

4(f)(2)⁹ thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the 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.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the rule change, including whether the 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-2004-45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathon G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2004-45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, please use only one method. The Commission will post all electronic 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 rule change that are filed with the Commission, and all written communications relating to the 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 will also be available for inspection and copying at

the principal office of the Phlx. 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 No. SR-Phlx-2004-45 and should be submitted on or before October 19, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[File Nos. SR-Phlx-2004-50 and SR-Phlx-2004-56]

Securities Exchange Act of 1934; Release No. 50420; In the Matter of the Philadelphia Stock Exchange, Inc.; Order of Summary Abrogation

September 22, 2004.

Notice is hereby given that the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(3)(C) of the Securities Exchange Act of 1934 ("Act"),¹ is summarily abrogating certain proposed rule changes of the Philadelphia Stock Exchange, Inc. ("Phlx").

On July 29, 2004, the Phlx filed SR-Phlx-2004-50. On August 16, 2004, the Phlx submitted Amendment No. 1 to the proposed rule change.² On August 18, 2004, the Phlx submitted Amendment No. 2 to the proposed rule change.³ The proposed rule change, as amended, modified the Phlx's schedule of dues, fees, and charges to revise its equity option payment for order flow program by (1) charging a \$0.35 per contract (for all equity options other than options on the QQQ) or a \$1.00 per contract (for options on the QQQ) equity option payment for order flow fee on

transactions by Phlx's Registered Options Traders ("ROTs") when they trade with a customer; (2) permitting specialists to opt in or out of the program by notifying the Exchange in writing at least five business days prior to the start of the month; and (3) combining the payment for order flow fees collected from ROTs in one account to form a "pool" from which specialists may request reimbursement for the amounts that they pay to order flow providers to send order flow to the Exchange. The filing was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.⁴

On August 16, 2004, the Phlx filed SR-Phlx-2004-56. The proposed rule change amended the Phlx's schedule of dues, fees, and charges to revise its equity option payment for order flow program by (1) requiring a specialist unit to pay equity option payment for order flow fees in a given month at the same rate as ROTs if the specialist unit elects to participate in the program and does not pay a specified percentage of the total amount of equity option payment for order flow funds collected from ROTs in the options for which that specialist unit is acting as the specialist, and (2) providing that specialist units may opt out of the equity option payment for order flow program, as long as they notify the Exchange in writing by the 15th day of the month. The filing was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.⁵

Pursuant to Section 19(b)(3)(C) of the Act,⁶ at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,⁷ the Commission may summarily abrogate the change in the rules of the self-regulatory organization and require that the proposed rule change be re-filed in accordance with the provisions of Section 19(b)(1) of the Act⁸ and reviewed in accordance with Section 19(b)(2) of the Act,⁹ 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.

The Commission believes that the above-referenced proposed rule changes raise serious questions as to whether they are consistent with the Act and with the protection of investors.

¹¹ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(3)(C).

² See letter from Cynthia K. Hoekstra, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 13, 2004 ("Amendment No. 1"). Amendment No. 1 replaced the original proposed rule change in its entirety.

³ See letter from Richard S. Rudolph, Director and Counsel, Phlx, to David Liu, Attorney, Division, Commission, dated August 18, 2004 ("Amendment No. 2"). Amendment No. 2 deleted all references to the proposed \$0.05 per contract charge for broker-dealer (AUTOM-delivered) transactions and replaced the proposed rule text contained in Amendment No. 1 in its entirety.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 15 U.S.C. 78s(b)(3)(C).

⁷ 15 U.S.C. 78s(b)(1).

⁸ 15 U.S.C. 78s(b)(1).

⁹ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act (15 U.S.C. 78s(b)(3)(C)), the Commission considers the period to commence on September 3, 2004, the date the Phlx filed its amendment.

Specifically, the proposed rule changes appear to raise serious questions as to whether they provide for the equitable allocation of reasonable dues, fees, and other charges among the Phlx's members and issuers and other persons using its facilities.¹⁰

Accordingly, the Commission believes that the procedures provided by Section 19(b)(2) of the Act¹¹ will provide a more appropriate mechanism for determining whether the proposed rule changes are consistent with the Act. Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to abrogate the proposed rule changes.

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,¹² that File Nos. SR-Phlx-2004-50 and SR-Phlx-2004-56 be, and they hereby are, summarily abrogated. If the Phlx chooses to re-file the proposed rule changes, it must do so pursuant to Sections 19(b)(1)¹³ and 19(b)(2) of the Act.¹⁴

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments on Additional Items for Potential Withdrawal of Tariff Concessions and Increase in Applied Duties in Response to European Union (EU) Enlargement and EU Changes to its Rice Import Regime

AGENCY: Office of the United States
Trade Representative.

ACTION: Request for comments.

SUMMARY: The Office of the U.S. Trade Representative seeks comments concerning the addition of several types of cheese, peaches, mandarins and clementines, to a list of goods for which tariff concessions may be withdrawn and duties may be increased in the event the United States cannot reach agreement with the European Union (EU) for adequate compensation owed under World Trade Organization (WTO) rules as a result of EU enlargement and EU changes to its rice import regime.

DATES: Persons wishing to provide written public comments are required to

do so no later than noon on Wednesday, September 29, 2004.

ADDRESSES: Submissions by electronic mail to FR0443@ustr.eop.gov. Submissions by facsimile to: Anita Thomas at fax: (202) 395-3974. The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below).

FOR FURTHER INFORMATION CONTACT: For questions contact Lisa Errion, Office of Europe and the Mediterranean, at (202) 395-3320.

SUPPLEMENTARY INFORMATION: By **Federal Register** Vol. 69, No. 175/ Friday, September 10, 2004, p. 54827-54849, "Request for Comments and Notice of Public Hearing on Potential Withdrawal of Tariff Concessions and Increase in Applied Duties in Response to European Union (EU) Enlargement and EU Changes to Its Rice Regime," the Office of the U.S. Trade Representative sought comments concerning the list of goods for which tariff concessions might be withdrawn and duties might be increased in the event the United States could not reach agreement with the European Union (EU) for adequate compensation owed under World Trade Organization (WTO) rules as a result of EU enlargement and EU changes to its rice import regime. The United States has received public comment regarding the addition of several types of cheese, peaches, mandarins and clementines to this list. Public written testimony requesting the addition of several types of cheese and of peaches is available in the USTR Reading Room, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395-6186. It is also available on USTR's Web site at: www.ustr.gov/World_Regions/Europe_Mediterranean/European_Union/Section_Index.html.

Public Comment

Written comments of interested persons should be limited to the following issues: (1) The appropriateness of withdrawing WTO tariff concessions upon the products listed in the Annex to this notice; (2) the appropriateness of imposing increased duties upon the products listed in the Annex to this notice; (3) the levels at which U.S. customs duties should be set for particular items; and (4) the degree to which increased duties might have an adverse effect upon U.S. consumers of the products listed in the Annex.

Requirements for Submissions

In order to facilitate prompt processing of submissions, the TPSC strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "EU Enlargement/EU Rice Import Regime" followed by "Written Comments." Documents should be submitted as either Adobe PDF, WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the character "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notices of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395-6186. General information concerning USTR may be obtained by accessing its Internet Web site (www.ustr.gov).

Annex: Proposed Additional Items

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 15 U.S.C. 78s(b)(3)(C).

¹³ 15 U.S.C. 78s(b)(1).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(58).