

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 solicited or received with respect to the proposed rule change.

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

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.²² However, Rule 19b-4(f)(6)(iii)²³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will immediately provide a mechanism for the Exchange to divert order flow from one Routing Broker to another in the event of a system malfunction or failure. In addition, the Commission notes that the proposed Exchange rules applicable to a non-affiliated Routing Broker are substantially similar to the rules of other national securities exchanges applicable to non-affiliated outbound routing brokers.²⁴ For these reasons, the Commission designates the proposed

rule change to be operative upon filing with the Commission.²⁵

At any time within 60 days of the filing of such 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2008-37 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-NYSE-2008-37. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-NYSE-2008-37 and should be submitted on or before June 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57872; File No. SR-Phlx-2008-27]

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

May 27, 2008.

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 ("ROT's") 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 ROT's 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

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this notice requirement.

²³ *Id.*

²⁴ See, e.g., the National Stock Exchange, Inc. Rule 2.12, the Philadelphia Stock Exchange, Inc. Rule 185(g), and the International Securities Exchange, LLC Rule 2108.

²⁵ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁶ 17 CFR 200.30-3(a)(12).

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.

XLE, or any member, limited partner, officer, or associated person thereof, from acting as an options Specialist or ROT or functioning 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 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.

[FR Doc. E8-12195 Filed 5-30-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57871; File No. SR-Phlx-2008-37]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Definition of Exchange-Traded Fund Share

May 27, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on May 19, 2008, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Phlx. The Exchange filed the proposal as a non-controversial proposed rule change pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 proposes to modify Phlx Rule 1000(b)(42), the definition of Exchange-Traded Fund Share, to conform it to the definition of that term used in Phlx Rule 1009, Commentary .06.

The proposed rule change is available at the Phlx, the Commission's Public Reference Room, and <http://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, the 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. 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 update and clarify what may appear to be inconsistent language between Phlx Rule 1000(b)(42) and Phlx Rule 1009, Commentary .06. Phlx Rule 1000(b)(42) defines the term Exchange-Traded Fund Share. Phlx Rule 1009, Commentary .06 states what options are appropriate for options trading on Phlx. Phlx currently utilizes the definition of Exchange-Traded Fund Share as stated in Phlx Rule 1009, Commentary .06 for purposes of determining what options are appropriate for options trading. This proposed rule change is meant to clarify Phlx's rules by correlating the definition of Exchange-Traded Fund Share in Phlx Rule 1000(b)(42) with the meaning of Exchange-Traded Fund Share in Phlx Rule 1009, Commentary .06. It is not intended to change which securities are deemed appropriate for options trading on Phlx.

Phlx Rule 1000(b)(42) was adopted in 2001.⁵ The current language in Phlx Rule 1009, Commentary .06 was adopted in 2007.⁶ Phlx should have modified Phlx Rule 1000(b)(42) at that time to correlate it to the meaning of Exchange-Traded Fund Share in Phlx Rule 1009, Commentary .06, but inadvertently did not. Therefore, Phlx proposes to amend Phlx Rule 1000(b)(42) to state that the definition of Exchange-Traded Fund Share shall have the meaning assigned to it in Phlx Rule 1009, Commentary .06.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b)

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).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

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)(6).

⁵ See Securities Exchange Act Release No. 43921 (February 2, 2001), 66 FR 9739 (February 9, 2001).

⁶ See Securities Exchange Act Release No. 55951 (June 25, 2007), 72 FR 37298 (July 9, 2007).