January 30, 2007

Mr. John Dayton
Director and Counsel
Philadelphia Stock Exchange
1900 Market Street
Philadelphia, PA 19103

> **Re:** **Extension of the Exemption under Rule 608(e) of Regulation NMS
> Under the Securities Exchange Act of 1934 from Certain Provisions of
> the Intermarket Trading System Plan**

Dear Mr. Dayton:

On November 14, 2006, the Commission granted to the Philadelphia Stock
Exchange, Inc. ("Exchange" or "Phlx") a limited exemption pursuant to Rule 608(e)
under the Securities Exchange Act of 1934 ("Act") [1] from certain trade-through
provisions of the Intermarket Trading System ("ITS") Plan, in connection with
implementation of Phlx's new equity trading system, XLE. [2] Specifically, the
Commission granted an exemption from Section 8(d)(i) (Trade-Throughs; Locked
Markets) and Exhibit B, Section (b)(1) of the ITS Plan in connection with the use of
intermarket sweep orders ("ISOs"), execution of which by XLE could violate Section
8(d) of the ITS Plan. The Commission also granted an exemption for trade-throughs that
occur when the market is crossed, as well as an exemption from the obligation under the
ITS Plan to route orders through the ITS electronic communications network. [3]

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[1]   17 C.F.R. § 242.608(e). Rule 608(c) requires each participant in a national
market system plan to comply, and enforce compliance with, the plan by its
members and their associated persons. Rule 608(e) establishes the Commission's
authority to exempt any self-regulatory organization ("SRO") or SRO member
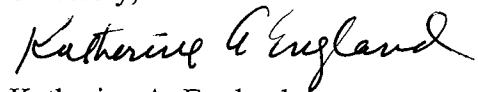from the requirements of the Rule.

[2]   See Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR
59184 (October 6, 2006) (order approving XLE, Phlx's automated, order-driven
system for the entry and execution of orders in NMS Stocks).

[3]   See letter from David Shillman, Associate Director, Division of Market
Regulation, Commission, to John Dayton, Director and Counsel, Phlx, dated
November 14, 2006.

The Commission granted the exemptions through February 4, 2007, one day before the established Trading Phase Date for Regulation NMS.[4] On January 24, 2007, the Commission extended the Trading Phase Date.[5] Accordingly, the Commission hereby extends the previously granted exemptions to Phlx, effective February 5, 2007 up to the Trading Phase Date. These exemptions are subject to modification or revocation at any time, however, if the Commission determines that such action is necessary or appropriate to further the purposes of the Act.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Sincerely,

Katherine A. England
Assistant Director

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[4] Trading Phase Date is the required date for full operation of Regulation NMS-compliant trading systems of all automated trading centers that intend to qualify their quotations for trade-through protection under Rule 611. See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006).

[5] See Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007) (extending the Trading Phase Date until March 5, 2007).

[6] See 17 CFR § 200.30-3(a)(27).

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
MARKET REGULATION

January 30, 2007

Mr. John Dayton
Director and Counsel
Philadelphia Stock Exchange
1900 Market Street
Philadelphia, PA 19103

Dear Mr. Dayton:

On November 14, 2006, the Commission granted to the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") a limited exemption[1] pursuant to Rule 608(e) under the Securities Exchange Act of 1934 ("Act")[2] from certain trade-through provisions of the Intermarket Trading System ("ITS") Plan, in connection with implementation of Phlx's new equity trading system, XLE. Specifically, the Commission granted an exemption from Section 8(d)(i) (Trade-Throughs; Locked Markets) and Exhibit B, Section (b)(1) of the ITS Plan in connection with the use of intermarket sweep orders ("ISOs"), execution of which by XLE could violate Section 8(d) of the ITS Plan. The Commission also granted an exemption for trade-throughs that occur when the market is crossed, as well as an exemption from the obligation under the ITS Plan to route orders through the ITS electronic communications network.

In addition, on November 14, 2006, 2006, the staff of the Division of Market Regulation issued a letter stating that it would not recommend enforcement action to the Commission under Section 19(g)(1) of the Act if Phlx did not enforce compliance with its Rule 2001A(b)(1) adopted pursuant to Section 8(d) of the ITS Plan with respect to trade-throughs during a crossed market and the use of ISOs and private linkages.[3]

The Commission granted the exemptions through February 4, 2007, one day before the established Trading Phase Date for Regulation NMS.[4] On January 24, 2007, the Commission

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[1] See letter from David Shillman, Associate Director, Division of Market Regulation ("Division"), to John Dayton, Director and Counsel, Phlx, dated November 14, 2006.

[2] 17 C.F.R. § 242.608(e). Rule 608(c) requires each participant in a national market system plan to comply, and enforce compliance with, the plan by its members and their associated persons. Rule 608(e) establishes the Commission's authority to exempt any self-regulatory organization ("SRO") or SRO member from the requirements of the Rule.

[3] See letter from David Shillman, Associate Director, Division, Commission, to John Dayton, Director and Counsel, Phlx, dated November 14, 2006.

[4] Trading Phase Date is the required date for full operation of Regulation NMS-compliant trading systems of all automated trading centers that intend to qualify their quotations for

extended the Trading Phase Date.[5] Accordingly, the staff of the Division of Market Regulation is hereby extending up to the Trading Phase Date the time period during which it will not recommend enforcement action to the Commission under Section 19(g)(1) of the Act if Phlx does not enforce compliance with its Rule 2001A(b)(1) adopted pursuant to Section 8(d) of the ITS Plan with respect to trade-throughs during a crossed market and the use of ISOs and private linkages.

This staff position is limited to enforcement action under Section 19(g)(1) of the Act and does not purport to express any legal conclusions with respect to the applicability of the statutory or regulatory provisions of the federal securities laws. The Staff's position is subject to modification or revocation at any time if the Commission or the Staff determines that such action is necessary or appropriate, in furtherance of the purposes of the Act.

Sincerely,

Katherine A. England
Assistant Director

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trade-through protection under Rule 611. See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006).

[5] See Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007) (extending the Trading Phase Date until March 5, 2007).