

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56526; File No. SR-Phlx-2007-67)

September 25, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as modified by Amendment No. 1 Thereto Relating to XLE Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 31, 2007, the Philadelphia Stock Exchange, Inc. (“Phlx” or the “Exchange”), filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On September 20, 2007, Phlx filed Amendment No. 1 to the proposed rule change. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend the Exchange’s current XLE⁵ Fee Schedule to: (1) adopt definitions for Net Makers of liquidity (“Net Makers”) and Net Takers of liquidity (“Net Taker”) on XLE; (2) update the current volume tier structure by reducing the volume breakpoints to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ XLE refers to the Exchange’s equity trading system. XLE is designed to provide the opportunity for entirely automated executions to occur within a central matching system accessible by Exchange members and member organizations and their Sponsored Participants. See Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR-Phlx-2006-43).

create two new volume pricing tiers; (3) amend the amount of the credits or rebates to Net Makers and the fees for Net Takers; and (4) make two other minor changes to update the XLE Fee Schedule.

The proposed fees will be assessed on Exchange members or member organizations, which may include Sponsoring Member Organizations⁶ (collectively “member organizations”).

The changes set forth in this proposal are scheduled to become operative beginning with transactions settling on or after September 4, 2007.

The text of the proposed rule change is available at Phlx, the Commission’s Public Reference Room, and www.phlx.com.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In an effort to enhance liquidity on XLE, the Exchange proposes to amend the XLE fee schedule to provide economic incentives to help attract additional order flow to the Exchange. The proposed amendments to the XLE Fee Schedule are discussed in detail below:

⁶ See Exchange Rules 1(jj) and 1(kk) (defining “Sponsored Participant” and “Sponsoring Member Organization”).

i. Adopt Definitions for Net Makers and Net Takers

An XLE Participant Organization⁷ would qualify as a Net Maker if the total volume from providing liquidity for that XLE Participant Organization is at least one share greater than the total volume from removing liquidity during a single billing period.⁸ Additionally, if in one month the total volume from providing liquidity is equivalent to the total volume from removing liquidity, the XLE Participant Organization would be considered a Net Maker for purposes of this proposal.

For example, for the month of August, if an XLE Participant Organization's total volume from providing liquidity is 2 million shares executed and for that same month that XLE Participant Organization's total volume from removing liquidity was 1.5 million shares executed (total executed volume is therefore 3.5 million shares) that XLE Participant Organization would qualify as a Net Maker for that same month.

Conversely, an XLE Participant Organization would qualify as a Net Taker if the total volume from removing liquidity for that XLE Participant Organization is at least one share greater than the total volume from providing liquidity during a single billing period. For example, for the month of August, if an XLE Participant Organization's total volume from removing liquidity is 3 million shares executed and for that same month, that XLE Participant Organization's total volume from providing liquidity was 2 million shares executed, that XLE Participant Organization would qualify as a Net Taker for that same month.

⁷ For purposes of this fee proposal, an XLE Participant Organization refers to Sponsored Participants, Sponsoring Member Organizations, and member organizations without Sponsored participants. See Exchange Rules 1(jj) and 1(kk). Sponsoring Member Organizations are responsible for the fees generated by their Sponsored Participant(s).

⁸ Currently, the Exchange assesses fees on a monthly calendar basis based on the settlement date of the transactions.

Volume would be calculated based on volume generated from Maker (providing liquidity) or Taker (removing liquidity) executions, and volume from single-sided odd lot orders⁹ executed on XLE against an XLE Participant.¹⁰ Volume from the following transactions would not be included in determining Net Maker and Net Taker volumes: Immediate or Cancel (“IOC”) Cross¹¹ and Mid-Point Cross Orders¹² entered over technology provided by Phlx,¹³ including odd lot IOC Cross and Mid-Point Cross Orders; all other IOC Cross and Mid-Point Cross Orders, including all other odd lot IOC Cross and Mid-Point Cross Orders; Single-sided odd lot orders executed at an away market; and volume from Routed Away Orders, referred to on the XLE Fee Schedule as “Fee for Routing Liquidity (Per Share Executed).”

Consistent with current practice, the Net Maker or Net Taker calculation will be determined separately per XLE Participant Organization. Volume generated from a Sponsored Participant’s executions will accrete towards that Sponsored Participant’s volume to determine whether Maker or Taker fees will be assessed, and not towards the Sponsoring Member Organization’s volume. Once an XLE Participant Organization has been designated as a Maker or Taker for a specific month, all transactions that month would be subject to the fee that corresponds with whether the XLE Participant Organization is a Maker or Taker.¹⁴

⁹ An odd lot order means an order for less than a round lot, which is defined for purposes of XLE as a unit of trading that is 100 shares. See Exchange Rules 1(w) and 1(gg).

¹⁰ All odd lot transactions refer to those orders that are initially entered as odd lot orders. Fees for these types of transactions are set forth on the Exchange’s XLE fee schedule under the heading Miscellaneous Transaction fees.

¹¹ See Exchange Rules 185(c) and 185(c)(2).

¹² See Exchange Rules 185(c) and 185(c)(1).

¹³ Phlx provides optional technology to XLE Participants for the entry of two-sided orders into XLE.

¹⁴ Securities executed on XLE with a per share price below \$1.00 that remove liquidity, will continue to be charged 0.1% (i.e., 10 basis points) of total dollar value of the transaction. Consistent with current practice, there would be no credit for providing liquidity for

ii. Update the Current Volume Tier Structure by Reducing the Volume Breakpoints to Create Two New Volume Pricing Tiers

The Exchange also proposes to change the aggregate volume calculations and lower the current volume-based breakpoints to entice XLE Participant Organizations to generate additional trading activity.

Currently, there are four volume tiers based on monthly shares executed. The total of monthly executed shares 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. The existing fee schedule established four volume breakpoints based on the aggregate monthly shares executed with the last two tiers set at “greater than 50 million and less than or equal to 200 million shares executed” in one month and “greater than 200 million shares,” respectively. These levels have proven to be difficult for XLE Participant Organizations to reach. Therefore, the Exchange proposes to lower the volumes used in the volume-based tiers and to change the volume calculation from a monthly one to one based on average daily volume.

The proposed two volume tiers would be as follows: Tier One would be comprised of volume of less than one million shares executed (average daily volume) and Tier Two would be comprised of volume of greater than or equal to one million shares executed (average daily volume). The proposed volume tiers would be determined by calculating the average daily volume of total shares executed (volume from providing liquidity and the volume from removing liquidity) during the applicable billing period. Consistent with calculating volume levels for Net Maker/Net Taker activity, the tier volume is calculated based on volume generated from

shares with a per share price below \$1.00. Executed volume in such shares will accrete towards the volume tier breakpoint (discussed below) and Maker/Taker category per XLE Participant Organization

Maker/Taker executions and volume from single-sided odd lot orders executed on XLE against an XLE Participant.

To calculate the average daily shares executed, the total number of executed shares (comprised of liquidity provided, liquidity removed, and single-sided odd lot orders executed on XLE against an XLE Participant during the applicable billing period) would be divided by the number of trading days during the applicable billing period. For example, for a billing period with 20 trading days, if an XLE Participant Organization executed 23 million shares (comprised of 15 million executed shares from providing liquidity and 8 million shares from removing liquidity), the average daily volume is calculated by adding the liquidity provided (15 million executed shares), to the liquidity removed (8 million executed shares), which totals 23 million shares, and then dividing by 20 days (or applicable trading days in the month), which equals 1,150,000 average daily shares executed.

Due to the lower volume tier breakpoint, the following transactions would not be included in determining the applicable volume tier breakpoints:¹⁵ IOC Cross and Mid-Point Cross Orders entered over technology provided by Phlx, including odd lot IOC Cross and Mid-Point Cross Orders; all other IOC Cross and Mid-Point Cross Orders, including all other odd lot IOC Cross and Mid-Point Cross Orders; Single-sided odd lot orders executed at an away market; and volume from Routed Away Orders, referred to on the XLE Fee Schedule as “Fee for Routing Liquidity (Per Share Executed).”

Consistent with current practice, the total monthly shares will be calculated separately per XLE Participant Organization. Sponsored Participant executions will accrete towards that Sponsored Participant’s volume tier and not towards the Sponsoring Member Organization’s

¹⁵ These are the same requirements for determining Net Maker and Net Taker volumes. All volume calculations would be based settlement dates.

volume tier. Once a specific tier has been reached in a month, all transactions for that month would be subject to the fee that corresponds with that volume tier.

iii. Amend the Amount of the Credits or Rebates to Net Makers and the Fees for Net Takers

The Exchange is proposing to amend the Net Maker credits or rebates and Net Taker fees in an effort to balance the need to offer liquidity Makers sufficient economic incentives to participate on XLE (in the form of competitive “Maker” credit) and the need to earn sufficient transaction revenue from a business standpoint (in the form of liquidity taking fees). The Exchange proposes to adopt the following fees: (1) for less than one million shares executed (average daily volume), the Net Maker fee for removing liquidity would be \$0.0030 per share executed and the credit for providing liquidity would be \$0.0025 per share executed; the Net Taker fee for removing liquidity would be \$0.0030 per share executed and the credit for providing liquidity would be \$0.0022 per share executed; (2) for greater than or equal to one million shares executed (average daily volume), the Net Maker fee for removing liquidity would be \$0.0024 per share executed and the credit for providing liquidity would be \$0.0028 per share executed; the Net Taker fee for removing liquidity would be \$0.0026 per share executed and the credit for providing liquidity would be \$0.0024 per share executed.

Consistent with current practice, the dollar value of the Net Maker credits would appear on the member organization’s monthly invoice. The dollar amount of the excess credits would continue to be carried over into subsequent months or rebated to the applicable member organization as requested by the member organization.

The purpose of this proposal is to attract more business by enticing Net Makers to the Exchange and by creating financial incentives to XLE Participant Organizations to encourage them to send additional order flow to the Exchange. The economics of the proposed fee

schedule are focused around creating financial incentives to attract additional order flow to the Exchange while managing the risk associated with those financial incentives. The proposed changes to the XLE Fee Schedule are intended to stimulate liquidity and generate a reasonable return.

iv. Additional Changes to the XLE Fee Schedule

The Exchange also proposes to make the following two minor changes to the XLE fee Schedule: (1) under Miscellaneous Fees for “Execution Fee for Single-Sided Odd Lot Orders executed on XLE against another XLE Participant,” the Exchange proposes to change the word “another” to “an” to clarify that the same XLE Participant could be on both sides of the transaction; and (2) delete the reference to Monthly Drop Copy Feed Fee.¹⁶ Although there is no charge for this service, at this time the Exchange is not providing a Monthly Drop Copy Feed.

The purpose of the two minor changes is to clarify and update the XLE fee schedule to more accurately reflect the XLE fees being charged by the Exchange.

The changes set forth in this proposal are scheduled to become operative beginning with transactions settling on or after September 4, 2007.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁸ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that this proposal is equitable and reasonable in that it is designed to create financial incentives for all XLE Participant Organizations to encourage

¹⁶ The Drop Copy Feed refers to real-time information concerning trades executed by an XLE Participant Organization.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4).

them to send additional order flow to the Exchange. This additional order flow should, in turn stimulate additional transaction volume and liquidity at the Exchange.

B. Self Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(ii) of the Act¹⁹ and subparagraph (f)(2) of Rule 19b-4 thereunder²⁰ because it establishes or changes a due, fee, or other charge applicable only to a member imposed by a self-regulatory organization.

Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.²¹

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁰ 17 CFR 240.19b-4(f)(2).

²¹ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on September 20, 2007, the date on which Phlx filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2007-67 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2007-67. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. All comments received will be posted without change; the Commission does not edit

personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2007-67 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Florence E. Harmon
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).