

Equities # 0346-07

To: All PHLX XLE Participants
From: PHLX Equities Surveillance Department
Date: February 9, 2007
Subject: Qualification of Benchmark Orders

The Equities Surveillance Department reminds all XLE Participants that orders marked as “Benchmark” must comply with PHLX Rule 185(c)(3) which states that, “An IOC Cross Order may be marked Benchmark if it meets the requirements of Reg NMS Rule 611(b)(7).”

XLE Participants entering Benchmark orders are reminded of their obligation to make and maintain the memorandum described in Rule 17a-3(a)(6) and Rule 17a-4(b)(1) for all such orders. The memorandum shall show the terms and conditions of the order or instructions and any modification or cancellation thereof; the account for which entered, and the time the order, modification, or cancellation was received. Additionally, for an order to qualify as a Benchmark order, it must be:

- (1) at a price that was not based, directly or indirectly, on the quoted price of the NMS Stock at the time of the execution; and
- (2) for which the material terms were not reasonably determinable at the time the commitment to execute the order was made.

Any order tickets received or written by an XLE Participant acting in the capacity of a broker must also show this information, and must be marked by either an electronic or mechanical timestamp, as must any cancel or cancel-replacement tickets.

Please contact Christine McMaster, Director of Equities Surveillance, at (215) 496-1486 or christine.mcmaster@phlx.com should you have any questions.