

MEMORANDUM

TO: Members and Member Organizations

FROM: John Dayton

DATE: January 3, 2008

RE: Modification of Short Interest Reporting Rule

---

The Securities and Exchange Commission (“Commission”) has approved a proposed rule change filed by the Exchange to amend Phlx Rules regarding the reporting of short interest positions to the Exchange. The purpose of the proposed rule change was to conform Phlx Rule 786, Phlx’s short interest reporting rule, to changes that other self-regulatory organizations (“SROs”) have filed to implement uniform changes to the short interest reporting requirements across SROs. In addition, all SROs, including Phlx, now require short interest reporting twice per month. For more information on the changes made by the SROs, see the following memo: <http://www.phlx.com/docs/ISG2007-01.pdf>

First, in this filing, Phlx made a technical change to the text of Phlx Rule 786, Supplementary Material .01. Phlx Rule 786, Supplementary Material .01 provides that, subject to certain limited exceptions, short positions required to be reported under the rule are those resulting from short sales as the term is defined in Rule 200 of Regulation SHO. The term “short sale” is actually defined in Rule 200(a) of Regulation SHO. Therefore, Phlx amended the text of Phlx Rule 786, Supplementary Material .01 to reference Rule 200(a) of Regulation SHO, not Rule 200 of Regulation SHO to eliminate any confusion.

Second, Phlx added Supplementary Material .02 and conforming language in Supplementary Material .01, which adopted exceptions to the short interest reporting requirement. The prior language stated that any transaction that is marked “sell short exempt” is exempt from the reporting requirement. Beginning on July 6, 2007, the “short exempt” marking requirement was eliminated by the Commission.<sup>1</sup> Therefore, beginning on July 6, 2007, all transactions marked short would have been covered by Phlx’s reporting requirement. However, other SROs modified their short interest reporting rules to exclude five specific transactions, which were previously contained in the now eliminated Rule 10a-1 under the Act. The proposed change that the Commission adopted should conform Phlx’s reporting requirement to those of other SROs and increase

---

<sup>1</sup> See Securities Exchange Act Release No. 55970 (June 28, 2007).

uniformity for broker-dealers as they comply with various rules across SROs, which should reduce costs and increase efficiency for those broker-dealers.

**However, it is important to note all sell orders submitted to XLE are still required to be marked as long or short, pursuant to Commission and Phlx rules.**

Questions regarding short interest reporting may be directed to Joe Cusick at (215) 496-1576. Questions regarding the proposed rule change may be directed to John Dayton at (435) 783-6415. Questions regarding XLE functionality may be directed to the XLE Help Desk at (215) 496-5311 or 1-877-678-PHLX.

## **Rule Text**

Underling indicates additions; brackets indicate deletions

### **Rule 786.**

#### **Periodic Reports**

Member organizations shall submit, as required by the Exchange, periodic reports with respect to short positions in securities.

#### ***Supplementary Material: ...***

**.01 Short Positions** --Member organizations for which the Exchange is the designated examining authority ("DEA") are required to report short positions, including odd-lots, in each stock or warrant traded on the Exchange, and in each other stock or warrant not traded on the Exchange for which short positions are not otherwise reported to another United States securities exchange or association, using such automated format and methods as prescribed by the Exchange. Such reports must include customer and proprietary positions and must be made at such times and covering such time period as may be designated by the Exchange. Member organizations whose short positions have properly been reported to, and are carried by, a non-member clearing organization will be in compliance with this rule if adequate arrangements have been made providing for the clearing organization to properly report such positions to the Exchange or to another United States securities exchange or association.

"Short" positions to be reported are those resulting from "short" sales as defined in Securities and Exchange Commission Rule 200(a) of Regulation SHO, but excluding sales that meet an exception in .02 below[marked "sell short exempt" pursuant to Rule 200(g) of Regulation SHO]. Also, to be excluded are "short" positions carried for other members and member organizations reporting for themselves.

Only one report should be made for each stock or warrant for which there is a short position, if more than one "account" has a short position in the same stock or warrant, the combined aggregate should be reported.

Member organizations for which the Exchange is not the DEA must report short positions to its DEA if such DEA has a requirement for such reports. If the DEA does not have such a reporting requirement, then such member organization must comply with the provisions of this rule.

.02 Exceptions

(a) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense.

(b) Any sale of a security covered by a short sale rule on a national securities exchange (except a sale to a stabilizing bid complying with Rule 104 of Regulation M) effected with the approval of such exchange which is necessary to equalize the price of such security thereon with the current price of such security on another national securities exchange which is the principal exchange market for such security.

(c) Any sale of a security for a special arbitrage account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.

(d) Any sale of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on a securities market subject to the jurisdiction of the United States; provided the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him such foreign securities market and intends to accept such offer immediately.

(e) Any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment.