

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### 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-FINRA-2007-007 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-FINRA-2007-007. 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

the report that certain transactions should not be disseminated. The commenter also stated its opposition generally to any reporting and dissemination of Derivative-Related Transactions. See letter to Nancy M. Morris, Secretary, Commission, from Mary Kuan, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association, dated December 8, 2006.

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 such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2007-007 and should be submitted on or before October 12, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-18551 Filed 9-20-07; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56444; File No. SR-ISE-2007-45]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval to a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to a Quote Mitigation Plan for Competitive Market Makers

September 14, 2007.

On June 8, 2007, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to adopt, on a one-year pilot basis, a quote mitigation plan for the Exchange's Competitive Market Makers ("CMMs"). On August 1, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 9, 2007.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule

change, as modified by Amendment No. 1.

After careful review of the proposal, 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.<sup>4</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>5</sup> which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, 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 Exchange is proposing a quote mitigation plan for its CMMs on a pilot basis for one year in no more than twenty securities ("Pilot Program Securities") to be designated by the Exchange. Under ISE's current rules, a CMM must enter continuous quotations in all the series of at least 60 percent of the options classes for the group or "bin" to which it is appointed, or 60 options classes in the Group, whichever is less. Further, once a CMM enters a quote in an options class to which it is appointed, it must continuously quote in all series of that options class until the close of trading that day. ISE proposes to amend its rule so that a CMM will be required to enter continuous quotations in just 60 percent of the series, rather than in all series, of the options classes overlying the Pilot Program Securities, to which the CMM is appointed. Once a CMM enters a quote in a series, it must continue to quote in that series until the close of trading that day.<sup>6</sup>

The Exchange will issue a circular to CMMs identifying the initial Pilot Program Securities.<sup>7</sup> The Exchange notes that the Pilot Program Securities selected by the Exchange are subject to

<sup>4</sup> In approving this proposed 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).

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

<sup>6</sup> The Exchange notes that ISE Rule 804(e)(2)(iii), which states that a CMM may be called upon to submit quotes in one or more series of options to which it is appointed in the interest of maintaining fair and orderly markets, shall continue to apply under the proposed pilot program.

<sup>7</sup> The initial proposed pilot will consist of up to 20 of the most active classes, in terms of the number of quotes generated, that are in the Exchange's Penny Pilot Program. See Securities Exchange Act Release Nos. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR-ISE-2006-62) and 56151 (July 26, 2007), 72 FR 42452 (August 2, 2007) (SR-ISE-2007-68).

<sup>10</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> Securities Exchange Act Release No. 56201 (August 3, 2007), 72 FR 44903.

change based on the quoting activity in these securities. Each time a change takes place in the Pilot Program Securities, the Exchange will issue circulars to notify CMMs of this change and shall provide them with adequate notice in order for them to make any required systems changes.

The Commission believes that the proposed rule change, which is intended to alleviate capacity constraints on some market participants' systems without adversely affecting the quality of the Exchange's markets or the timely receipt of quote information, is consistent with the Act. The Commission notes that it has already approved internal quote mitigation strategies on other exchanges that relieve some market makers of the obligation to quote every series of every class to which they are appointed.<sup>8</sup>

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-ISE-2007-45), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-18686 Filed 9-20-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56443; File No. SR-Phlx-2007-64]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Throughs for IOC Cross Orders on the XLE

September 14, 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 August 30, 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 substantially by Phlx. Phlx filed the proposed rule change pursuant to section 19(b)(3)(A) of the

Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it 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 remove the trade through restrictions for IOC Cross Orders<sup>5</sup> entered during the Pre Market Session<sup>6</sup> or the Post Market Session<sup>7</sup> on XLE, Phlx's electronic equity trading platform. In addition, Phlx proposes to re-organize Phlx Rule 185(c)(2)(D), which should make it more readable.

The text of the proposed rule change is available at <http://www.phlx.com>, the Exchange, and the Commission's Public Reference Room.

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

In its filing with the Commission, 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. 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 increase the competitiveness of XLE by allowing an additional circumstance in which IOC Cross Orders may trade through. In addition, Phlx proposes to make Phlx Rule 185(c)(2)(D) more readable by dividing the rule into subsections. Phlx accepts IOC Cross Orders on XLE during all three XLE trading sessions, from 8 a.m. until 6 p.m. An IOC Cross Order is a two-sided order that matches, immediately and automatically on XLE, the buy side and sell side identified in the order, unless the price of the order would impermissibly trade at or through other orders on XLE or at away

markets.<sup>8</sup> Currently, IOC Cross Orders may trade through the Protected NBBO<sup>9</sup> in four different situations as described in Phlx Rule 185(c)(2)(D). These four situations correspond with either exceptions<sup>10</sup> to or an exemption<sup>11</sup> from Rule 611(a) of Regulation NMS.<sup>12</sup>

At this time, Phlx proposes to add to Phlx Rule 185(c)(2)(D) another situation in which IOC Cross Orders may trade through the Protected NBBO. Proposed Phlx Rule 185(c)(2)(D)(v) would allow IOC Cross Orders that are entered during the Pre Market or Post Market Sessions to trade through the Protected NBBO. The Pre Market and Post Market Sessions take place outside of the hours 9:30 a.m. to 4 p.m. Rule 611(a) of Regulation NMS does not apply to trade throughs of, among other things, the Protected NBBO, outside of regular trading hours, which are 9:30 a.m. until 4 p.m.<sup>13</sup> Therefore, Rule 611(a) of Regulation NMS would not prohibit IOC Cross Orders from trading through the Protected NBBO during the Pre Market or Post Market Sessions on XLE.<sup>14</sup>

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>16</sup> in particular, in that it is 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

<sup>8</sup> See Phlx Rule 185(c)(2).

<sup>9</sup> See Phlx Rule 1(dd).

<sup>10</sup> Renumbered Phlx Rule 185(c)(2)(D)(i) corresponds with Rule 611(b)(4) of Regulation NMS, 17 CFR 242.611(b)(4). Renumbered Phlx Rule 185(c)(2)(D)(ii) corresponds with Rule 611(b)(5) of Regulation NMS, 17 CFR 242.611(b)(5). Renumbered Phlx Rule 185(c)(2)(D)(iii) corresponds with Rule 611(b)(7) of Regulation NMS, 17 CFR 242.611(b)(7).

<sup>11</sup> Renumbered Phlx Rule 185(c)(2)(D)(iv) corresponds with Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006).

<sup>12</sup> 17 CFR 242.611(a).

<sup>13</sup> As used in Rule 611(a) of Regulation NMS, 17 CFR 242.611(a), the term "trade through" only applies during regular trading hours. 17 CFR 242.600(b)(77). Rule 600(b)(64) of Regulation NMS, 17 CFR 242.600(b)(64), defines regular trading hours as "the time between 9:30 a.m. and 4 p.m. Eastern Time, or such other time as is set forth in the procedures established pursuant to § 242.605(a)(2)." At this time, no such other time has been set forth, therefore the regular trading hours for all purposes is 9:30 a.m. until 4 p.m.

<sup>14</sup> Although Rule 611(a) of Regulation NMS does not prohibit trade throughs during these times, a broker's duty of best execution still applies. See Securities Exchange Act Release No. 51808 (June 9, 2005) 70 FR 37496 (June 29, 2005) (text at footnote 338).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See Phlx Rule 1014(b)(ii)(D)(1); see also Amex Rule 994(c)(iv).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</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> See Phlx Rule 185(c)(2).

<sup>6</sup> See Phlx Rule 101 Supplementary Material .02(1).

<sup>7</sup> See Phlx Rule 101 Supplementary Material .02(3).