidiaries. Three copies of the report must be filed with the Exchange at the time it is distributed to shareholders. If the report is filed on the SEC’s EDGAR system, such report will be deemed sent to the Exchange when accepted for filing on EDGAR.

(b) No Change
**Exhibit 5b**

Underlining indicates additions; brackets indicates deletions

**XLE Fee Schedule**

*Page 1 of [2]3*

**Transaction Fees**

<table>
<thead>
<tr>
<th>XLE Participant Organization Tier</th>
<th>Monthly Shares Executed</th>
<th>Execution Fees *</th>
<th>Routing Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Fee to Remove Liquidity (Per Share Executed)</td>
<td>Credit for Providing Liquidity (Per Share Executed)</td>
</tr>
<tr>
<td>1 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 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 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 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.

---

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. 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 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), 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

Depth of Book Data Feed Fee 12

No Charge

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

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

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 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.
Listing Fees for Structured Equity Products\textsuperscript{13}

Original Listing Fee per security…………………………………………………………………….$5,000
Continued Listing Fee per security\textsuperscript{14}………………………………………………………$500 per month

\textsuperscript{13} Structured Equity Products are securities listed pursuant to the categories entitled Other Securities, Equity Linked Notes, Basket Linked Notes, Index Linked Exchangeable Notes and Index Linked Securities. See Phlx Rule 803(f), (h), (k), (m) and (n).

\textsuperscript{14} The Continued Listing Fee will be assessed beginning on the first calendar month following the listing of the security.