

Amex securities may instruct Nasdaq to open their quotes either at the price of the firm's quote when the quote was closed by the participant during the previous trading day or at a price and size entered by the participant between 7 a.m. and 9:24:59 a.m.

This opening process is consistent with the opening process for NYSE/Amex securities that was utilized for such securities in Nasdaq's ITS/CAES system pursuant to NASD Rule 4707(d) with the exception that the NMC System opens at 7 a.m. rather than 7:30 a.m.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 proposed rule change clarifies certain terms in Nasdaq's rules.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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

Because the foregoing rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section

19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the 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.

A proposed rule change filed under Section 19b-4 of the Act normally does not become operative prior to 30 days after the date of the filing.<sup>10</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>11</sup> Because the filing would conform the opening of trading in NYSE/Amex securities to the opening of trading in Nasdaq securities, thus streamlining the Nasdaq's opening process, the Commission believes waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>12</sup>

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-008 in the subject line.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has decided to waive the five-day pre-filing notice requirement.

<sup>11</sup> *Id.*

<sup>12</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(F).

## 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-NASDAQ-2007-008. 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. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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-NASDAQ-2007-008 and should be submitted on or before March 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55330; File No. SR-NYSEArca-2007-06]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Obvious Errors in Option Transactions

February 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 18, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)<sup>3</sup> of the Act and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 Exchange proposes to amend NYSE Arca Rule 6.87, which contains procedures for trade nullification and price adjustments on obvious errors in option transactions. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nysearca.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 Exchange 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. NYSE Arca has substantially 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 this filing is to amend Rule 6.87 in order to offer an extra level of protection for Customers<sup>5</sup> who are a party to a transaction involving an obvious error during the opening. Under existing rules, OTP Holders that have

executed a trade on behalf of a Customer have a twenty (20) minute period from the time of execution to notify the Exchange and request a review of the trade for either nullification or price adjustment. The current twenty minute window, for nullification purposes, would not be changed by this proposal. However, under the proposed rule change, OTP Holders representing Customers would now have an extended period of time to request an obvious error review for adjustment purposes. OTP Holders would now be able to make a request to Trading Officials<sup>6</sup> to make price adjustments on transactions that occur on the opening, until 4:30 p.m. (ET) on the day that the transaction occurs. The intention of this filing is to protect Customers who fail to discover an obvious error within twenty minutes of execution from being forced to accept an execution that results from an obvious error during the opening auction.

An obvious pricing error is deemed to have occurred when the execution price of a transaction is higher or lower than the theoretical price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below \$2 .....	\$0.25
\$2 to \$5 .....	0.40
Above \$5 to \$10 .....	0.50
Above \$10 to \$20 .....	0.80
Above \$20 .....	1.00

The theoretical price of an option is, for series that are traded on at least one other exchange, the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, disseminated by the competing options exchange that has the most liquidity in the option class over the previous two calendar months. If there are no quotes for comparison, the theoretical price shall be determined by designated Trading Officials.

For transactions during the opening auction between a Customer and a Market Maker,<sup>7</sup> after the twenty minute notification period has elapsed since the trade containing the obvious error occurred but before 4:30 p.m. (ET) on the same trading day, the OTP Holder, on behalf of its Customer, could request an obvious error review for possible adjustment to the theoretical price. In determining the theoretical price of an

option series, the Trading Official would look to the away competing exchange with the most liquidity in the option class over the two preceding months. The transaction would be adjusted to the competing exchanges' disseminated theoretical price at the time the trade occurred. With respect to sell transactions the last bid price, just prior to the trade, would be used. With respect to buy transactions the last offer price, just prior to the trade would be used.<sup>8</sup> Price adjustments would be made up to the equivalent number of contracts that the competing exchange was listing as its disseminated size at the time the trade occurred.

For transactions during the opening auction between a Customer and a non-Market Maker,<sup>9</sup> after the twenty minute notification period has elapsed but before 4:30 p.m. (ET) on the same trading day, an OTP Holder, on behalf of its Customer, could request an obvious error review. In determining how to adjust the transaction to the theoretical price, the Trading Official would look to the away competing exchange with the most liquidity in the option class over the two preceding months. The transaction would be adjusted to the competing exchanges' disseminated theoretical price at the time the trade occurred. With respect to sell transactions the last bid price, just prior to the trade, would be used. With respect to buy transactions the last offer price, just prior to the trade would be used.<sup>10</sup> Price adjustments would be made up to the equivalent number of contracts that the competing exchange was listing as its disseminated size at the time the trade occurred.

The rule changes proposed in this filing are similar to those presented by the Chicago Board Options Exchange ("CBOE") in SR-CBOE-2005-63.<sup>11</sup> In that filing, the CBOE amended CBOE Rule 6.25 to include substantially similar provisions that NYSE Arca is presenting at this time. The Exchange notes that the Commission did receive one comment letter from Citadel Investment Group L.L.C. (the "Citadel

<sup>8</sup> The Exchange believes that the proposed basis for determining the theoretical price for transactions occurring during the opening does not implicate NYSE Arca users' trade through liability, because the Linkage Plan provides for an exception to trade through liability for transactions occurring on the opening.

<sup>9</sup> For the purpose of this rule "non-Market Maker" could include (but is not limited to) an away specialist, an off-floor firm or another Customer.

<sup>10</sup> See, *supra* note 8.

<sup>11</sup> See Securities Exchange Act Release No. 54004 (June 16, 2006), 71 FR 36139 (June 23, 2006) (approval order for SR-CBOE-2005-63).

<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)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> "Customer" as defined in NYSE Arca Rule 6.1(b)(29) and NYSE Arca 6.1A(a)(4) shall mean a non-broker dealer.

<sup>6</sup> "Trading Official" as defined in NYSE Arca Rule 6.1(b)(34).

<sup>7</sup> "Market Maker" as defined in NYSE Arca Rule 6.32 or 6.32A.

Letter”) regarding the CBOE proposal.<sup>12</sup> In its approval notice, the Commission stated that “the Citadel Letter does not raise any issues that would preclude approval of the proposed rule change.” NYSE Arca feels that any similar issues contained in the Citadel Letter that may be raised in regard to proposed rule changes contained in this filing would not preclude approval.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>14</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would 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*

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and

subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup>

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 the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2007-06 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-NYSEArca-2007-06. 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. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. 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-NYSEArca-2007-06 and should be submitted on or before March 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55333; File No. SR-Phlx-2007-13]

### **Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to 100 Share Away Markets in Non-Nasdaq Securities on XLE**

February 22, 2007.

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 February 20, 2007, 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 has designated the proposed rule change as constituting a “non-controversial” rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 XLE, Phlx’s equity trading system, so as to prevent XLE from trading through 100 share away quotations in non-Nasdaq securities. In addition, XLE will be modified to route to 100 share away quotations in non-Nasdaq securities. Accordingly, Phlx Rule 1(cc)(3) will be modified to include 100 share away quotations in the definition of Protected

<sup>12</sup> See letter dated May 17, 2006 to Mr. Jonathan Katz, Secretary, Commission, from Mr. Matthew Hinerfeld, Deputy General Counsel, Citadel Investment Group, L.L.C. on behalf of Citadel Derivatives Group LLC.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

<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)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).