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 Cynthia Last Name Hoekstra

Title Vice President

E-mail cynthia.hoekstra@phlx.com

Telephone (215) 496-5066 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 09/20/2007

By Cynthia Hoekstra Vice President

(Note)

(Note)

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 amend the Exchange’s current XLE\(^3\) Fee Schedule to: (1) adopt definitions for Net Makers of liquidity ("Net Makers") and Net Takers of liquidity ("Net Taker") on XLE; (2) update the current volume tier structure by reducing the volume breakpoints to create two new volume pricing tiers; (3) amend the amount of the credits or rebates to Net Makers and the fees for Net Takers; and (4) make two other minor changes to update the XLE Fee Schedule.

The proposed fees will be assessed on Exchange members or member organizations, which may include Sponsoring Member Organizations\(^4\) (collectively "member organizations").

The changes set forth in this proposal are scheduled to become operative beginning with transactions settling on or after September 4, 2007.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as **Exhibit 1** and a copy of the Exchange’s XLE Fee Schedule is attached hereto as **Exhibit 5**.

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\(^3\) XLE refers to the Exchange’s equity trading system. XLE is designed to provide the opportunity for entirely automated executions to occur within a central matching system accessible by Exchange members and member organizations and their Sponsored Participants. See Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR-Phlx-2006-43).

\(^4\) See Exchange Rules 1(jj) and 1(kk).
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 29, 2007.

Questions and comments on the proposed rule change may be directed to Cynthia Hoekstra, Vice President and Counsel, at (215) 496-5066 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**

      In an effort to enhance liquidity on XLE, the Exchange proposes to amend the XLE fee schedule to provide economic incentives to help attract additional order flow to the Exchange. The proposed amendments to the XLE Fee Schedule are discussed in detail below:

      i. **Adopt Definitions for Net Makers and Net Takers**

         An XLE Participant Organization\(^5\) would qualify as a Net Maker if the total volume from providing liquidity for that XLE Participant Organization is at least one share greater than the total volume from removing liquidity during a single billing period.\(^6\) Additionally, if in one month the total volume from providing liquidity is

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\(^5\) For purposes of this fee proposal, an XLE Participant Organization refers to Sponsored Participants, Sponsoring Member Organizations, and member organizations without Sponsored participants. See Exchange Rules 1(jj) and 1(kk). Sponsoring Member Organizations are responsible for the fees generated by their Sponsored Participant(s).

\(^6\) Currently, the Exchange assesses fees on a monthly calendar basis based on the settlement date of the transactions.
equivalent to the total volume from removing liquidity, the XLE Participant Organization would be considered a Net Maker for purposes of this proposal.

For example, for the month of August, if an XLE Participant Organization’s total volume from providing liquidity is 2 million shares executed and for that same month that XLE Participant Organization’s total volume from removing liquidity was 1.5 million shares executed (total executed volume is therefore 3.5 million shares) that XLE Participant Organization would qualify as a Net Maker for that same month.

Conversely, an XLE Participant Organization would qualify as a Net Taker if the total volume from removing liquidity for that XLE Participant Organization is at least one share greater than the total volume from providing liquidity during a single billing period. For example, for the month of August, if an XLE Participant Organization’s total volume from removing liquidity is 3 million shares executed and for that same month, that XLE Participant Organization’s total volume from providing liquidity was 2 million shares executed, that XLE Participant Organization would qualify as a Net Taker for that same month.

Volume would be calculated based on volume generated from Maker (providing liquidity) or Taker (removing liquidity) executions, and volume from single-sided odd lot orders\(^7\) executed on XLE against an XLE Participant.\(^8\) Volume from the following transactions would not be included in determining Net Maker and Net Taker volumes:

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\(^7\) An odd lot order means an order for less than a round lot, which is defined for purposes of XLE as a unit of trading that is 100 shares. See Exchange Rules 1(w) and 1(gg).

\(^8\) All odd lot transactions refer to those orders that are initially entered as odd lot orders. Fees for these types of transactions are set forth on the Exchange’s XLE fee schedule under the heading Miscellaneous Transaction fees.
Immediate or Cancel ("IOC") Cross\(^9\) and Mid-Point Cross Orders\(^{10}\) entered over technology provided by Phlx,\(^{11}\) including odd lot IOC Cross and Mid-Point Cross Orders; all other IOC Cross and Mid-Point Cross Orders, including all other odd lot IOC Cross and Mid-Point Cross Orders; Single-sided odd lot orders executed at an away market; and volume from Routed Away Orders, referred to on the XLE Fee Schedule as “Fee for Routing Liquidity (Per Share Executed).”

Consistent with current practice, the Net Maker or Net Taker calculation will be determined separately per XLE Participant Organization. Volume generated from a Sponsored Participant’s executions will accrete towards that Sponsored Participant’s volume to determine whether Maker or Taker fees will be assessed, and not towards the Sponsoring Member Organization’s volume. Once an XLE Participant Organization has been designated as a Maker or Taker for a specific month, all transactions that month would be subject to the fee that corresponds with whether the XLE Participant Organization is a Maker or Taker.\(^{12}\)

ii. Update the Current Volume Tier Structure by Reducing the Volume Breakpoints to Create Two New Volume Pricing Tiers

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\(^9\) See Exchange Rules 185(c) and 185(c)(2).

\(^{10}\) See Exchange Rules 185(c) and 185(c)(1).

\(^{11}\) Phlx provides optional technology to XLE Participants for the entry of two-sided orders into XLE.

\(^{12}\) Securities executed on XLE with a per share price below $1.00 that remove liquidity, will continue to be charged 0.1% (i.e., 10 basis points) of total dollar value of the transaction. Consistent with current practice, there would be no credit for providing liquidity for shares with a per share price below $1.00. Executed volume in such shares will accrete towards the volume tier breakpoint (discussed below) and Maker/Taker category per XLE Participant Organization.
The Exchange also proposes to change the aggregate volume calculations and lower the current volume-based breakpoints to entice XLE Participant Organizations to generate additional trading activity.

Currently, there are four volume tiers based on monthly shares executed. The total of monthly executed shares 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. The existing fee schedule established four volume breakpoints based on the aggregate monthly shares executed with the last two tiers set at “greater than 50 million and less than or equal to 200 million shares executed” in one month and “greater than 200 million shares,” respectively. These levels have proven to be difficult for XLE Participant Organizations to reach. Therefore, the Exchange proposes to lower the volumes used in the volume-based tiers and to change the volume calculation from a monthly one to one based on average daily volume.

The proposed two volume tiers would be as follows: Tier One would be comprised of volume of less than one million shares executed (average daily volume) and Tier Two would be comprised of volume of greater than or equal to one million shares executed (average daily volume). The proposed volume tiers would be determined by calculating the average daily volume of total shares executed (volume from providing liquidity and the volume from removing liquidity) during the applicable billing period. Consistent with calculating volume levels for Net Maker/Net Taker activity, the tier volume is calculated based on volume generated from Maker/Taker executions and volume from single-sided odd lot orders executed on XLE against an XLE Participant.
To calculate the average daily shares executed, the total number of executed shares (comprised of liquidity provided, liquidity removed, and single-sided odd lot orders executed on XLE against an XLE Participant during the applicable billing period) would be divided by the number of trading days during the applicable billing period. For example, for a billing period with 20 trading days, if an XLE Participant Organization executed 23 million shares (comprised of 15 million executed shares from providing liquidity and 8 million shares from removing liquidity), the average daily volume is calculated by adding the liquidity provided (15 million executed shares), to the liquidity removed (8 million executed shares), which totals 23 million shares, and then dividing by 20 days (or applicable trading days in the month), which equals 1,150,000 average daily shares executed.

Due to the lower volume tier breakpoint, the following transactions would not be included in determining the applicable volume tier breakpoints:13 Immediate or Cancel (“IOC”) Cross and Mid-Point Cross Orders entered over technology provided by Phlx, including odd lot IOC Cross and Mid-Point Cross Orders; all other IOC Cross and Mid-Point Cross Orders, including all other odd lot IOC Cross and Mid-Point Cross Orders; Single-sided odd lot orders executed at an away market; and volume from Routed Away Orders, referred to on the XLE Fee Schedule as “Fee for Routing Liquidity (Per Share Executed).”

Consistent with current practice, the total monthly shares will be calculated separately per XLE Participant Organization. Sponsored Participant executions will accrete towards that Sponsored Participant’s volume tier and not towards the Sponsoring

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13 These are the same requirements for determining Net Maker and Net Taker volumes. All volume calculations would be based settlement dates.
Member Organization’s volume tier. Once a specific tier has been reached in a month, all transactions for that month would be subject to the fee that corresponds with that volume tier.

iii. Amend the Amount of the Credits or Rebates to Net Makers and the Fees for Net Takers

The Exchange is proposing to amend the Net Maker credits or rebates and Net Taker fees in an effort to balance the need to offer liquidity Makers sufficient economic incentives to participate on XLE (in the form of competitive “Maker” credit) and the need to earn sufficient transaction revenue from a business standpoint (in the form of liquidity taking fees). The Exchange proposes to adopt the following fees: (1) for less than one million shares executed (average daily volume), the Net Maker fee from removing liquidity would be $0.0030 per share executed and the credit for providing liquidity would be $0.0025 per share executed; the Net Taker fee for removing liquidity would be $0.0030 per share executed and the credit for providing liquidity would be $0.0022 per share executed; (2) for greater than or equal to one million shares executed (average daily volume), the Net Maker fee for removing liquidity would be $0.0024 per share executed and the credit for providing liquidity would be $0.0028 per share executed; the Net Taker fee for removing liquidity would be $0.0026 per share executed and the credit for providing liquidity would be $0.0024 per share executed.

Consistent with current practice, the dollar value of the Net Maker credits would appear on the member organization’s monthly invoice. The dollar amount of the excess credits would continue to be carried over into subsequent months or rebated to the applicable member organization as requested by the member organization.
The purpose of this proposal is to attract more business by enticing Net Makers to the Exchange and by creating financial incentives to XLE Participant Organizations to encourage them to send additional order flow to the Exchange. The economics of the proposed fee schedule are focused around creating financial incentives to attract additional order flow to the Exchange while managing the risk associated with those financial incentives. The proposed changes to the XLE Fee Schedule are intended to stimulate liquidity and generate a reasonable return.

iv. Additional Changes to the XLE Fee Schedule

The Exchange also proposes to make the following two minor changes to the XLE fee Schedule: (1) Under Miscellaneous Fees for “Execution Fee for Single-Sided Odd Lot Orders executed on XLE against another XLE Participant,” the Exchange proposes to change the word “another” to “an” to clarify that the same XLE Participant could be on both sides of the transaction; and (2) Delete the reference to Monthly Drop Copy Feed Fee.\(^{14}\) Although there is no charge for this service, at this time the Exchange is not providing a monthly drop copy feed.

The purpose of the two minor changes is to clarify and update the XLE fee schedule to more accurately reflect the XLE fees being charged by the Exchange.

The changes set forth in this proposal are scheduled to become operative beginning with transactions settling on or after September 4, 2007.

\(^{14}\) The Drop Copy Feed refers to real-time information concerning trades executed by an XLE Participant Organization.
b. **Statutory Basis**

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act\(^\text{15}\) in general, and furthers the objectives of Section 6(b)(4) of the Act\(^\text{16}\) in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that this proposal is equitable and reasonable in that it is designed to create financial incentives for all XLE Participant Organizations to encourage them to send additional order flow to the Exchange. This additional order flow should, in turn stimulate additional transaction volume and liquidity at the Exchange.

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)**

The foregoing proposed rule change establishes or changes a due, fee, or other charge applicable only to a member pursuant to Section 19(b)(3)(A)(ii) of the Act\(^{17}\) and Rule 19b-4(f)(2)\(^{18}\) thereunder. Accordingly, the proposal will take effect upon filing with the Commission. 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.

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*.

5. XLE Fee Schedule.\(^{19}\)

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EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-Phlx-2007-67)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to XLE Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\), and Rule 19b-4 thereunder,\(^2\) 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 the Exchange’s current XLE\(^5\) Fee Schedule to: (1) adopt definitions for Net Makers of liquidity ("Net Makers") and Net Takers of liquidity ("Net Taker") on

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\(^5\) XLE refers to the Exchange’s equity trading system. XLE is designed to provide the opportunity for entirely automated executions to occur within a central matching system accessible by Exchange members and member organizations and their Sponsored Participants. See Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR-Phlx-2006-43).
XLE; (2) update the current volume tier structure by reducing the volume breakpoints to create two new volume pricing tiers; (3) amend the amount of the credits or rebates to Net Makers and the fees for Net Takers; and (4) make two other minor changes to update the XLE Fee Schedule.

The proposed fees will be assessed on Exchange members or member organizations, which may include Sponsoring Member Organizations\(^6\) (collectively “member organizations”).

The changes set forth in this proposal are scheduled to become operative beginning with transactions settling on or after September 4, 2007.


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

In an effort to enhance liquidity on XLE, the Exchange proposes to amend the XLE fee schedule to provide economic incentives to help attract additional order flow to

\(^6\) See Exchange Rules 1(jj) and 1(kk).
the Exchange. The proposed amendments to the XLE Fee Schedule are discussed in detail below:

i. Adopt Definitions for Net Makers and Net Takers

An XLE Participant Organization would qualify as a Net Maker if the total volume from providing liquidity for that XLE Participant Organization is at least one share greater than the total volume from removing liquidity during a single billing period. Additionally, if in one month the total volume from providing liquidity is equivalent to the total volume from removing liquidity, the XLE Participant Organization would be considered a Net Maker for purposes of this proposal.

For example, for the month of August, if an XLE Participant Organization’s total volume from providing liquidity is 2 million shares executed and for that same month that XLE Participant Organization’s total volume from removing liquidity was 1.5 million shares executed (total executed volume is therefore 3.5 million shares) that XLE Participant Organization would qualify as a Net Maker for that same month.

Conversely, an XLE Participant Organization would qualify as a Net Taker if the total volume from removing liquidity for that XLE Participant Organization is at least one share greater than the total volume from providing liquidity during a single billing period. For example, for the month of August, if an XLE Participant Organization’s total volume from removing liquidity is 3 million shares executed and for that same month,
that XLE Participant Organization’s total volume from providing liquidity was 2 million shares executed, that XLE Participant Organization would qualify as a Net Taker for that same month.

Volume would be calculated based on volume generated from Maker (providing liquidity) or Taker (removing liquidity) executions, and volume from single-sided odd lot orders\(^9\) executed on XLE against an XLE Participant.\(^10\) Volume from the following transactions would not be included in determining Net Maker and Net Taker volumes: Immediate or Cancel (“IOC”) Cross\(^11\) and Mid-Point Cross Orders\(^12\) entered over technology provided by Phlx,\(^13\) including odd lot IOC Cross and Mid-Point Cross Orders; all other IOC Cross and Mid-Point Cross Orders, including all other odd lot IOC Cross and Mid-Point Cross Orders; Single-sided odd lot orders executed at an away market; and volume from Routed Away Orders, referred to on the XLE Fee Schedule as “Fee for Routing Liquidity (Per Share Executed).”

Consistent with current practice, the Net Maker or Net Taker calculation will be determined separately per XLE Participant Organization. Volume generated from a Sponsored Participant’s executions will accrete towards that Sponsored Participant’s

\(^9\) An odd lot order means an order for less than a round lot, which is defined for purposes of XLE as a unit of trading that is 100 shares. See Exchange Rules 1(w) and 1(gg).

\(^10\) All odd lot transactions refer to those orders that are initially entered as odd lot orders. Fees for these types of transactions are set forth on the Exchange’s XLE fee schedule under the heading Miscellaneous Transaction fees.

\(^11\) See Exchange Rules 185(c) and 185(c)(2).

\(^12\) See Exchange Rules 185(c) and 185(c)(1).

\(^13\) Phlx provides optional technology to XLE Participants for the entry of two-sided orders into XLE.
volume to determine whether Maker or Taker fees will be assessed, and not towards the
Sponsoring Member Organization’s volume. Once an XLE Participant Organization has
been designated as a Maker or Taker for a specific month, all transactions that month
would be subject to the fee that corresponds with whether the XLE Participant
Organization is a Maker or Taker.14

   ii. Update the Current Volume Tier Structure by Reducing the Volume
       Breakpoints to Create Two New Volume Pricing Tiers

The Exchange also proposes to change the aggregate volume calculations and
lower the current volume-based breakpoints to entice XLE Participant Organizations to
generate additional trading activity.

Currently, there are four volume tiers based on monthly shares executed. The
total of monthly executed shares 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.
The existing fee schedule established four volume breakpoints based on the aggregate
monthly shares executed with the last two tiers set at “greater than 50 million and less
than or equal to 200 million shares executed” in one month and “greater than 200 million
shares,” respectively. These levels have proven to be difficult for XLE Participant
Organizations to reach. Therefore, the Exchange proposes to lower the volumes used in

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14 Securities executed on XLE with a per share price below $1.00 that remove liquidity,
will continue to be charged 0.1% (i.e., 10 basis points) of total dollar value of the
transaction. Consistent with current practice, there would be no credit for providing
liquidity for shares with a per share price below $1.00. Executed volume in such shares
will accrete towards the volume tier breakpoint (discussed below) and Maker/Taker
category per XLE Participant Organization.
the volume-based tiers and to change the volume calculation from a monthly one to one based on average daily volume.

The proposed two volume tiers would be as follows: Tier One would be comprised of volume of less than one million shares executed (average daily volume) and Tier Two would be comprised of volume of greater than or equal to one million shares executed (average daily volume). The proposed volume tiers would be determined by calculating the average daily volume of total shares executed (volume from providing liquidity and the volume from removing liquidity) during the applicable billing period. Consistent with calculating volume levels for Net Maker/Net Taker activity, the tier volume is calculated based on volume generated from Maker/Taker executions and volume from single-sided odd lot orders executed on XLE against an XLE Participant.

To calculate the average daily shares executed, the total number of executed shares (comprised of liquidity provided, liquidity removed, and single-sided odd lot orders executed on XLE against an XLE Participant during the applicable billing period) would be divided by the number of trading days during the applicable billing period. For example, for a billing period with 20 trading days, if an XLE Participant Organization executed 23 million shares (comprised of 15 million executed shares from providing liquidity and 8 million shares from removing liquidity), the average daily volume is calculated by adding the liquidity provided (15 million executed shares), to the liquidity removed (8 million executed shares), which totals 23 million shares, and then dividing by 20 days (or applicable trading days in the month), which equals 1,150,000 average daily shares executed.
Due to the lower volume tier breakpoint, the following transactions would not be included in determining the applicable volume tier breakpoints: Immediate or Cancel ("IOC") Cross and Mid-Point Cross Orders entered over technology provided by Phlx, including odd lot IOC Cross and Mid-Point Cross Orders; all other IOC Cross and Mid-Point Cross Orders, including all other odd lot IOC Cross and Mid-Point Cross Orders; Single-sided odd lot orders executed at an away market; and volume from Routed Away Orders, referred to on the XLE Fee Schedule as “Fee for Routing Liquidity (Per Share Executed).”

Consistent with current practice, the total monthly shares will be calculated separately per XLE Participant Organization. Sponsored Participant executions 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 for that month would be subject to the fee that corresponds with that volume tier.

iii. Amend the Amount of the Credits or Rebates to Net Makers and the Fees for Net Takers

The Exchange is proposing to amend the Net Maker credits or rebates and Net Taker fees in an effort to balance the need to offer liquidity Makers sufficient economic incentives to participate on XLE (in the form of competitive “Maker” credit) and the need to earn sufficient transaction revenue from a business standpoint (in the form of liquidity taking fees). The Exchange proposes to adopt the following fees: (1) for less than one million shares executed (average daily volume), the Net Maker fee from removing

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15 These are the same requirements for determining Net Maker and Net Taker volumes. All volume calculations would be based settlement dates.
liquidity would be $0.0030 per share executed and the credit for providing liquidity would be $0.0025 per share executed; the Net Taker fee for removing liquidity would be $0.0030 per share executed and the credit for providing liquidity would be $0.0022 per share executed; (2) for greater than or equal to one million shares executed (average daily volume), the Net Maker fee for removing liquidity would be $0.0024 per share executed and the credit for providing liquidity would be $0.0028 per share executed; the Net Taker fee for removing liquidity would be $0.0026 per share executed and the credit for providing liquidity would be $0.0024 per share executed.

Consistent with current practice, the dollar value of the Net Maker credits would appear on the member organization’s monthly invoice. The dollar amount of the excess credits would continue to be carried over into subsequent months or rebated to the applicable member organization as requested by the member organization.

The purpose of this proposal is to attract more business by enticing Net Makers to the Exchange and by creating financial incentives to XLE Participant Organizations to encourage them to send additional order flow to the Exchange. The economics of the proposed fee schedule are focused around creating financial incentives to attract additional order flow to the Exchange while managing the risk associated with those financial incentives. The proposed changes to the XLE Fee Schedule are intended to stimulate liquidity and generate a reasonable return.

iv. Additional Changes to the XLE Fee Schedule

The Exchange also proposes to make the following two minor changes to the XLE fee Schedule: (1) Under Miscellaneous Fees for “Execution Fee for Single-Sided Odd Lot Orders executed on XLE against another XLE Participant,” the Exchange
proposes to change the word “another” to “an” to clarify that the same XLE Participant could be on both sides of the transaction; and (2) Delete the reference to Monthly Drop Copy Feed Fee.\textsuperscript{16} Although there is no charge for this service, at this time the Exchange is not providing a monthly drop copy feed.

The purpose of the two minor changes is to clarify and update the XLE fee schedule to more accurately reflect the XLE fees being charged by the Exchange.

The changes set forth in this proposal are scheduled to become operative beginning with transactions settling on or after September 4, 2007.

2. \textbf{Statutory Basis}

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act\textsuperscript{17} in general, and furthers the objectives of Section 6(b)(4) of the Act\textsuperscript{18} in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that this proposal is equitable and reasonable in that it is designed to create financial incentives for all XLE Participant Organizations to encourage them to send additional order flow to the Exchange. This additional order flow should, in turn stimulate additional transaction volume and liquidity at the Exchange.

\textsuperscript{16} The Drop Copy Feed refers to real-time information concerning trades executed by an XLE Participant Organization.

\textsuperscript{17} 15 U.S.C. 78f(b).

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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act\(^\text{19}\) and paragraph (f)(2) of Rule 19b-4\(^\text{20}\) thereunder. 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.

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](http://www.sec.gov/rules/sro.shtml)); or

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• Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2007-67 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-2007-67. 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-2007-67 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.\(^\text{21}\)

Nancy M. Morris
Secretary

\(^\text{21}\) 17 CFR 200.30-3(a)(12).
## Exhibit 5

*Underlining indicates additions; brackets indicate deletions*

### XLE Fee Schedule¹

#### Page 1 of 2

**Transaction Fees**

<table>
<thead>
<tr>
<th>[XLE Participant Organization Tier]</th>
<th>[Monthly Shares Executed²]</th>
<th>[Execution Fees *]</th>
<th>[Routing Fees]</th>
</tr>
</thead>
<tbody>
<tr>
<td>[1] [Less than or equal to 10 million shares executed]</td>
<td>[$0.003]</td>
<td>[$0.002]</td>
<td>[$0.0036]</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>[$0.0036]</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>[$0.0036]</td>
</tr>
<tr>
<td>[4] [Greater than 200 million shares executed]</td>
<td>[$0.0026]</td>
<td>[$0.0026]</td>
<td>[$0.0036]</td>
</tr>
</tbody>
</table>

¹ Per XLE Participant Organization. For purposes of these fees, an XLE Participant Organization refers to a Sponsored Participant, a Sponsoring Member Organization, and a member organization without Sponsored Participant(s). 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. 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.
<table>
<thead>
<tr>
<th>XLE Participant Organization Tier</th>
<th>Fee to Remove Liquidity (Per Share Executed)</th>
<th>Credit for Providing Liquidity (Per Share Executed)</th>
<th>Fee to Remove Liquidity (Per Share Executed)</th>
<th>Credit for Providing Liquidity (Per Share Executed)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Less than one (1) million shares executed (Average Daily Volume)</strong>&lt;sup&gt;4&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tier 1</td>
<td>$0.0030</td>
<td>$0.0025</td>
<td>$0.0030</td>
<td>$0.0022</td>
</tr>
<tr>
<td><strong>Greater than or equal to one (1) million shares executed (Average Daily Volume)</strong>&lt;sup&gt;4&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tier 2</td>
<td>$0.0024</td>
<td>$0.0028</td>
<td>$0.0026</td>
<td>$0.0024</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.<sup>3</sup>

**Routing Fees**

Fee for Routing Liquidity. All Tiers (Per Share Executed)<sup>+</sup>…………………………………….. $0.0036 per share

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

<sup>2</sup> An XLE Participant Organization qualifies as a Net Maker, during a particular billing period, if the total volume for providing liquidity, including single-sided odd lot orders executed on XLE against an XLE Participant, for that XLE Participant Organization is equal to or at least one share greater than the total volume for removing liquidity during the applicable billing period. Volume would be calculated based on volume generated from Maker (providing liquidity) or Taker (removing liquidity) executions, and volume from single-sided odd lot orders executed on XLE against an XLE Participant. Volume from the following transactions would not be included in determining Net Maker and Net Taker volumes: Immediate or Cancel (“IOC”) Cross and Mid-Point Cross Orders entered over technology provided by Phlx, including odd lot IOC Cross and Mid-Point Cross Orders; all other IOC Cross and Mid-Point Cross Orders, including all other odd lot IOC Cross and Mid-Point Cross Orders; Single-sided odd lot orders executed at an away market; and volume from Routed Away Orders, referred to on the XLE Fee Schedule as “Fee for Routing Liquidity (Per Share Executed).”

<sup>3</sup> An XLE Participant Organization qualifies as a Net Taker if the total volume for removing liquidity, including single-sided odd lot orders executed on XLE against an XLE Participant, for that XLE Participant Organization is at least one share greater than the total volume for providing liquidity during the applicable billing period.

<sup>4</sup> Volume is calculated based on volume generated from Maker/Taker executions, and volume from single-sided odd lot orders executed on XLE against an XLE Participant Organization. The Average Daily Volume is calculated by dividing the total shares executed (comprised of liquidity provided, liquidity removed, and single-sided odd lot orders executed on XLE against an XLE Participant during the applicable billing period) by the total number of trading days during that billing period. Average Daily Volume does not include any crosses executed on XLE, or any orders routed via XLE to an away trading center and executed on that away trading center. The volume tier and Maker/Taker classification during the applicable billing period will be calculated per XLE Participant Organization. Sponsor activity will accrue towards that Sponsored Participant’s volume tier and Maker/Taker classification and not towards the Sponsoring Member Organization’s volume tier and Maker/Taker classification. Once a specific volume tier and Maker/Taker classification has been reached in a billing period, all transactions in that billing period will be subject to the fee that corresponds with that volume tier and Maker/Taker classification.

<sup>3</sup><sup>5</sup> Executed volume in such shares will accrue towards the volume tier breakpoint and Maker/Taker classification 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]6 *……………………………… 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]7 *……………………………… For All Tiers – No Charge
Execution Fee for Single-Sided Odd Lot Orders executed on XLE against [another]an XLE Participant:[6]8 *……………………………… For All Tiers – $0.003 per share
Routing Fee for Single-Sided Odd Lot Orders executed at an away market:[6]8 *……………………………… For All Tiers – $0.03 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.[7]9

System Fees
Monthly FIX Computer-to-Computer Interface (CTCI) Port Fee[8]10 ………………… $100 per port
[Monthly Drop Copy Feed Fee9 .................................. No Charge]
Monthly Phlx Systems Fee[10]11 ………………… No Charge
Depth of Book Data Feed Fee[11]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]6 Phlx provides optional technology to XLE Participants for the entry of two-sided orders into XLE. Executed volume will not accrete towards the volume tier breakpoint or Maker/Taker classification 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]7 Executed volume will not accrete towards the volume tier breakpoint or Maker/Taker classification [per] of the XLE Participant Organization. [There is no Execution credit for IOC Cross and Mid-Point Cross executions].
[6]8 Executed volume will accrete towards the volume tier breakpoint and Maker/Taker classification [per] of the XLE Participant Organization. [There is no execution credit for orders initially entered as odd-lot orders and executed on XLE.]
[7]9 A Sponsoring Member Organization is responsible for the fees generated in connection with its Sponsored Participant’s sale transactions.
[8]10 A port is defined as an IP address assigned by the Exchange for connectivity to XLE.
[9] 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.
[10]11 Per device, for use of optional Phlx technology to enter in two-sided orders and related clearing information.
[11]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.