

MEMORANDUM

TO: Members and Member Organizations

FROM: John Dayton

DATE: June 12, 2007

RE: Requirements for Certain Orders on XLE Before the All Stocks Phase
Date of Regulation NMS

The Exchange has filed an immediately effective proposed rule change with the Securities and Exchange Commission (“Commission”) to clarify that the requirements on XLE Participants that send certain orders to XLE before the All Stocks Phase Date of Regulation NMS, which is currently August 20, 2007, remain in effect. The All Stocks Phase Date is the date that Rules 610 and 611 of Regulation NMS are operative for all industry participants including broker-dealers. This rule change clarifies that before that date, Phlx continues to require that XLE Participants sending ISOs and IOC Cross Orders marked as Benchmark, as Qualified Contingent Trade, or as meeting the requirements of an intermarket sweep order meet the requirements in Phlx Rule 185A(b)-(d), as specified. **These order types remain available in all securities traded on XLE and the requirements on XLE Participants sending these order types have not changed.** Amended Phlx Rule 185A is attached.

Following the All Stocks Phase Date, all of these order types will remain in effect on XLE and the requirements for them will remain the same. The only change will be to the rule text such that the requirements will be in Phlx Rule 185 instead of Phlx Rule 185A and Phlx Rule 185A will be deleted.

Questions regarding the proposed rule change may be directed to John Dayton at (215) 496-5162. 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 185A.

Orders and Order Execution – Temporary

(a) [An away market obligation is an immediate or cancel limit order for an NMS stock generated by Phlx in connection with the execution of an order by Phlx and routed to one or more away market centers to execute against all better-priced protected quotations displayed by the other market centers up to their displayed size. In the event that an away market that trades a particular security is capable of receiving intermarket sweep orders, then the Exchange may choose to generate and utilize intermarket sweep orders as the away market obligations for that market. Before Rule 611 of Regulation NMS is operative on the Exchange (the "Trading Phase Date"), the words "immediate-or-cancel intermarket sweep orders" in Rule 185(b)(1)(C)(i)-(ii) and (b)(2)(B) shall mean "away market obligations."]For purposes of this rule, the All Stocks Phase Date is the date that full industry compliance with Rules 610 and 611 of Regulation NMS is required for all NMS Stocks.

(b) [In addition, b]Before the All Stocks Phase Date [Trading Phase Date, a XLE Participant may submit an ISO or an IOC Cross Order marked by the XLE Participant entering the order as meeting the requirements of an intermarket sweep order to XLE only if it has simultaneously sent an intermarket sweep order (or comparable order) for the full displayed size of the top of book of every other ITS Participant displaying a better-priced quotation. For Nasdaq Global Market Securities and Nasdaq Capital Market Securities], a XLE Participant may submit an ISO or an IOC Cross Order marked by the XLE Participant entering the order as meeting the requirements of an intermarket sweep order to XLE only if it has simultaneously sent an intermarket sweep order (or comparable order) for the full displayed size of the top of book of every national securities exchange or national securities association displaying a better-priced quotation.

(c) Before the All Stocks Phase Date[Trading Phase Date], a XLE Participant may mark an IOC Cross Order [in Nasdaq Global Market Securities or Nasdaq Capital Market Securities] as Benchmark if it is an order: (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.

(d) Before the All Stocks Phase Date[Trading Phase Date], a XLE Participant may mark an IOC Cross Order [in Nasdaq Global Market Securities or Nasdaq Capital Market Securities] as Qualified Contingent Trade. A Qualified Contingent Trade is a transaction consisting of two or more component orders, executed as agent or principal, where:

(1)-(7) No Change