

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58405; File No. SR-Phlx-2008-63)

August 21, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of  
Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Execution  
Fees on the XLE Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 19, 2008, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Phlx, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes to amend the Execution Fees on the XLE Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at [http://www.phlx.com/regulatory/reg\\_rulefilings.aspx](http://www.phlx.com/regulatory/reg_rulefilings.aspx).

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

In its filing with the Commission, the Phlx included statements concerning the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(1).

<sup>4</sup> 17 CFR 240.19b-4.

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. The 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

The purpose of the proposed rule change is to adjust the Execution Fees for XLE<sup>®</sup>, the Exchange's equity trading platform, in light of the expected reduction in volume following the Exchange's announcement to XLE Participants that XLE<sup>®</sup> will cease operations in October 2008. The Exchange informed XLE Participants on August 4, 2008, that the Exchange intends to discontinue XLE<sup>®</sup> on or before October 24, 2008. Following this announcement, the Exchange expects that XLE Participants will now begin to reduce their operations on XLE<sup>®</sup>, thereby reducing volume on XLE<sup>®</sup>.

The amendments to the XLE Fee Schedule include a deletion of the Execution Fees<sup>5</sup> currently in place, including the categories of fees based on the volume tier level executed through XLE<sup>®6</sup> and on the XLE Participant's status as a net maker or net taker of liquidity.<sup>7</sup> As amended, the Execution Fee for removing liquidity will be \$0.003 per

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<sup>5</sup> See Securities Exchange Act Release No. 56526 (September 25, 2007), 72 FR 56117 (SR-Phlx-2007-67).

<sup>6</sup> See footnote 4 of the current XLE Fee Schedule.

<sup>7</sup> See footnotes 2 and 3 of the current XLE Fee Schedule.

share executed on XLE<sup>®</sup>.<sup>8</sup> There will be no credit for providing liquidity. These fees will apply to XLE Participants without regard to volume tiers or status as a net taker or net maker of liquidity. In addition, the XLE Fee Schedule will be amended to delete footnotes and references in footnotes referring to volume tier and net maker and net taker qualifications. The remaining footnotes will be renumbered. The amended Execution Fee will be operative for trades that settle on or after September 2, 2008.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members who continue to use XLE<sup>®</sup> as the amended fees apply equally to all XLE Participants and will only operate for less than 60 days as the Exchange intends to discontinue XLE<sup>®</sup> on or before October 24, 2008. In addition, the Exchange believes that its proposal is consistent with Rule 610(c)(1) of Regulation NMS<sup>11</sup> as the amended Execution Fee for removing liquidity from XLE<sup>®</sup> does not exceed \$0.003 per share.

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<sup>8</sup> The current fee for securities executed on XLE<sup>®</sup> with a per share price below \$1.00 that remove liquidity will remain at 0.1% (i.e., 10 basis points) of the total dollar value of the transaction.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 17 CFR 242.610(c)(1).

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and paragraph (f)(2) of Rule 19b-4<sup>13</sup> thereunder. 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.

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

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2008-63 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2008-63. 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, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the 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-2008-63 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Florence E. Harmon  
Acting Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).