Database. They produce those services from volume data that broker-dealers voluntarily provide. NYSE constituents have told NYSE that they do not find those reports sufficient and have asked NYSE to distribute broker volume information that reflects members' actual trading activity as reported to NYSE. In response, NYSE created the NYSE Broker Volume Database and made that database available to vendors as an alternative to the databases that vendors are creating for themselves. On November 12, 2002, NYSE filed a proposed rule change [3] to establish fees for vendor access to the NYSE Broker Volume Database and for vendor distribution to subscribers of Broker Volume Reports that vendors generate from the NYSE Broker Volume Database (the ''2002 Filing''). The 2002 Filing imposes a per-device subscriber fee that is subject to a per-subscriber monthly maximum that is reached when a subscriber has 25 devices.

Pursuant to the 2002 Filing, vendors may redistribute information from the NYSE Broker Volume Database in the form of controlled displays of broker volume reports. Vendors may display the reports according to their own preferences and styles and in the manner that they consider most useful to their subscribers. However, to date, no vendors have taken advantage of the opportunity to access the NYSE Broker Volume Database or to make reports generated from that database available to subscribers. Yet, NYSE continues to receive requests for broker volume information from its members and investors.

Accordingly, the Exchange proposes to provide a NYSE Broker Volume Web Service, which will allow market participants to gain access to NYSE Broker Volume displays that NYSE creates from the NYSE Broker Volume Database. NYSE will provide the NYSE Broker Volume Web Service on a controlled display directly to subscribers over the Web site.

The Exchange proposes to charge subscribers $300 per month for each user that has access to the NYSE Broker Volume Web Service. NYSE has established a secure information display and retrieval system through the combined use of user IDs and passwords. Persons with access to NYSE Broker Volume displays through the NYSE Broker Volume Web Service will not be able to manipulate the information contained in the displays or to redistribute the displays to others. The Exchange will require each subscriber to execute a suitable subscriber agreement with the Exchange. The Exchange will not cap the NYSE Broker Volume Web Service fees payable in respect of a subscriber, as it does in respect of subscribers that receive broker volume reports from a vendor.

For any individual that first subscribes to the NYSE Broker Volume Web Service on or prior to October 1, 2003, NYSE will waive the NYSE Broker Volume Web Service fee for 30 days (the ''Free Trial Period''). The Free Trial Period will be applied on a rolling basis, determined by the date on which NYSE first entitles a new individual subscriber or potential individual subscriber to receive the NYSE Broker Volume Web Service. A specific individual subscriber may only receive this fee waiver one time.

2. Statutory Basis

The NYSE believes the proposed rule change is consistent with section 6(b)(4) of the Act [4] because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The Exchange believes that the proposal will 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 regarding the 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**

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 Exchange 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR-NYSE–2003–11 and should be submitted by June 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–11994 Filed 5–13–03; 8:45 am]

**BILLING CODE 8010–01–P**

[3] Securities Exchange Act Release No. 46847 (November 19, 2002), 67 FR 70799 (November 26, 2002)(SR–NYSE–2002–61).

[4] 15 U.S.C. 78f(b)(4).

[5] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47819; File No. SR-Phlx-2002–17]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto and Notice of Filing of and Order Granting Accelerated Approval to Amendment Nos. 4, 5, 6, and 7 Thereto Relating to Crossing, Facilitation, and Solicited Orders

May 8, 2003.

**I. Introduction**

On March 18, 2002, 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'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to crossing, facilitation, and solicited orders. On May 2, 2002, July 24, 2002, and August 20, 2002, Phlx submitted Amendment Nos. 1, 2, and 3 to the proposed rule change, respectively.[3] On May 2, 2002, notice of the proposed rule change, as amended by Amendment Nos. 1, 2, and 3, was published in the **Federal Register**.[4] The Commission received no comments on the proposed rule change. On November 6, 2002, February 25, 2003, March 19, 2003, and April 23, 2003, Phlx submitted Amendment Nos. 4, 5, 6, and 7 to the proposed rule change, respectively.[5] This notice and order solicits comment on Amendment Nos. 4, 5, 6, and 7 and approves the proposed rule change, as amended, on an accelerated basis.

## II. Description of Proposal

The proposed rule change would amend Phlx Rule 1064, ''Crossing, Facilitation and Solicited Orders,'' which governs the crossing of equity option orders by floor brokers. Rule 1064, among other things, sets forth the procedures by which a floor broker who holds a customer order (''original order'') may cross such order with either another customer order or orders from the same originating firm, or with a contra side order provided by the originating firm from its own proprietary account.[6]

As explained by the Phlx, under the current rule, a floor broker seeking to cross buy and sell orders for the same options series must first bring the transaction to the trading floor and request markets from the trading crowd for all components of the order. After providing the crowd with the opportunity to make such markets, the floor broker must announce that he or she holds an order subject to crossing or facilitation, and then must propose a price at which to cross the original order that improves upon the price provided by the crowd. However, before the floor broker can effect the cross, the registered options traders (''ROTs'') in the crowd are given the opportunity to take all or part of the transaction at the proposed price.

Under these rules, if the crowd does not want to participate in the trade, the floor broker may proceed with the cross. If the crowd wants to participate in part of the order, however, the crowd has priority and the floor broker may cross only that amount remaining after the crowd has taken its portion. If the crowd wants to participate in the entire order, the floor broker will not be able to cross or facilitate any part of the order.

The Phlx proposes to adopt new Commentary .02 to Rule 1064 to entitle the floor broker, under certain conditions, to cross a specified percentage of an original order with another customer order or orders, or with an order of the originating firm, before ROTs in the crowd can participate in the transaction. The percentage of the floor broker's guarantee would depend upon whether the price at which the order is ultimately traded is at the crowd's best bid or offer in response to the floor broker's initial request, or at an improved price.

Where the floor broker proposes the cross at a price that improves the crowd's market, and the crowd then wants to take part in some or all of the order at the improved price, the floor broker would be entitled to cross 40% of the contracts.[7] Where the trade takes place at the market provided by the crowd, the floor broker would be entitled to cross 20% of the contracts. These entitlements would apply only with respect to any portion of the original order that remained after all public customer orders in the limit order book and represented in the trading crowd at the time the market was established were satisfied.

The proposed rule change would apply to transactions in equity options and would initially apply to customer orders of a minimum size of 500 contracts. The Exchange's Options Committee would be authorized to determine, on an option by option basis, the eligible size for an order that could be transacted pursuant to the proposal. However, the eligible order size could not be less than 500 contracts. In the case of a complex order, such as a spread or a straddle, the proposed rule change would require that at least one leg of such an order, standing alone, would need to meet the eligible size requirement.

The proposed rule change also provides that if the same member organization of the Exchange is both the originating firm and the specialist for the option in which the transaction takes place, and the floor broker acting on behalf of the originating firm crosses or facilitates under the proposed rule, the specialist would not be entitled to any Enhanced Specialist Participation pursuant to Phlx Rule 1014(g)[8] with respect to the particular cross transaction.

If the specialist is not the same member organization as the originating firm, and the trade takes at the specialist's disseminated bid or offer when the specialist is on parity with one or more controlled accounts, the specialist may be entitled to an Enhanced Specialist Participation, but in no case would the specialist be guaranteed a percentage that, when combined with the percentage crossed by the floor broker, exceeds 40% of the original order after relevant public customer orders have been satisfied.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letters from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 1, 2002 (''Amendment No. 1''); and to Ira Brandriss, Special Counsel, Division, Commission, dated July 23, 2002 (''Amendment No. 2''), and August 19, 2002 (''Amendment No. 3'').

[4] *See* Securities Exchange Act Release No. 45824 (April 25, 2002), 67 FR 22144 (''Notice'').

[5] *See* letters from Richard S. Rudolph, Director and Counsel, Phlx, to Ira Brandriss, Special Counsel, Division, Commission, dated November 5, 2002 (''Amendment No. 4''), February 24, 2003 (''Amendment No. 5''), March 18, 2003 (''Amendment No. 6''), and April 22, 2003 (''Amendment No. 7'').

Amendment No. 4 replaced the text of the proposed rule change with new text that made revisions to proposed Commentary .03. The text of proposed Commentary .03 was further amended by Amendment Nos. 5, 6, and 7. As discussed *infra*, the final text of proposed Commentary .03 as set forth in Amendment No. 7 is intended to clarify that the provision would apply to any transaction in which a floor broker is crossing a public customer order with an order that is not a public customer order.

In Amendment No. 6, Phlx also amended proposed Commentary .02(i) to Phlx Rule 1064, as discussed *infra*, to reflect that the proposed provision to entitle a floor broker to cross a certain percentage of a customer order with a facilitation order from the originating firm would apply only to *public* customer orders, not all customer orders.

[6] When the contra side is provided by the originating firm from its own proprietary account, the transaction is known as a ''facilitation.''

[7] After the floor broker proposed to cross the order, he or she would be required again to give the crowd a reasonable opportunity to bid or offer for the order. Telephone conversation between Richard S. Rudolph, Director and Counsel, and Dawn Kelly Reim, Market Surveillance Investigator, Phlx, and Ira Brandriss, Special Counsel, and Frank N. Genco, Attorney, Division, Commission, on October 21, 2002. If the crowd improved upon the floor broker's price, and the floor broker then proposed to match the crowd's price, the floor broker would be entitled to cross 20% of the contracts. Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Ira Brandriss, Special Counsel, and Frank N. Genco, Attorney, Division, Commission, on November 21, 2002.

[8] The Enhanced Specialist Participation programs in Phlx Rule 1014(g) allocate to the specialist, in certain options classes, a greater than equal share of the portion of the order that is divided among the specialist and any ''controlled accounts'' that are on parity. A ''controlled account'' is an account controlled by or under common control with a broker-dealer.

Other provisions of the proposed rule change are patterned after similar rules on other exchanges.[9]

Amendment No. 6 to the proposed rule change specifies that the provisions of Commentary .02 to permit the floor broker to cross a specified percentage of an original order with a facilitation order of the originating firm would apply where the original order is a *public* customer order.

The Exchange further proposes to adopt Commentary .03 to Phlx Rule 1064. As set forth in Amendment No. 7 to the proposed rule change, Commentary .03 would state that a floor broker crossing a public customer order with an order that is not a public customer order, when providing a reasonable opportunity for the trading crowd to participate in the transaction, must disclose the public customer order that is subject to crossing prior to the execution of the order.

**III. Discussion**

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. Specifically, the Commission finds that the proposal is consistent with the requirements of sections 6(b)(5) of the Act [10] that the rules of an exchange, among other things, be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.[11]

The Commission believes that Phlx's proposal to grant crossing guarantees and participation rights to member firms seeking to execute crosses on the Exchange, under the proposed conditions, is reasonable. As noted above, other options exchanges have similar rules, and the proposed rule change should enable Phlx to compete with these exchanges in attracting order flow of broker-dealer firms seeking to cross or facilitate customer orders.

The Commission notes that, in approving member firm participation rights and other guaranteed participations in the past, it has found that rules entitling a market participant or participants to up to 40% of an order are not inconsistent with the statutory standards of competition and free and open markets.[12] The Commission has raised concerns, on the other hand, about participation guarantees that ''lock up'' a larger percentage of an order, and thereby reduce the number of contracts for which the trading crowd can compete.[13] The proposed rule change guarantees an allocation of no more than 40% of an order to a member firm seeking to facilitate an order. Moreover, the proposal includes a provision that limits the number of contracts to be allocated to the facilitating firm and the specialist in the aggregate to no more than 40% of the order. The rule for which the Phlx seeks approval is consistent with the Commission's position with respect to participation guarantees.

The Commission finds good cause for granting accelerated approval of Amendment Nos. 4, 5, 6, and 7 to the proposed rule change. Amendment No. 4 restated the text of the proposed rule change as set forth in the Notice, and made revisions only to Commentary .03. Amendment Nos. 5 and 6 also revised proposed Commentary .03. To the extent that the revisions made by these amendments were retained in the final version of proposed Commentary .03 set forth in Amendment No. 7, they are discussed below.

Amendment No. 6 also amended proposed Commentary .02 to establish that the member firm participation guarantee would apply only when the floor broker is seeking to cross a facilitation order from the member firm with a *public* customer order. The Commission notes that Phlx Rule 1064(b), governing facilitation crosses, refers specifically to transactions in which a floor broker is holding an options order for a *public* customer that he or she is seeking to cross with a contra side order. The text of proposed new Commentary .02 as originally submitted also referred to the facilitation of a public customer order. Although in an earlier amendment the Exchange deleted the word ''public'' from proposed Commentary .02,[14] the Exchange has now determined to restore the term. The Commission believes that this change is reasonable and also eliminates a possible inconsistency between Phlx Rule 1064(b) and proposed Commentary .02.

The Commission also finds good cause for accelerating approval of Amendment No. 7 to the proposed rule change. Amendment No. 7 would amend the text of proposed Commentary .03 to state that a floor broker crossing a public customer order with an order that is not a public customer order, when providing for a reasonable opportunity for the trading crowd to participate in the transaction, shall disclose the public customer order that is subject to crossing prior to the execution of the order. As discussed in the Notice, the Phlx believes that ''[i]f the customer order is disclosed first, the trading crowd may be more likely to bid or offer competitively as contra side to that customer's order, thus benefiting the customer.'' As originally proposed, Commentary .03, referred only to facilitation orders. Amendment No. 7 establishes that the provision would apply to all crossing transactions in which the floor broker is crossing a public customer order with an order that is not a public customer order.[15] The Commission believes that it is appropriate to accelerate approval of Amendment No. 7.

Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5) and 19(b)(2) of the Act,[16] to grant accelerated approval of Amendment Nos. 4, 5, 6, and 7 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 4, 5, 6 and 7, including whether Amendment Nos. 4, 5, 6 and 7 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment Nos. 4, 5, 6, and 7 that are filed with the Commission, and all written communications relating to these amendments between the Commission and any person, other than those that may be withheld from the public in

[9] *See* Notice.

[10] 15 U.S.C. 78f(b)(5).

[11] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See, e.g.*, Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000); 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000); 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000); 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

[13] *See, e.g.*, Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000).

[14] *See* Amendment No. 2.

[15] Commentary .03 also was amended by the Phlx to distinguish the disclosure requirement of proposed Commentary .03 from the provision of proposed Commentary .02(iv) requiring the floor broker to disclose all components of the customer order initially, before requesting that the trading crowd provide its market.

[16] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

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 Exchange. All submissions should refer to File No. SR–Phlx–2002–17 and should be submitted by June 4, 2003.

**V. Conclusion**

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (File No. SR–Phlx–2002–17), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–11996 Filed 5–13–03; 8:45 am]

**BILLING CODE 8010–01–P**

## DEPARTMENT OF STATE

**[Public Notice 4347]**

### Overseas Schools Advisory Council Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Meeting on Thursday, June 12, 2003, in the Bureau of Administration Conference Room 6320, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting will take place from 9:30 a.m. to 12 p.m. and is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving American-sponsored schools overseas, which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the recent activities of American-sponsored overseas schools and the overseas schools regional associations, a progress report on projects selected for the annual Program of Educational Assistance, and a presentation on the Council's project to develop a video tape for U.S. corporations on the Council's activities.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to June 2, 2003. Each visitor will be asked to provide a date of birth and Social Security number at the time of registration and attendance and must carry a valid photo ID to the meeting. All attendees must use the C Street entrance to the building.

Dated: May 7, 2003.

**Keith D. Miller,**

*Executive Secretary, Overseas Schools Advisory Council, Department of State.*

[FR Doc. 03–12006 Filed 5–13–03; 8:45 am]

**BILLING CODE 4710–24–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/DS–277]**

### WTO Dispute Settlement Proceeding Regarding the United States International Trade Commission Final Determination of Threat of Material Injury in the Investigation Concerning Certain Softwood Lumber From Canada

**AGENCY:** Office of the United States International Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States International Trade Representative (''USTR'') is providing notice of the request by the Government of Canada for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement'') to examine the International Trade Commission (''ITC'') final determination of threat of material injury with respect to certain softwood lumber from Canada.

The request for the establishment of a panel alleges that the ITC's determination is inconsistent with various provisions of the General Agreement on Tariffs and Trade 1994 (''GATT 1994''), the Agreement on Implementation of Article VI of GATT 1994 (''Anti-dumping Agreement''), and the Agreement on Subsidies and Countervailing Measures (''SCM Agreement''). USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Athough USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before June 30, 2003 to be assured of timely consideration by USTR.

**ADDRESSES:** Comments should be submitted (i) electronically, to *fr0062@ustr.gov,* Attn: ''Lumber Injury Dispute'' in the subject line, or (ii) by fax, to Sandy KcKinzy at (202) 395–3640, with a confirmation copy sent electronically to the e-mail address above.

**FOR FURTHER INFORMATION CONTACT:** Theodore R. Posner, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–3582.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)), USTR is providing notice that on April 3, 2003, the Government of Canada submitted a request for establishment of a dispute settlement panel to examine the U.S. International Trade Commission (''ITC'') final determination that an industry in the United States is threatened with material injury by reason of imports of softwood lumber from Canada determined by the U.S. Department of Commerce to have been subsidized and sold in the United States at less than fair value.

**Major Issues Raised and Legal Basis of the Complaint**

In its determination of May 16, 2002, published in the **Federal Register** on May 22, 2002, the ITC found that imports of softwood lumber from Canada that the U.S. Department of Commerce found to be subsidized and sold at less than fair value threatened an industry in the United States with material injury. The reasons for the ITC's determination are set forth in USITC Publication No. 3509 (May 2002).

By letter dated December 20, 2002, Canada requested consultations with the United States under the WTO Dispute Settlement Understanding regarding the ITC's determination. Consultations were held on January 22, 2003.

In its request for the establishment of a panel, Canada alleges that the United States has violated Article VI:6(a) of the GATT 1994; Articles 1, 3.1, 3.2, 3.4, 3.5, 3.7, 3.8, 12.2, 12.2.2, and 18.1 of the Anti-dumping Agreement; and Articles 10, 15.1, 15.2, 15.4, 15.5, 15.7, 15.8, 22.3, 22.5 and 32.1 of the SCM

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).