

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

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]

BILLING CODE 8011-01-P

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

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

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).

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 either solicited or 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)(ii) of the Act⁹ and paragraph (f)(2) of Rule 19b-4¹⁰ thereunder. 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 Number SR-Phlx-2008-80 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-Phlx-2008-80. 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 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-Phlx-2008-80 and should be submitted on or before December 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-28960 Filed 12-5-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59023; File No. SR-NASDAQ-2008-090]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Enhancements to the Nasdaq Regulation Reconnaissance Service

November 26, 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 24, 2008, The NASDAQ Stock Market LLC ("Nasdaq"), 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 Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to establish fees for an enhancement to the Regulation

Reconnaissance Service, which would provide firms with the ability to recreate the Nasdaq/CQS order books and trade data by way of a visual display. The text of the proposed rule change is available on Nasdaq's Web site, at Nasdaq's principal office, and at 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, Nasdaq 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. Nasdaq 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

Nasdaq proposes to establish a fee for a new enhancement to the Nasdaq Regulation Reconnaissance Service ("Reg Recon"). Reg Recon is currently available as an add-on to the Nasdaq Workstation and Weblink ACT 2.0. Nasdaq is proposing to provide access to the Market Replay function to Reg Recon subscribers for an additional fee. Market Replay is a software program developed by Nasdaq, which uses publicly-available information to recreate and display the Nasdaq/CQS order books and trade data for any point in time.³

Nasdaq currently provides Market Replay for free on a publicly-accessible Web site as a demonstration of the product. Nasdaq hopes that vendors will ultimately purchase Market Replay to provide access to the functionality to their customers, either using the software "as is" or integrating the software into their proprietary displays. Nasdaq is proposing to provide Reg Recon subscribers an option to enhance their service with an integrated version of Market Replay.

Market Replay allows users to reconstruct the market for any Nasdaq/CQS security, and view trades and quotes at the millisecond level. In particular, Market Replay allows users to access the historical market for a particular security by entering a symbol, date, and timeframe. Subscribers may

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Market Replay data is delayed 15 minutes.