

MEMORANDUM

TO: Members and Member Organizations

FROM: John Dayton

DATE: May 27, 2008

RE: Generic UTP Standards

The Securities and Exchange Commission recently approved a proposed rule change, SR-Phlx-2008-34, which adopted Phlx Rule 803(o) regarding the trading of securities on XLE pursuant to Unlisted Trading Privileges (UTP) and further defines, in Phlx Rule 136, trading halt requirement for New Derivative Securities Products, such as ETFs. UTP allows an exchange, such as Phlx, to trade a security that is listed on another exchange, subject to having the proper listing standards and certain other requirements. This rule filing will allow Phlx to UTP any security that is listed on another exchange, subject to certain conditions. Primarily, this filing will allow Phlx to begin trading, subject to certain conditions, various ETFs that previously required Phlx to adopt detailed listing standards in order to trade. XLE Participants should continue to contact the XLE Help Desk with requests to begin trading a security on XLE. The rule text is attached.

Questions regarding the rule change may be directed to John Dayton at (435) 783-6415. Questions regarding securities may be directed to Lori Mann at (215) 496-5472. Questions regarding XLE functionality may be directed to the XLE Help Desk at (215) 496-5311 or 1-877-678-PHLX.

Underlining indicates additions; brackets indicate deletions

Rules of the Board of Governors

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Rule 136 Trading Halts in Certain Exchange Traded Funds

(a)-(b) No Change

(c) The Exchange will halt trading in all New Derivative Securities Products if the circuit breaker parameters of Phlx Rule 133 have been reached. In exercising its discretion to halt or suspend trading in a New Derivative Securities Product pursuant to Phlx Rule 164(a), the Exchange may consider factors such as the extent to which trading in the underlying securities is not occurring or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, in addition to other factors that may be relevant. In particular, when the Exchange is the listing market for a New Derivative Securities Product, if the Required Value applicable to that New Derivative Securities Product is not being calculated and disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Required Value occurs. If the interruption to the dissemination of the Required Value persists past the trading day in which it occurred the Exchange will halt trading no later than the beginning of the trading day following the interruption.

(d) Trading Halts for Trading of [Certain] New Derivative Securities Products on XLE Pursuant to Unlisted Trading Privileges

(1) During Pre Market Session. If a New Derivative Securities Product begins trading on XLE in the Pre Market Session and subsequently a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value, XLE may continue to trade the New Derivative Securities Product for the remainder of the Pre Market Session.

(2) During Core Session. During the Core Session, if a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value, and the listing market halts trading in the New Derivative Securities Product, Phlx, upon notification by the listing market of a halt due to such temporary interruption, also shall immediately halt trading in the New Derivative Securities Product on XLE.

(3) Post Market Session and Next Trading Day.

(A) If an applicable Required Value continues not to be calculated or widely disseminated after the close of the Core Session, XLE may trade the New Derivative Securities Product in the Post Market Session only if the listing market traded the New Derivative Securities Product until the close of its regular trading session without a halt.

(B) If an applicable Required Value continues not to be calculated or widely disseminated as of the beginning of the Pre Market Session on the next trading day, XLE shall not commence trading of the New Derivative Securities Product in the Pre Market Session that day. If an interruption in the calculation or wide dissemination of an applicable Required Value continues, XLE may resume trading in the New Derivative Securities Product only if calculation and wide dissemination of the applicable Required Value resumes or trading in the New Derivative Securities Product resumes in the listing market.

(4) For a New Derivative Securities Product where a net asset value (and, in the case of managed fund shares or actively managed exchange-traded funds, a “disclosed portfolio”) is disseminated, Phlx will

immediately halt trading in such security upon notification by the listing market that the net asset value and, if applicable, such disclosed portfolio is not being disseminated to all market participants at the same time. Phlx may resume trading in the New Derivative Securities Product only when trading in the New Derivative Securities Product resumes on the listing market.

(e) For purposes of this Rule:

(1) "New Derivative Securities Product" shall have the same meaning as new derivative securities product in Rule 803(o). [means a series of securities described in Phlx Rule 803(f) and (h)-(n), which is based on an underlying security or index.]

(2) "Required Value" shall mean (i) the value of any security or index underlying a New Derivative Securities Product, and (ii) the Intraday Indicative Value (as defined in Rule 803), or the Indicative Optimized Portfolio Value or other comparable estimate of the value of a share of a New Derivative Securities Product updated regularly during the trading day.

Rule 803 Criteria for Listing – Tier I

(a)-(n) No Change

(o) Unlisted Trading Privileges

(1) Applicability. The Exchange may determine to extend unlisted trading privileges ("UTP") to a NMS Stock that is listed on another national securities exchange. Any such security will be subject to all Exchange trading rules applicable to NMS Stocks, unless otherwise noted. The Exchange shall file with the Commission a Form 19b-4(e) with respect to any such security that is a "new derivative securities product" ("NDSP") as defined in Rule 19b-4(e) under the Exchange Act.

(2) Any NDSP traded on the Exchange pursuant to UTP shall be subject to the additional following rules:

(A) Information Circular. The Exchange shall distribute an information circular prior to the commencement of trading in such NDSP that generally includes the same information as the information circular provided by the listing exchange, including: (1) the special risks of trading the NDSP; (2) the Exchange's rules that will apply to the NSDP, including the suitability rule; (3) information about the dissemination of value of the underlying assets or indexes; and (4) information about trading and trading halts during the Pre Market and Post Market Sessions due to the lack of calculation or dissemination of the underlying index value, the Intraday Indicative Value, the Indicative Optimized Portfolio Value or other comparable estimate of the value of a share of the NSDP.

(B) Prospectus Delivery/Product Description. Members and member organizations are subject to the prospectus delivery requirements under the Securities Act of 1933, unless the NDSP is the subject of an order by the Securities and Exchange Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and the product is not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange shall inform its members and member organizations regarding the application of the provisions of this subparagraph to such NDSPs by means of an information circular.

The Exchange requires that members provide to all purchasers of such NDSPs a written description of the terms and characteristics of those securities, in a form approved by the Exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, the members and member organizations shall

include a written description with any sales material relating to such NDSPs that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to such NDSPs as an investment vehicle must include a statement substantially in the following form: “ A circular describing the terms and characteristics of [such NDSPs] has been prepared by the [open-ended management investment company name] and is available from your broker. It is recommended that you obtain and review such circular before purchasing [such NDSPs].”

A member or member organization carrying an omnibus account for a non-member is required to inform such non-member that execution of an order to purchase such NDSPs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to the member under this rule.

Upon request of a customer, a member or member organization shall also provide a prospectus for such NDSPs.

(C) Market Maker Restrictions. The following restrictions shall apply to each XLE Participant registered as a Market Maker (“Restricted Market Maker”) in an NDSP that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index comprised of currencies or commodities (collectively, “Reference Assets”):

(i) A Restricted Market Maker in an NDSP is prohibited from acting or registering as a market maker in any Reference Asset of that NDSP or any derivative instrument based on a Reference Asset of that NDSP (collectively, with Reference Assets, “Related Instruments”).

(ii) A Restricted Market Maker shall, in a manner prescribed by Phlx, file with Phlx and keep current a list identifying any accounts (“Related Instrument Trading Accounts”) for which Related Instruments are traded:

- (a) in which the Restricted Market Maker holds an interest;
- (b) over which it has investment discretion; or
- (c) in which it shares in the profits and/or losses.

A Restricted Market Maker may not have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account which has not been reported to Phlx as required by this Rule.

(iii) In addition to the existing obligations under Phlx rules regarding the production of books and records, a Restricted Market Maker shall, upon request by Phlx, make available to Phlx any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Restricted Market Maker for which Related Instruments are traded.

(iv) A Restricted Market Maker shall not use any material nonpublic information in connection with trading a Related Instrument.

(D) Comprehensive Surveillance Sharing Agreements. Phlx shall enter into a comprehensive surveillance sharing agreement (“CSSA”) with markets trading components of the index or portfolio on which the NDSP is based to the same extent as the listing exchange’s rules require the listing exchange to enter into a CSSA with such markets.