**Proposed Rule Change**

**Philadelphia Stock Exchange**

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

<table>
<thead>
<tr>
<th>Initial</th>
<th>Amendment</th>
<th>Withdrawal</th>
<th>Section 19(b)(2)</th>
<th>Section 19(b)(3)(A)</th>
<th>Section 19(b)(3)(B)</th>
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**Rule**

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

**Description**

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

**PHlx proposes an amendment to trade through requirements for IOC Cross Orders.**

**Contact Information**

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

<table>
<thead>
<tr>
<th>First Name</th>
<th>John</th>
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<tbody>
<tr>
<td>Last Name</td>
<td>Dayton</td>
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<tr>
<td>Title</td>
<td>Director and Counsel</td>
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<td><a href="mailto:john.dayton@phlx.com">john.dayton@phlx.com</a></td>
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<td>(435) 783-6415</td>
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<td>Fax</td>
<td>(215) 496-6729</td>
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</table>

**Signature**

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

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

**Date**

08/30/2007

**By**

Jurij Trypupenko

Director and Counsel

**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.
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 remove the trade through restrictions for IOC Cross Orders\(^3\) entered during the Pre Market Session\(^4\) or the Post Market Session\(^5\) on XLE, Phlx’s electronic equity trading platform. In addition, Phlx proposes to re-organize Phlx Rule 185(c)(2)(D), which should make it more readable.

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 Rule(c)(2)(D) is set forth below:

Underlining indicates additions; brackets indicate deletions

**Rule 185. Orders and Order Execution**

(a)-(c)(1) No Change

(c)(2) IOC Cross Order. A two-sided order that executes, in its entirety, at the specified price, provided that XLE will cancel an IOC Cross Order at the time of order entry if:

   (A)-(C) No Change

   (D) the specified price would cause an execution at a price that would trade-through the price of the Protected NBBO, unless:

      (i) the Protected Bid is priced higher than the Protected Offer\(^7\) [or]

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\(^3\) See Phlx Rule 185(c)(2).

\(^4\) See Phlx Rule 101 Supplementary Material .02(1).

\(^5\) See Phlx Rule 101 Supplementary Material .02(3).
(ii) the IOC Cross Order is marked by the XLE Participant entering the order as meeting the requirements of an intermarket sweep order in Reg NMS Rule 600(b)(30);[.]

(iii) the IOC Cross Order is marked as Benchmark; [or]

(iv) the IOC Cross Order is marked as a Qualified Contingent Trade;[.] or

(v) the IOC Cross Order is entered during the Pre Market Session or the Post Market Session.

(c)(3)-(h) No Change

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 August 22, 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.

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 increase the competitiveness of XLE by allowing an additional circumstance in which IOC Cross Orders may trade through. In addition, Phlx proposes to make Phlx Rule 185(c)(2)(D) more readable by dividing the rule into subsections. Phlx accepts IOC Cross Orders on XLE during all three XLE trading sessions, from 8:00 a.m. until 6:00 p.m. An IOC Cross Order is a two-sided order that matches, immediately and automatically on XLE, the buy side and sell side identified in the order, unless the price of the order would impermissibly trade at or
through other orders on XLE or at away markets. Currently, IOC Cross Orders may trade through the Protected NBBO in four different situations as described in Phlx Rule 185(c)(2)(D). These four situations correspond with either exceptions to or an exemption from Rule 611(a) of Regulation NMS.

At this time, Phlx proposes to add to Phlx Rule 185(c)(2)(D) another situation in which IOC Cross Orders may trade through the Protected NBBO. Proposed Phlx Rule 185(c)(2)(D)(v) would allow IOC Cross Orders that are entered during the Pre Market or Post Market Sessions to trade through the Protected NBBO. The Pre Market and Post Market Sessions take place outside of the hours 9:30 a.m. to 4:00 p.m. Rule 611(a) of Regulation NMS does not apply to trade throughs of, among other things, the Protected NBBO, outside of regular trading hours, which are 9:30 a.m. until 4:00 p.m. Therefore,  

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6 See Phlx Rule 185(c)(2).

7 See Phlx Rule 1(dd).


10 17 CFR 242.611(a).

11 As used in Rule 611(a) of Regulation NMS, 17 CFR 242.611(a), the term “trade through” only applies during regular trading hours. 17 CFR 242.600(b)(77). Rule 600(b)(64) of Regulation NMS, 17 CFR 242.600(b)(64), defines regular trading hours as “the time between 9:30 a.m. and 4:00 p.m. Eastern Time, or such other time as is set forth in the procedures established pursuant to § 242.605(a)(2).” At this time, no such other time has been set forth, therefore the regular trading hours for all purposes is 9:30 a.m. until 4:00 p.m.
Rule 611(a) of Regulation NMS would not prohibit IOC Cross Orders from trading through the Protected NBBO during the Pre Market or Post Market Sessions on XLE.\(^{12}\)

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^{13}\) in general, and furthers the objectives of Section 6(b)(5) of the Act\(^{14}\) in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

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

The Phlx does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

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

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)\(^{15}\)

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\(^{12}\) Although Rule 611(a) of Regulation NMS does not prohibit trade throughs during these times, a broker’s duty of best execution still applies. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (text at footnote 338).

\(^{13}\) 15 U.S.C. 78f(b).


\(^{15}\) Phlx submitted a pre-filing, consisting of a written notice of Phlx’s intent to file the proposed rule change, along with a brief description and text of the proposed rule change, pursuant to Rule 19b-
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\(^\text{16}\) and Rule 19b-4(f)(6) thereunder.\(^\text{17}\) 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 proposed rule change permits activity that is currently permitted by the Chicago Stock Exchange ("CHX") pursuant to CHX, Article 20, Rule 5(a).\(^\text{18}\)

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

The proposed rule change is based on the rules of CHX.\(^\text{19}\)

9. **Exhibits**

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

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\(^{18}\) CHX Article 20, Rule 5(a) permits orders submitted to CHX to trade through orders on markets other than CHX if such trade through is not prohibited by Rule 611 of Regulation NMS, 17 CFR 242.611. Therefore, orders submitted to CHX outside of regular trading hours would be permitted to trade through orders on markets other than CHX.

\(^{19}\) Id.
SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-Phlx-2007-64)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Trade Throughs for IOC Cross Orders on XLE

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 remove the trade through restrictions for IOC Cross Orders\(^5\) entered during the Pre Market Session\(^6\) or the Post Market Session\(^7\) on XLE, Phlx’s electronic equity

\(^5\) See Phlx Rule 185(c)(2).
\(^6\) See Phlx Rule 101 Supplementary Material .02(1).
\(^7\) See Phlx Rule 101 Supplementary Material .02(3).
trading platform. In addition, Phlx proposes to re-organize Phlx Rule 185(c)(2)(D), which should make it more readable.

The text of the amended Phlx Rule(c)(2)(D) is set forth below:

**Rule 185. Orders and Order Execution**

(a)-(c)(1) No Change

(c)(2) IOC Cross Order. A two-sided order that executes, in its entirety, at the specified price, provided that XLE will cancel an IOC Cross Order at the time of order entry if:

(A)-(C) No Change

(D) the specified price would cause an execution at a price that would trade-through the price of the Protected NBBO, unless:

(i) the Protected Bid is priced higher than the Protected Offer [or]

(ii) the IOC Cross Order is marked by the XLE Participant entering the order as meeting the requirements of an intermarket sweep order in Reg NMS Rule 600(b)(30);[.]

(iii) the IOC Cross Order is marked as Benchmark; [or]

(iv) the IOC Cross Order is marked as a Qualified Contingent Trade;[.] or

(v) the IOC Cross Order is entered during the Pre Market Session or the Post Market Session.

(c)(3)-(h) No Change

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 increase the competitiveness of
XLE by allowing an additional circumstance in which IOC Cross Orders may trade
through. In addition, Phlx proposes to make Phlx Rule 185(c)(2)(D) more readable by
dividing the rule into subsections. Phlx accepts IOC Cross Orders on XLE during all
three XLE trading sessions, from 8:00 a.m. until 6:00 p.m. An IOC Cross Order is a two-
sided order that matches, immediately and automatically on XLE, the buy side and sell
side identified in the order, unless the price of the order would impermissibly trade at or
through other orders on XLE or at away markets.8 Currently, IOC Cross Orders may
trade through the Protected NBBO9 in four different situations as described in Phlx Rule
185(c)(2)(D). These four situations correspond with either exceptions10 to or an
exemption11 from Rule 611(a) of Regulation NMS.12

   At this time, Phlx proposes to add to Phlx Rule 185(c)(2)(D) another situation in
which IOC Cross Orders may trade through the Protected NBBO. Proposed Phlx Rule

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8 See Phlx Rule 185(c)(2).

9 See Phlx Rule 1(dd).

10 Renumbered Phlx Rule 185(c)(2)(D)(i) corresponds with Rule 611(b)(4) of Regulation NMS, 17 CFR
242.611(b)(4). Renumbered Phlx Rule 185(c)(2)(D)(ii) corresponds with Rule 611(b)(5) of Regulation
NMS, 17 CFR 242.611(b)(5). Renumbered Phlx Rule 185(c)(2)(D)(iii) corresponds with Rule 611(b)(7) of
Regulation NMS, 17 CFR 242.611(b)(7).

(August 31, 2006), 71 FR 52829 (September 7, 2006).

12 17 CFR 242.611(a).
185(c)(2)(D)(v) would allow IOC Cross Orders that are entered during the Pre Market or Post Market Sessions to trade through the Protected NBBO. The Pre Market and Post Market Sessions take place outside of the hours 9:30 a.m. to 4:00 p.m. Rule 611(a) of Regulation NMS does not apply to trade throughs of, among other things, the Protected NBBO, outside of regular trading hours, which are 9:30 a.m. until 4:00 p.m. Therefore, Rule 611(a) of Regulation NMS would not prohibit IOC Cross Orders from trading through the Protected NBBO during the Pre Market or Post Market Sessions on XLE.

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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As used in Rule 611(a) of Regulation NMS, 17 CFR 242.611(a), the term “trade through” only applies during regular trading hours. 17 CFR 242.600(b)(77). Rule 600(b)(64) of Regulation NMS, 17 CFR 242.600(b)(64), defines regular trading hours as “the time between 9:30 a.m. and 4:00 p.m. Eastern Time, or such other time as is set forth in the procedures established pursuant to § 242.605(a)(2).” At this time, no such other time has been set forth, therefore the regular trading hours for all purposes is 9:30 a.m. until 4:00 p.m.

Although Rule 611(a) of Regulation NMS does not prohibit trade throughs during these times, a broker’s duty of best execution still applies. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (text at footnote 338).


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 and Rule 19b-4(f)(6) thereunder. 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 proposed rule change permits activity that is currently permitted by the Chicago Stock Exchange ("CHX") pursuant to CHX, Article 20, Rule 5(a).

IV. Solicitation of Comments

17 Phlx submitted a pre-filing, consisting of a written notice of Phlx’s intent to file the proposed rule change, along with a brief description and text of the proposed rule change, pursuant to Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii), on August 21, 2007. Phlx submitted this pre-filing via email outside of the EFFS.


20 CHX Article 20, Rule 5(a) permits orders submitted to CHX to trade through orders on markets other than CHX if such trade through is not prohibited by Rule 611 of Regulation NMS, 17 CFR 242.611. Therefore, orders submitted to CHX outside of regular trading hours would be permitted to trade through orders on markets other than CHX.
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-2007-64 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-2007-64. 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-2007-64 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.21

Nancy M. Morris
Secretary