

MEMORANDUM

TO: Members and Member Organizations

FROM: John Dayton

DATE: November 29, 2007

RE: Rule and Fee Changes to Facilitate Listing of Structured Equity Products

The Exchange has received approval from the Securities and Exchange Commission for a proposed rule change, SR-Phlx-2007-60, which updates certain of its listing rules and fees in order to better facilitate the listing of Structured Equity Products¹ that may then be traded on XLE, Phlx's equity trading system. Structured Equity Products are designed for investors who desire to participate in a specific market segment or combination of market segments through index products. Each Structured Equity Product is intended to provide investors with exposure to an identifiable underlying market index. Structured Equity Products may or may not make interest payments to the holder during their term. Despite the fact that Structured Equity Products are linked to an underlying index, each will trade as a single, exchange-listed security.

In order to facilitate the listing of equity securities, Phlx has long had a series of rules, the 800 series, which create standards regarding both the security to be listed and traded on Phlx, as well as regarding the issuer of the security. In regards to the listing of the Structured Equity Products, Phlx adopted modifications to the 800 series of rules designed to accommodate the specific attributes that many Structured Equity Securities have. Specifically, the Exchange modified Phlx Rule 802, Rule 806, Initial Public Offerings, Rule 807, Registration under the Exchange Act, and Rule 837, Annual Reports. The Phlx Fee Schedule was also amended to add Initial and Continued Listing Fees for Structured Equity Products. The amended rule text and fee schedule is attached.

Questions regarding the proposed rule change may be directed to John Dayton at (435) 783-6415. Questions regarding security listing may be directed to Walt Smith at (215) 496-5532 or Todd Borneman at (215) 496-1261. Questions regarding XLE functionality may be directed to the XLE Help Desk at (215) 496-5311 or 1-877-678-PHLX.

¹ For purposes of this proposed rule change, Structured Equity Products are securities to be listed pursuant to the categories in Phlx Rule 803 entitled Other Securities, Equity Linked Notes, Basket Linked Notes, Index Linked Exchangeable Notes and Index Linked Securities. See Phlx Rule 803(f), (h), (k), (m) and (n).

Rule Text

Underlining indicates additions; brackets indicate deletions

Rule 802.

The Exchange will evaluate and prepare a confidential listing opinion as to the eligibility of an applicant's securities for listing upon submission of the information listed in Rule 808. [The company must be a going concern or the successor to a going concern.] [Other f]Factors the Exchange places great emphasis upon include but are not limited to: the nature of a company's business, the character of the market for its product, its stability and position in its industry, the reputation of its management, its history of growth and growth prospects for the future, its financial integrity and the voting rights for shareholders.

The Exchange does not rate or guarantee the quality of any security dealt in on the Exchange beyond the fact that it meets the Exchange's minimum financial criteria for listing. In making a determination concerning listing or delisting, the Exchange acts upon information furnished by the issuer which must verify the information by providing at least, independently audited financial statements and other disclosure documents.

For purposes of Rules 801-899, (i) "public shareholder" or "public holder" does not include officers, directors, controlling shareholders or other owners of family or concentrated holdings and (ii) beneficial holders rather than holders of record will be counted by the Exchange.

Rule 806.

Initial Public Offerings

(a) A new issue of securities shall be eligible for listing on the day that its registration statement is effective with the Securities and Exchange Commission, or where registration with Securities and Exchange Commission is not required, upon effectiveness of its registration statement or equivalent document filed with the appropriate regulatory authority, provided that the issuer has met the initial listing criteria as follows: prior to the offering, the issuer has met the initial listing criteria of Rules 803, 804 or 805 except that as a result of the offering, the criteria for shares outstanding, price per share and holder of record contained in Rules 803, 804 or 805 as applicable, were met for a majority of the trading days in the first month after the offering is complete.

(b) Prior to the offering the issuer must provide the Exchange with a letter from the principal investment bank which represents that, in their opinion, the company will attain the requisite level of shareholders, market value and price in order to be eligible for listing. Within one month after the offering has been completed and closed, the Exchange requires documentation from the company's transfer agent that the requisite criteria have been met for a majority of trading days during that month. If criteria has not been met,

the issue will be immediately delisted. A new issue of securities listed pursuant to Rule 803(f), (h), (k), (m) and (n) shall be exempt from the provisions of Rule 806(b).

Rule 807.

Registration Under the Exchange Act

A security approved for listing by the Exchange must be registered under Section 12(b) of the Exchange Act before it may be admitted to trading on the Exchange. Exchange Act registration is required even though the issuer may have previously registered all or part of the securities under the Securities Act of 1933 ("Securities Act"). However, a security which has already been registered under Section 12(g) of the Exchange Act, or has recently been the subject of a public offering registered under the Securities Act, may normally be registered under Section 12(b) of the Exchange Act for Exchange trading on SEC Form 8-A.

In addition, securities of an issuer which has another class or series of securities registered on another national securities exchange may also use SEC Form 8-A. If an applicant does not have a class of securities registered under Exchange Act Section 12(g) or another class of securities registered on a national securities exchange, SEC Form 10 may be required.

Applicants should prepare and file the SEC registration statement and exhibits concurrently with the Exchange listing application and exhibits. However, registration under Section 12(b) of the Exchange Act cannot become effective until after the issue has been approved for listing by the Exchange. Upon such approval, the Exchange is required to certify to the SEC that it has received its copy of the registration statement and has approved the particular securities for listing and registration. [Ordinarily, registration becomes effective automatically thirty days after receipt by the SEC of the Exchange's certification, but may become effective within a shorter period, by order of the Exchange's certification, and by order of the SEC, on request for acceleration of the effective date made by the issuer to the SEC.] Registration of a class of securities on Form 8-A becomes effective automatically upon the later of the filing of the Form 8-A with the SEC, the SEC's receipt of certification from the Exchange, or (if the class of securities is concurrently being registered under the Securities Act) the effectiveness of the related Securities Act registration statement. Registration other than on Form 8-A becomes effective automatically 30 days after receipt by the SEC of the Exchange's certification but may become effective within a shorter period, by order of the SEC, on request for acceleration of the effective date made by the company to the SEC.

One manually signed copy of the Exchange Act registration statement, including exhibits, must be filed with the listing application.

Rule 837.

Annual Reports

(a) A listed company is required to publish and furnish to its shareholders (or to holders

of any other listed security when its common stock is not listed on a national securities exchange) an annual report containing audited financial statements of the company and its subsidiaries. Three copies of the report must be filed with the Exchange at the time it is distributed to shareholders. If the report is filed on the SEC's EDGAR system, such report will be deemed sent to the Exchange when accepted for filing on EDGAR.

(b) No Change

Underlining indicates additions; brackets indicates deletions

XLE FEE SCHEDULE²

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Transaction Fees

| | | Execution Fees * | | Routing Fees |
|-----------------------------------|---|--|---|--|
| XLE Participant Organization Tier | Monthly Shares Executed ³ | Fee to Remove Liquidity (Per Share Executed) | Credit for Providing Liquidity (Per Share Executed) | Fee for Routing Liquidity (Per Share Executed) + |
| 1 | Less than or equal to 10 million shares executed | \$0.003 | \$0.002 | \$. 0036 |
| 2 | Greater than 10 million and less than or equal to 50 million shares executed | \$0.0028 | \$0.0025 | \$.0036 |
| 3 | Greater than 50 million and less than or equal to 200 million shares executed | \$0.0027 | \$0.0026 | \$.0036 |
| 4 | Greater than 200 million shares executed | \$0.0026 | \$0.0026 | \$.0036 |

* Securities executed on XLE with a per share price below \$1.00 that remove liquidity, will be charged 0.1% (i.e., 10 basis points) of total dollar value of the transaction. There is no execution fee credit for providing liquidity for shares with a per share price below \$1.00.⁴

+ Excluding single-sided odd lot orders executed at an away market. See Miscellaneous Transaction Fees.

² Per XLE Participant Organization. Sponsoring Member Organizations are responsible for the fees generated by their Sponsored Participant(s).

³ The total monthly shares executed includes executions resulting from removing and providing liquidity on XLE and crosses executed on XLE, as well as shares executed when routed via XLE to an away trading center and executed on that away trading center, except for liquidity provided by NMS Linkage Orders. The total monthly shares will be calculated separately per XLE Participant Organization, which, for purposes of these fees, refers to Sponsored Participants, Sponsoring Member Organizations, and member organizations without Sponsored Participants. Thus, Sponsored Participant activity will accrete towards that Sponsored Participant's volume tier and not towards the Sponsoring Member Organization's volume tier. Once a specific tier has been reached in a month, all transactions that month will be subject to the fee that corresponds with that volume tier.

⁴ Executed volume in such shares will accrete towards the volume tier breakpoint per XLE Participant Organization.

Miscellaneous Transaction Fees

Execution Fee for all IOC Cross and Mid-Point Cross Orders entered over technology provided by the Phlx, including odd lot IOC and Mid-Point Cross Orders:^{5*}.....
 For All Tiers – \$0.0023 per share per side,

maximum charge of \$50.00 per trade side

Execution Fee for all other IOC Cross and Mid-Point Cross Orders, including all other odd lot IOC Cross and Mid-Point Cross Orders: ^{6*}..... For All Tiers – No Charge

Execution Fee for Single-Sided Odd Lot Orders executed on XLE against another XLE Participant:⁷
 *..... For All Tiers – \$0.003 per share

Routing Fee for Single-Sided Odd Lot Orders executed at an away market:^{6*}.....For All Tiers – \$0.03 per share

Execution Fee for Incoming NMS Linkage Orders ⁸..... For All Tiers – \$0.003 per share
 * Applicable to orders initially entered as odd-lot orders

Covered Sale Fee

Each member and member organization engaged in executing sale transactions on the Exchange or executing transactions on another exchange or on a Participant in NASD’s Alternative Display Facility (“ADF Participant”), which were routed through the Exchange’s Routing Facility, as described in Rule 185(g), during any computational period shall pay a Covered Sale Fee equal to (i) the Section 31 fee rate multiplied by (ii) the member’s aggregate dollar amount of covered sales.⁹

System Fees

Monthly FIX Computer-to-Computer Interface (CTCI) Port Fee¹⁰..... \$100 per port
 Monthly Drop Copy Feed Fee¹¹..... No Charge
 Monthly Phlx Systems Fee¹²..... No Charge
 Depth of Book Data Feed Fee¹³.....No Charge

Quarterly Market Data Revenue Sharing for Tape A (NYSE), Tape B (Amex and other non-NASDAQ, non-NYSE exchanges), and Tape C (Nasdaq) Securities

50% of gross market data revenue for trades executed on XLE will be shared with the member organization responsible for providing the liquidity portion of the trade. Sponsored Participant trades will be credited to the applicable Sponsoring Member Organization.

⁵ Phlx provides optional technology to XLE Participants for the entry of two-sided orders into XLE. Executed volume will accrete towards the volume tier breakpoint for each XLE Participant Organization that is a party to the execution. There is no execution credit for IOC Cross and Mid-Point Cross executions entered through technology provided by Phlx.

⁶ Executed volume will accrete towards the volume tier breakpoint per XLE Participant Organization. There is no Execution credit for IOC Cross and Mid-Point Cross executions.

⁷ Executed volume will accrete towards the volume tier breakpoint per XLE Participant Organization. There is no execution credit for orders initially entered as odd-lot orders and executed on XLE.

⁸ Applicable to Incoming NMS Linkage Orders routed to the Phlx and executed on XLE. Activity will not accrete towards the XLE Participant Organization’s volume tier.

⁹ A Sponsoring Member Organization is responsible for the fees generated in connection with its Sponsored Participant’s sale transactions.

¹⁰ A port is defined as an IP address assigned by the Exchange for connectivity to XLE.

¹¹ The drop copy feed will be provided on a subscription basis. The feed will provide real-time information concerning trades executed by an XLE Participant Organization.

¹² Per device, for use of optional Phlx technology to enter in two-sided orders and related clearing information.

¹³ The Depth of Book feed will be provided on a subscription basis. The feed will display every order, except the undisplayed portion of a Reserve Order, within XLE at each price level.

Listing Fees for Structured Equity Products¹⁴

| | |
|--|-----------------|
| Original Listing Fee per security..... | \$5,000 |
| Continued Listing Fee per security ¹⁵ | \$500 per month |

¹⁴ Structured Equity Products are securities listed pursuant to the categories entitled Other Securities, Equity Linked Notes, Basket Linked Notes, Index Linked Exchangeable Notes and Index Linked Securities. See Phlx Rule 803(f), (h), (k), (m) and (n).

¹⁵ The Continued Listing Fee will be assessed beginning on the first calendar month following the listing of the security.