

MEMORANDUM

TO: Members and Member Organizations

FROM: John Dayton

DATE: July 23, 2007

RE: Adoption of Listing Standards for International ETFs on XLE

The Exchange has received approval from the Securities and Exchange Commission for a proposed rule change, SR-Phlx-2007-20, which adopts listing standards and trading halt rules for exchange traded funds (“ETFs”) that are based on indexes that contain non-US securities (“International ETFs”). These International ETFs may be listed and/or traded on XLE, Phlx’s equity trading system. International ETFs, like other ETFs, are trusts or investment companies that hold securities in proportion to the holdings of the index on which the International ETF is based. Despite the fact that International ETFs are based on an underlying index, each will trade as a single, exchange-listed security.

Prior to the listing or trading of any International ETF, the Exchange will prepare and distribute an Information Memorandum that describes the product, highlighting the particular structure and corresponding risks of an International ETF. In particular, the Memorandum will set forth the Exchange’s suitability rule that sets forth certain requirements for member organizations recommending a transaction in International ETFs. In addition, the Information Memorandum will note that all of the Exchange’s equity trading rules will be applicable to trading in International ETFs. The rule text is attached.

Questions regarding the proposed rule change may be directed to John Dayton at (435) 783-6415. Questions regarding International ETFs 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

Rule 136.

Trading Halts in Certain Exchange Traded Funds

(a)-(d) No Change

(e) For purposes of this Rule:

(1) “Derivative Securities Product” means a series of [Index-Linked Securities (Phlx Rule 803(n))]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 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 Derivative Securities Product updated regularly during the trading day.

Rule 803.

Criteria for Listing --Tier I

Issuers should consider whether to list their securities under the Tier I or Tier II listing standards. While all listed issues will be traded pursuant to the identical Exchange auction rules, issues listed pursuant to the Tier I and Tier II standards may be distinguished with respect to blue sky exemptions, transactions reporting symbols, listing fees and maintenance standards. The Exchange will identify and distinguish at all times which securities are listed pursuant to the Exchange's Tier I and Tier II standards. An issuer seeking to list its securities pursuant to the Tier I standards must satisfy one of the two alternative Tier I quantitative criteria and an issuer seeking to list its securities pursuant to the Tier II standards must satisfy the Tier II quantitative criteria. Issuers listing under either criteria must adhere to the policies and procedures and the corporate governance criteria provided in Rules 812 through 853.

The Exchange also places great emphasis upon the level of public interest in the securities of an issuer. Causes for concern may include a low trading volume on another Exchange, lack of dealer interest in the over-the-counter market, unusual geographical concentration of shareholders or a low rate of transfers. Under such circumstances the Exchange may implement a higher distribution standard provided it perceives a relatively low level of investor interest.

Phlx may extend unlisted trading privileges to any security for which Phlx has in effect rules providing for transactions in such class or type of security. Provisions of Rule 803 that govern trading hours, dissemination of information (i.e. Intraday Indicative Value

and index value) and surveillance procedures, and that relate to information circulars and prospectus delivery, shall apply to securities traded on an unlisted trading privileges basis.

The listing criteria for Tier I Issues are as follows:

(a)-(h) No Change

(i) Trust Shares

(1) *Definitions.*

(i)-(ii) No Change

(iii) The term “US Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 (“Exchange Act”) or an American Depository Receipt the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

(iv) The term “Non-US Component Stock” shall mean an equity security that is not registered under Sections 12(b) or 12(g) of the Exchange Act and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including real estate investment trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

(2)-(4) No Change

(5) *Initial and Continued Listing and/or Trading.* A Trust upon which a series of Trust Shares are based will be listed and traded on the Exchange[, whether by listing or pursuant to unlisted trading privileges,] subject to application of the following criteria:

(A) No Change

(B) Continued Trading - Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of [or termination of unlisted trading privileges for] a Trust upon which a series of Trust Shares is[are] based under any of the following circumstances:

(i)-(iii) No Change

(C) No Change

(D) The Exchange will obtain a representation from the issuer of each series of Trust Shares that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(6)-(10) No Change

(11) The Exchange may approve a series of Trust Shares for listing and trading[, whether by listing or pursuant to unlisted trading privileges,] pursuant to Rule 19b-4(e) under the [Securities] Exchange Act [of 1934] provided [each of] the [following] criteria described in paragraphs (a), (b) or (c) below and (d) through (l) are [is] satisfied:

(a) [Eligibility Criteria for Index Components]Series of Trust Shares that are based on an Index or Portfolio comprised solely of US Component Stocks. Upon the initial listing of a series of Trust Shares on the Exchange, the component stocks of an index or portfolio underlying such series of Trust Shares shall meet the following criteria as of the date of the initial deposit of cash and securities into the trust:

(i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall each have a minimum market value of at least \$75 million;

(ii) The component stocks that in the aggregate account for at least 90 percent of the weight of the index or portfolio each must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares [shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio];

(iii) No Change

(iv) The underlying index or portfolio must include a minimum of 13 component stocks; and

(v) All securities in an underlying index or portfolio must be US Component Stocks listed on a national securities exchange [or The Nasdaq Stock Market (including the Nasdaq SmallCap Market)] and shall be NMS Stocks.

(b) Eligibility Criteria for series of Trust Shares that are based on an Index or Portfolio comprised solely of Non-US Component Stocks or Both US and Non-US Component Stocks. Upon the initial listing of a series of Trust Shares, the component stocks of an index or portfolio underlying such series of Trust Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund:

(i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least \$100 million;

(ii) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares;

(iii) the most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio;

(iv) the index or portfolio must include a minimum of 20 component stocks; and

(v) each US Component Stock must be listed on a national securities exchange and must be an NMS Stock, and each Non-US Component Stock must be listed and traded on an exchange that has last-sale reporting.

(c) Index or portfolio approved in connection with options or other derivative securities. Upon the initial listing of a series of Trust Shares, pursuant to Rule 19b-4(e) under the Exchange Act, the index or portfolio underlying such series shall have been reviewed and approved for trading of options, Trust Shares, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Exchange Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements with respect to Non-US Component Stocks and requirements regarding dissemination of information continue to be satisfied. Each component stock of the index or portfolio shall be either (I) a US Component Stock that is listed on a national securities exchange and is an NMS Stock or (II) a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

([b]d) Index Methodology and Calculation.

(i) No Change

(ii) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or a major market data vendor or that makes decisions on the index or portfolio composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the

applicable index.[The current index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Trust Shares trade on the Exchange.]

([c]e) *Disseminated Information.* [The Reporting Authority will disseminate for each series of Trust Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of shares of the series or upon the index value.] If a series of Trust Shares is listed for trading, or trades pursuant to unlisted trading privileges, on the Exchange in reliance upon Rule 19b-4(e) under the Exchange Act, and invests solely in US Component Stocks, the current value of the underlying index must be widely disseminated by one or more major market data vendors or disseminated over the consolidated tape at least every 15 seconds during trading hours on the Exchange. If a series of Trust Shares is listed for trading on the Exchange in reliance upon Rule 19b-4(e) under the Exchange Act and invest in both US Component Stocks and Non-US Component Stocks or only in Non-US Component Stocks, the current value of the underlying index must be widely disseminated by one or more major market data vendors or disseminated over the consolidated tape at least every 60 seconds during trading hours on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of Non-US Component Stocks because of time zone differences or holidays in the countries where such indexes' component stocks trade), then the last official calculated index value must remain available throughout Exchange trading hours.

There must be disseminated for each series of Trust Shares, whether listed or traded pursuant to unlisted trading privileges, an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value") during the Core Session on XLE, and, if applicable, during the Pre Market Session on XLE. This may be based, for example, upon current information regarding the required deposit of securities plus any cash amount to permit the creation of new shares of the series or upon the index value. The Intraday Indicative Value will be updated at least every 15 seconds during the Core Session on XLE, and, if applicable, during the Pre Market Session on XLE, to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on XLE, then the last official calculated Intraday Indicative Value must remain available throughout XLE's trading hours.

([d]f) *Initial Shares Outstanding.* A minimum of 100,000 shares of a series of Trust Shares is required to be outstanding at start-up of trading on the Exchange.

([e]g) *Trading Increment.* The minimum trading increment [for a series of Trust Shares shall be \$0.01] is set in Phlx Rule 125.

([f]h) *Listing Fees.* The original listing fee is \$7,500 for each series of Trust Shares. The annual maintenance listing fee will be \$1,250 for each series of Trust Shares.

([g]i) *Surveillance Procedures.* The Exchange will implement written surveillance procedures for Trust Shares.

([h]j) *Applicability of Other Rules.* All other provisions of Rule 803(i) will apply to all series of Trust Shares.

(k) *Creation and Redemption.* For Trust Shares listed pursuant to (i)(11)(b) or (c) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Trust Shares must state that the series of Trust Shares must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

(l) *Hours of Trading.* Trading will occur on XLE during the times set in Phlx Rule 101. In addition, the Exchange may designate each series of Trust Shares for trading during the Pre Market Session and/or the Post Market Session; provided, however that the Exchange will not designate a series of Trust Shares for Pre Market or Post Market trading unless the requirements of Phlx Rule 803(i)(11)(e) are satisfied. If there is no overlap with the trading hours of the primary market(s) trading the underlying components of a series of Trust Shares, the Exchange may designate such series for Pre Market trading as long as the last official calculated Intraday Indicative Value remains available.

(j)-(k) No Change

(l) Index Fund Shares.

(1) No Change

(2) Definitions. The following terms shall have the meanings specified herein:

(A)-(B) No Change

(C) The term “US Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 (“Exchange Act”) or an American Depositary Receipt the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

(D) The term “Non-US Component Stock” shall mean an equity security that is not registered under Sections 12(b) or 12(g) of the Exchange Act and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including real estate investment trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

(3) Disclosure. Unless Rule 803(l)(7) applies, [T]the Exchange requires that members and member organizations provide to all purchasers of newly issued Index Fund Shares a prospectus for the series of Index Fund Shares.

(4) No Change

(5) Initial and Continued Listing and/or Trading. Each series of Index Fund Shares will be listed and traded on the Exchange[, whether by listing or pursuant to unlisted trading privileges,] subject to application of the following criteria:

(A) No Change

(B) Continued Trading. Following the initial twelve month period following commencement of trading on the Exchange of a series of Index Fund Shares, the Exchange will consider the suspension of trading[,] or the removal from listing[, or termination of unlisted trading privileges] for such series under any of the following circumstances: (I) If there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; (II) If the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or (III) If such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Upon termination of an open-end management investment company, the Exchange requires that Index Fund Shares issued in connection with such entity be removed from Exchange listing.

(C) No Change

(D) The Exchange will obtain a representation from the issuer of each series of Index Fund Shares that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(6) Listing Pursuant to SEC Rule 19b-4(e). The Exchange may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the

[Securities] Exchange Act [of 1934] provided [each of] the [following] criteria described in paragraph (A), (B) or (C) below and (D)-(K) are [is] satisfied:

(A) Eligibility Criteria for [Index Components]series of Index Fund Shares that are based on an Index or Portfolio comprised solely of US Component Stocks. Upon the initial listing of a series of Index Fund Shares the component stocks of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund: (I) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$75 million; (II) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares[The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio]; (III) The most heavily weighted component stock cannot exceed [25]30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio; (IV) The underlying index or portfolio must include a minimum of 13 component stocks; and (V) All securities in an underlying index or portfolio must be US Component Stocks listed on a national securities exchange [or The Nasdaq Stock Market (including the Nasdaq SmallCap Market)] and shall be NMS Stocks.

(B) Eligibility Criteria for series of Index Fund Shares that are based on an index or portfolio comprised solely of Non-US Component Stocks or Both US and Non-US Component Stocks. Upon the initial listing of a series of Index Fund Shares, the component stocks of an index or portfolio underlying such series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund: (I) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least \$100 million; (II) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares; (III) the most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio; (IV) the index or portfolio must include a minimum of 20 component stocks; and (V) each US Component Stock must be listed on a national securities exchange

and must be an NMS Stock, and each Non-US Component Stock must be listed and traded on an exchange that has last-sale reporting.

(C) Index or portfolio approved in connection with options or other derivative securities. Upon the initial listing of a series of Index Fund Shares, pursuant to Rule 19b-4(e) under the Exchange Act, the index or portfolio underlying such series shall have been reviewed and approved for trading of options, Trust Shares, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Exchange Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements with respect to Non-US Component Stocks and requirements regarding dissemination of information continue to be satisfied. Each component stock of the index or portfolio shall be either (I) a US Component Stock that is listed on a national securities exchange and is an NMS Stock or (II) a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

([B]D) Index Methodology and Calculation. (I) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (II) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor; and (III) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or a major market data vendor or that makes decisions on the index or portfolio composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.[The current index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Index Fund Shares trade on the Exchange.]

([C]E) Disseminated Information. [The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.]If a series of Index Fund Shares is listed for trading, or trades pursuant to unlisted trading privileges, on the Exchange

in reliance upon Rule 19b-4(e) under the Exchange Act, and invests solely in US Component Stocks, the current value of the underlying index must be widely disseminated by on or more major market data vendors or disseminated over the consolidated tape at least every 15 seconds during trading hours on the Exchange. If a series of Index Fund Shares is listed for trading on the Exchange in reliance upon Rule 19b-4(e) under the Exchange Act and invest in both US Component Stocks and Non-US Component Stocks or only in Non-US Component Stocks, the current value of the underlying index must be widely disseminated by one or more major market data vendors or disseminated over the consolidated tape at least every 60 seconds during trading hours on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of Non-US Component Stocks because of time zone differences or holidays in the countries where such indexes' component stocks trade), then the last official calculated index value must remain available throughout Exchange trading hours.

There must be disseminated for each series of Index Fund Shares, whether listed or traded pursuant to unlisted trading privileges, an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value") during the Core Session on XLE, and, if applicable, during the Pre Market Session on XLE. This may be based, for example, upon current information regarding the required deposit of securities plus any cash amount to permit the creation of new shares of the series or upon the index value. The Intraday Indicative Value will be updated at least every 15 seconds during the Core Session on XLE, and, if applicable, during the Pre Market Session on XLE, to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on XLE, then the last official calculated Intraday Indicative Value must remain available throughout XLE's trading hours.

((D)F) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at commencement of trading.

((E)G) Minimum Variation. The minimum variation [may vary among different series of Index Fund Shares, but will be set at \$.01 (for Index Fund Shares trading in decimals)]is set in Phlx Rule 125.

((F)H) Hours of Trading. Trading will occur [between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange] on XLE during the times set in Phlx Rule 101. In addition, the Exchange may designate each series of Index Fund Shares

for trading during the Pre Market Session and/or the Post Market Session; provided, however that the Exchange will not designate a series of Index Fund Shares for Pre Market or Post Market trading unless the requirements of Phlx Rule 803(l)(6)(E) are satisfied. If there is no overlap with the trading hours of the primary market(s) trading the underlying components of a series of Index Fund Shares, the Exchange may designate such series for Pre Market trading as long as the last official calculated Intraday Indicative Value remains available.

([G]I) Surveillance Procedures. The Exchange will utilize existing surveillance procedures for Index Fund Shares.

([H]J) Applicability of Other Rules. The provisions of Rule 803(l)(1)-(5) will apply to all series of Index Fund Shares.

(K) Creation and Redemption. For Index Fund Shares listed pursuant to (l)(6)(B) or (C) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Index Fund Shares must state that the series of Index Fund Shares must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

(7)-(8) No Change

(m)-(n) No Change