

appointed third parties. Physical certificates could also be obtained through DTC's Central Delivery processes through which DTC mails certificates to the participant or allows the participant to pick up the certificate.

III. Comment Letters

The Commission received two comment letters, one from an individual investor and the other from DTC.⁶ The individual investor opposed the proposed rule change because he contends it is inconsistent with the purposes of the Exchange Act and would undermine the ability of beneficial shareholders to become registered shareholders, particularly with respect to issues that are not DRS eligible. The commenter believes that registered shareholders can be assured of receiving information directly from the company, receiving dividends promptly, and obtaining certain rights afforded under state law.

To address the concerns raised by the commenter, DTC responded with a comment letter. DTC stated that the commenter's understanding of DRS is inaccurate because investors holding positions in DRS are actually registered directly on the records of the issuer in book-entry form and therefore are registered shareholders. Furthermore, DTC contended that DRS provides benefits such as reducing the risk of holding securities certificates and allowing the assets to be accurately and quickly moved from DRS to street name position for depositing, thereby assisting in the prompt and accurate clearance and settlement of securities transactions. DTC also noted that because investors holding DRS positions are registered shareholders, they will receive all communications and disbursements directly from the issuer and may request a certificate directly from the issuer's transfer agent.

IV. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions,

and, in general, to protect investors and the public interest.⁷ Broker-dealers currently use DTC's services to obtain securities certificates on behalf of themselves or their customers.

Discontinuing those services at DTC should decrease the use of securities certificates. DTC's rule change should make processing securities transactions more safe and efficient by discouraging the use of securities certificates, which increase the risks and costs associated with processing securities transactions.

Contrary to the commenter's statements that DTC's proposed rule change would undermine the investor's ability to become a registered shareholder or eliminate the investor's ability to obtain a certificate, DTC's proposed rule change does neither. Only the issuer can decide whether to make securities eligible for DRS or make securities certificates available. DTC's proposed rule will simply eliminate the issuance of securities certificates through DTC's WT service for issues that are participating in DRS. Furthermore, as DTC noted, investor's holding their securities in DRS are registered shareholders and thereby eligible to all the same rights and obligations as are eligible to investors holding securities certificates.

Accordingly, for the reasons stated above the Commission believes that the rule change is consistent with DTC's obligation under Section 17A of the Act.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2008-08) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59021; File No. SR-ISE-2008-91]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Complex Orders

November 26, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 25, 2008, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 ISE proposes to amend its Rule 722 regarding Complex Orders. The text of the proposed rule change is as follows, with deletions in [brackets] and additions in *italics*:

Rule 722. Complex Orders

(a) *Definitions.* [Complex Orders Defined. A complex order is any order for the same account as defined below:]

(1) *Complex Order.* A complex order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.

[(1) Spread Order. A spread order is an order to buy a stated number of option contracts and to sell the same number of option contracts, of the same class of options.

(2) Straddle Order. A straddle order is an order to buy (sell) a number of call option contracts and the same number of put option contracts on the same underlying security which contracts have the same exercise price and expiration date (e.g., an order to buy two XYZ July 50 calls and to buy two XYZ July 50 puts).

⁷ 15 U.S.C. 78q(b)(3)(F).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ Supra note 3.

(3) Strangle Order. A strangle order is an order to buy (sell) a number of call option contracts and the same number of put option contracts in the same underlying security, which contracts have the same expiration date (e.g., an order to buy two ABC June 40 calls and to buy two ABC June 35 puts).

(4) Combination Order. A combination order is an order involving a number of call option contracts and the same number of put option contracts in the same underlying security and representing the same number of shares at option.

(5) Combination orders with non-equity options legs. One or more legs of a complex order may be to purchase or sell a stated number of units of another security.

(i) Stock-Option Order. A stock-option order is an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock ("convertible security") coupled with either (A) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of the underlying stock or convertible security or the number of units of the underlying stock necessary to create a delta neutral position; or (B) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date, and each representing the same number of units of stock, as and on the opposite side of the market from, the stock or convertible security portion of the order.]

(2) Stock-Option Order. A stock-option order is an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock ("convertible security") coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than 8 options contracts per unit of trading of the underlying stock or convertible security established for that series by the Clearing Corporation.

(3)(ii) SSF-Option Order. A SSF-option order is an order to buy or sell a stated number of units of a single stock future or a security convertible into a single stock future ("convertible SSF") coupled with either (A) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of stock underlying the single

stock future or convertible SSF, or the number of units of stock underlying the single stock future or convertible SSF necessary to create a delta neutral position; or (B) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date, and each representing the same number of units of underlying stock, as and on the opposite side of the market from, the stock underlying the single stock future or convertible SSF portion of the order.

[(6) Ratio Order. A spread, straddle or combination order may consist of legs that have a different number of contracts, so long as the number of contracts differs by a permissible ratio. For purposes of this paragraph, a permissible ratio is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.0) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not.

(7) Butterfly Spread Order. A butterfly spread order is an order involving three series of either put or call options all having the same underlying security and time of expiration and, based on the same current underlying value, where the interval between the exercise price of each series is equal, which orders are structured as either (i) a "long butterfly spread" in which two short options in the same series offset by one long option with a higher exercise price and one long option with a lower exercise price or (ii) a "short butterfly spread" in which two long options in the same series are offset by one short option with a higher exercise price and one short option with a lower exercise price.

(8) Box Spread Order. A box spread order is an order involving (a) a long call option and a short put option with the same exercise price, coupled with (b) a long put option and a short call option with the same exercise price; all of which have the same underlying security and time of expiration.

(9) Collar Order. A collar order is an order involving the sale of a call option coupled with the purchase of a put option in equivalent units of the same underlying security having a lower exercise price than, and same expiration date as, the sold call option.]

(b) No Change.

(1) No Change.

(2) Complex Order Priority.

Notwithstanding the provisions of Rule 713, a complex order, as defined in paragraph (a)(1) of this Rule, may be executed at a total credit or debit price with one other Member without giving priority to bids or offers established in

the marketplace that are no better than the bids or offers comprising such total credit or debit; provided, however, that if any of the bids or offers established in the marketplace consist of a Public Customer limit order, the price of at least one leg of the complex order must trade at a price that is better than the corresponding bid or offer in the marketplace by at least one minimum trading increment as defined in Rule 710. Under the circumstances described above, [the option leg of] if a stock-option order, as defined in subparagraph (a)(2)[(a)(5)(i)(A)] of this Rule, or SSF-option order as defined in subparagraph (a)(3)[(a)(5)(ii)(A)] of this Rule, has one option leg, such option leg has priority over bids and offers established in the marketplace by Non-Customer orders and market maker quotes that are no better than the price of the options leg, but not over such bids and offers established by Public Customer Orders. [The option legs of] If a stock-option order as defined in subparagraph (a)(2)[(a)(5)(ii)(B)], or SSF-option order as defined in subparagraph (a)(3)[(a)(5)(ii)(B)], consisting of a combination order with stock or single stock futures, as the case may be, has more than one option leg, such option legs may be executed in accordance with the first sentence of this subparagraph (b)(2).

(3)-(4) No Change.

Supplementary Material to Rule 722

.01 A bid or offer made as part of a stock-option order (as defined in (a)(2)[(a)(5)(i)] above) or a SSF-option order (as defined in (a)(3)[(a)(5)(ii)] above) is made and accepted subject to the following conditions: (1) The order must disclose all legs of the order and must identify the security (which in the case of a single stock future requires sufficient identification to determine the market(s) on which the single stock future trades) and the price at which the non-option leg(s) of the order is to be filled; and (2) concurrent with the execution of the options leg of the order, the initiating member and each member that agrees to be a contra-party on the non-option leg(s) of the order must either elect to have the stock leg(s) of a stock-option order electronically communicated to a designated broker-dealer for execution as provided in .02 below or take steps immediately to transmit the non-option leg(s) to a non-Exchange market(s) for execution. Failure to observe these requirements will be considered conduct inconsistent with just and equitable principles of trade and a violation of Rule 400.

A trade representing the execution of the options leg of a stock-option or SSF-

option order may be cancelled at the request of any member that is a party to that trade only if market conditions in any of the non-Exchange market(s) prevent the execution of the non-option leg(s) at the price(s) agreed upon.

.02 No Change.

* * * * *

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 self-regulatory organization 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 self-regulatory organization 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

(a) Purpose

ISE currently has rules governing the trading of "complex orders." Specifically, ISE Rule 722 contains definitions of complex orders and specifies the standing of such orders on the ISE. They state that the legs that comprise a complex order receive neither time-price priority nor away market price protection. And similar to the rules of the other options exchanges, our rules provide that the legs of a complex order may not be executed at prices that are inferior to the best prices available on the ISE.

The Exchange now proposes to amend its Rule 722 regarding complex orders. For many years, the options exchanges have recognized that strategies involving more than one option series or more than one instrument associated with an underlying security are different from regular buy and sell orders for a single series, and order to achieve such strategies should be defined separately. As the sophistication of the industry has grown, so have the strategies, and the options exchanges have regularly added new strategies to the list of defined complex order types. The investing industry, however, creates new, legitimate investment strategies that do not necessarily fit into one of the narrow definitions for complex order types that the exchanges presently use. These order types are often developed for a particular strategy, specific to a particular issue. To attempt to define

every individual strategy, and file additional rules to memorialize them, would be a time consuming and extremely onerous process, and would serve only to confuse the investing public. As a result, bona fide transactions to limit risk are not afforded the facility of execution afforded more common complex orders.

ISE Rule 722 currently defines at least nine specific complex strategies. These are the most comprehensive lists of complex strategies defined in a rule set, yet they do not cover all of the possibilities of complex orders. To provide for greater flexibility in the design and use of complex strategies, ISE proposes to eliminate specific complex order types described in Rule 722, and adopt a generic definition approved for use for exemption from Trade Through Liability by the Options Linkage Authority as described in the "Plan For The Purpose Of Creating And Operating An Intermarket Option Linkage." The Exchange believes adopting a generic definition of complex orders will give investors more flexibility in creating strategies with greater accuracy.

In addition, the Exchange also proposes to amend the definition of a Stock-Option Order in ISE Rule 722 to conform the Exchange's definition to that of NYSE Arca, Inc. ("NYSE Arca"). Specifically, under the proposed new definition, a stock-option order is an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than 8 options contracts per unit of trading of the underlying stock or convertible security.

(b) Basis

The basis under the Securities Exchange Act of 1934 ("Exchange Act") for this proposed rule change is the requirement under Section 6(b)(5)³ that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. ISE believes adopting a generic definition of for [sic] complex orders and amending the definition of a

stock-option order, as proposed in the instant rule change, is appropriate in that complex orders and stock-option orders are widely recognized and utilized by market participants and are invaluable, both as an investment, and a risk management, strategy. The proposed rule change will provide the opportunity for a more efficient mechanism for carrying out these strategies.

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

The proposed rule change does not 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange provided the Commission with 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 the proposed rule change as required by Rule 19b-4(f)(6).⁴ For the foregoing reasons, the Exchange believes the proposed rule filing qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 of the Act.

The proposed amendment to ISE Rule 722 will allow the Exchange to adopt a generic definition for complex orders and amend the definition of stock-option orders to give market participants an ability to create trading opportunities that may be more closely aligned with their investment and/or risk management strategies. This proposed rule change adopting a generic

³ 15 U.S.C. 78f(b)(5).

⁴ 17 CFR 240.19b-4(f)(6).

definition for complex orders and amending the definition of stock-option orders is identical to the equivalent definitional changes adopted in a proposal previously submitted by NYSE Arca.⁵ For the foregoing reasons, the Exchange believes the proposed rule change is non-controversial, does not raise any new, unique or substantive issues, and is beneficial for competitive purposes and to promote a free and open market for the benefit of investors.

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 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 No. SR-ISE-2008-91 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-ISE-2008-91. 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

⁵ See Securities Exchange Act Release Nos. 58174 (July 16, 2008), 73 FR 42640 (July 22, 2008) (Approving SR-NYSEArca-2008-54).

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 the ISE. 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-ISE-2008-91 and should be submitted by December 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-28956 Filed 12-5-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59030; File No. SR-Phlx-2008-80]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ OMX PHLX, Inc., Relating to XLE® Fees

December 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on November 19, 2008, the NASDAQ OMX PHLX, Inc. ("Phlx" 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 prepared by the Exchange. 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, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ proposes to delete the XLE Fee Schedule⁵ and to delete references

to XLE fees from Appendix A of the Exchange's fee schedule.

The text of the proposed rule change is available on the Exchange's Web site at http://www.phlx.com/regulatory/reg_rulefilings.aspx.

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. The Exchange 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 the Exchange's fee schedules by deleting fees that are no longer applicable. Recently, the Exchange ceased operation of the technology used to operate XLE®.⁶ At this time, XLE® is no longer available to accept orders and is no longer available to execute any transactions. Therefore, the Exchange proposes to delete all fees relating to XLE® from its fee schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act⁸ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. Deleting XLE®-related fees from the Exchange's fee schedule is necessary given that the Exchange has ceased operation of the technology used to operate XLE®.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not

⁶ 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)(1).

⁴ 17 CFR 240.19b-4.

⁵ XLE® was the Exchange's equity trading system.

⁶ See Securities Exchange Act Release No. 58613 (September 22, 2008), 73 FR 57181 (October 1, 2008) (SR-Phlx-2008-65). The Exchange ceased operation of the technology used to operate XLE® on October 24, 2008.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).