

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57872; File No. SR-Phlx-2008-27)

May 27, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Access to XLE on Phlx's Options Floor

On April 11, 2008, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to: (1) delete Phlx Rule 1014(e)(iii), which limits the actions of Registered Options Traders ("ROTs") related to trading in Phlx's equity market in certain situations, and (2) add new Phlx Rule 175 to prohibit integrated market making by Phlx market makers. The proposed rule change was published for comment in the Federal Register on April 24, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

The Exchange proposes to delete Phlx Rule 1014(e)(iii), which limits the actions of ROTs related to trading in Phlx's equity market in certain situations, in order to permit members and member organizations on the Phlx options floor to have connectivity to XLE, the Phlx's electronic equity trading system. The Exchange also proposes new Phlx Rule 175 to prohibit integrated market making by Phlx market makers. Specifically, Phlx Rule 175 prohibits Phlx Market Makers on XLE, or any member, limited partner, officer, or associated person thereof, from acting as an options Specialist or ROT or functioning

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57683 (April 18, 2008), 73 FR 22199.

in any capacity involving market making responsibilities, in any option overlying a security in which the Market Maker on XLE is registered as such.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Commission finds that the deletion of Phlx Rule 1014(e)(iii) is consistent with the Act. Phlx Rule 1014(e)(iii) was designed to mitigate the “time and place” advantages available to a ROT with access to the Phlx equities trading floor. The Commission notes that the Phlx no longer operates a physical equities trading floor. The Commission also notes that possession of XLE order entry technology by Phlx options floor participants does not offer any special information advantage that could be used on the Phlx options floor because access to XLE information is made available simultaneously to anyone. Likewise, physical presence on the Phlx options floor does not provide an advantage in priority for orders entered into XLE from the Phlx options floor because XLE executes orders in price-time priority based on a pre-set algorithm that may not be altered by the XLE participant entering the order and does not take into account the location where an

⁴ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

order is entered. In addition, the Commission notes that options floor participants currently have access to other execution venues and order routing mechanisms for the underlying securities.

The Commission also finds that the prohibition on integrated market making is consistent with the Act.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-Phlx-2008-27) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon
Acting Secretary

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).