

### *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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(5) thereunder<sup>15</sup> in that it effects a change to an order-entry or trading system that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. As such, this proposed rule change is effective upon filing with the Commission.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2008-047 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-NASDAQ-2008-047. 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, 100 F Street, NE., Washington, DC 20549, 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 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-NASDAQ-2008-047 and should be submitted on or before June 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-57870; File No. SR-NYSE-2008-37]**

### **Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend NYSE Rule 13 To Extend the Definition of Routing Broker and Effect Conforming Changes to NYSE Rule 17**

May 27, 2008.

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 May 9, 2008, the New York Stock Exchange, LLC ("NYSE" 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 substantially prepared by the Exchange. The Exchange has designated the proposed rule change as a "non-controversial" 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 the proposed rule change 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 Exchange Rule 13 to include in the definition of "Routing Broker" any non-affiliate third-party broker-dealer that may act as a Routing Broker for the Exchange. The Exchange further proposes a conforming amendment to Exchange Rule 17 to allow for the operation of such a non-affiliate third-party broker-dealer. The text of the proposed rule change is available at NYSE, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.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. 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

Through this filing, the Exchange proposes to amend Exchange Rule 13 to expand the definition of "Routing Broker" to include any non-affiliate third-party broker-dealer that may act as a Routing Broker for the Exchange. The Exchange further proposes to make conforming amendments to Exchange Rule 17 to allow for the operation of

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(5).

<sup>16</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).

such a non-affiliate third-party broker-dealer.

#### Current Exchange Rules 13 and 17

Exchange Rule 13 currently defines a Routing Broker as the broker-dealer affiliate of the Exchange that acts as agent for routing orders entered into Exchange systems to other market centers for execution whenever such routing is required by Exchange Rules and federal securities laws.<sup>5</sup> Rule 13 further provides that the Routing Broker shall operate as prescribed in Exchange Rule 17. Archipelago Securities, LLC ("Arca Sec"), a broker-dealer affiliate of the Exchange, currently functions as the sole Routing Broker for the Exchange.<sup>6</sup>

Exchange Rule 17 provides that the Routing Broker will receive routing instructions from the Exchange to route orders to other market centers and report such executions back to the Exchange.<sup>7</sup> The Routing Broker has no discretion and cannot change the terms of an order or the routing instructions.<sup>8</sup> Although the use of the Routing Broker to route orders to another market center is optional, all trades entered on the Exchange that are routed to other market centers via the Routing Broker and are executed are binding.<sup>9</sup>

By serving as a "system of communication to or from" the Exchange, the Routing Broker operates as a facility of the Exchange in accordance with Section 3(a)(2) of the Act.<sup>10</sup> The Exchange is responsible for filing with the Commission any rule changes and fees relating to the functions performed by the Routing Broker on NYSE.<sup>11</sup> The books, records, premises, officers, agents, directors and employees of the Routing Broker, as a facility of the Exchange, shall be deemed to be those of the Exchange (and subject to its oversight) for the purposes of the Act.<sup>12</sup> The books and records of the Routing Broker as a facility of the Exchange are subject at all times to inspection and copying by the Exchange and the Commission.<sup>13</sup>

<sup>5</sup> On April 5, 2007, the Commission noticed amendments to Exchange Rules 13 and 17 to establish a mechanism to route orders to away market centers for execution in compliance with Exchange Rules and Regulation NMS, and to facilitate the acceptance of odd-lot and sub-penny executions. See Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (SR-NYSE-2007-29) ("Routing Broker Release").

<sup>6</sup> See *id.*

<sup>7</sup> See Exchange Rule 17(b)(1).

<sup>8</sup> See *id.*

<sup>9</sup> See Exchange Rule 17(b)(3) and (4).

<sup>10</sup> 15 U.S.C. 78c(a)(2). See also Exchange Rule 17(b)(5) and (6).

<sup>11</sup> See Exchange Rule 17(b)(5).

<sup>12</sup> See Exchange Rule 17(b)(6).

<sup>13</sup> See *id.*

#### Proposed Amendments to Exchange Rules 13 and 17

The Exchange believes it is prudent to have a secondary Routing Broker (or Brokers, as may be needed) as a risk management tool in the event of a system malfunction or failure. The Exchange thus proposes to amend Rules 13 and 17 to allow any non-affiliate third-party broker-dealer to operate as a Routing Broker for NYSE.

Under this proposal, Arca Sec would continue to operate as an Exchange Routing Broker in conjunction with a non-affiliate third-party broker-dealer(s) that will operate simultaneously as a Routing Broker for the Exchange. By relying on parallel Routing Brokers, the Exchange will have the ability to divert order flow from one Routing Broker to another in the event of a system malfunction or failure.

A non-affiliate third-party broker-dealer will operate as prescribed by Exchange Rule 17, subject to an amendment to subparagraph (b)(2). Currently, Exchange Rule 17(b)(2) provides that the Routing Broker will not engage in any business other than (a) its outbound router function and (b) any other activities it may engage in as approved by the Commission.<sup>14</sup> In view of the addition of a non-affiliate third-party broker-dealer to Rules 13 and 17, the Exchange proposes to limit the proscription on business conduct contained in Rule 17(b)(2) to its broker-dealer affiliate (*i.e.* Arca Sec).

Any non-affiliate third-party broker-dealer that serves as a Routing Broker to the Exchange will be subject to the regulatory oversight and enforcement responsibilities of a self-regulatory organization unaffiliated with the Exchange or any of its affiliates.<sup>15</sup> Furthermore, the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including the non-affiliate

<sup>14</sup> This provision relates specifically to Arca Sec in its capacity as the Exchange's sole Routing Broker and affiliate. See Routing Broker Release, *supra* note 5. In March 2007, the Commission authorized Arca Sec to act as a marketing agent on behalf of NYSE Arca Tech 100 Index and NYSE Arca Tech 100 ETF. These business functions have no connection to Arca Sec's function as Routing Broker and facility for the Exchange. See Securities Exchange Act Release No. 55442 (March 12, 2007), 72 FR 12654 (March 16, 2007) (SR-NYSEArca-2007-09).

<sup>15</sup> Currently, the Financial Industry Regulatory Authority, Inc. ("FINRA") is the examining authority for the Routing Broker designated by the Commission pursuant to Rule 17d-1 of the Act. As such, FINRA is responsible for the oversight and enforcement of the Routing Broker for compliance with the applicable financial responsibility rules.

third-party broker-dealer acting as a facility of the Exchange ("third-party Routing Facility"), and any other entity, including any affiliate of the third-party Routing Facility, and, if the third-party Routing Facility or any of its affiliates engage in any other business activities other than providing routing services to the Exchange, between the segment of the third-party Routing Facility or affiliate that provides the other business activities and the routing services.<sup>16</sup>

#### 2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5),<sup>17</sup> which requires that an exchange have rules that are designed 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 Exchange believes that having a secondary Routing Broker as a risk management tool in the event of a system malfunction or failure fulfills these requirements. The Exchange thus proposes to amend Rules 13 and 17 to allow any non-affiliate third-party broker-dealer to operate as a Routing Broker for NYSE.

The proposed rule change also supports the principles of Section 11A(a)(1)(C) of the Act<sup>18</sup> in that it seeks to ensure economically efficient execution of securities transactions and to make it practicable for brokers to execute investors' orders in the best market. The proposed rule change also contributes to the linking of all markets for qualified securities through communication and data processing facilities pursuant to Section 11A(a)(1)(D) of the Act,<sup>19</sup> by fostering efficiency, enhancing competition, increasing information availability, facilitating the offsetting of investors' orders, and contributing to the best execution of such orders.

#### 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 that is not

<sup>16</sup> See proposed Exchange Rule 17(b)(8). Telephone conversation between Deanna Logan, Associate General Counsel, Office of General Counsel, NYSE, and Theodore S. Venuti, Special Counsel, Division of Trading and Markets, Commission, on May 27, 2008.

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 15 U.S.C. 78k-1(a)(1)(C).

<sup>19</sup> 15 U.S.C. 78k-1(a)(1)(D).

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 Act<sup>20</sup> and Rule 19b-4(f)(6) thereunder.<sup>21</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>22</sup> However, Rule 19b-4(f)(6)(iii)<sup>23</sup> 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.<sup>24</sup> For these reasons, the Commission designates the proposed

rule change to be operative upon filing with the Commission.<sup>25</sup>

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](mailto: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.<sup>26</sup>

**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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> 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

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</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 date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this notice requirement.

<sup>23</sup> *Id.*

<sup>24</sup> 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.

<sup>25</sup> 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).

<sup>26</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> See Securities Exchange Act Release No. 57683 (April 18, 2008), 73 FR 22199.