

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 155, OMB Control No. 3235-0549, SEC File No. 270-492;
Rule 477, OMB Control No. 3235-0550, SEC File No. 270-493

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comment on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 155 (OMB Control No. 3235-0549; SEC File No. 270-492) under the Securities Act of 1933 provides safe harbors for a registered offering following an abandoned private offering, or a private offering following an abandoned registered offering, without integrating the registered and private offering in either case. Rule 155 requires any prospectus filed as a part of a registration statement after a private offering to include disclosure regarding abandonment of the private offering. Similarly, the rule requires an issuer to provide each offeree in a private offering following an abandoned registered offering with: (1) Information concerning withdrawal of the registration statement; (2) the fact that the private offering is unregistered; and (3) the legal implications of the offering's unregistered status. The likely respondents will be companies. We estimate that 600 issuers will file Rule 155 submissions annually at an estimated 4 hours per response. We also estimate that 50% of the 2,400 total annual burden hours (1,200 burden hours) would be prepared by the issuer. We estimate that the remaining 50% of the burden hours is prepared by outside counsel.

Securities Act Rule 477 (OMB 3235-0550; SEC File No. 270-493) sets forth procedures for withdrawing a registration statement or any amendment or exhibits thereto. The rule provides that if a registrant applies for withdrawal in anticipation of reliance on Rule 155's registered-to-private safe harbor, the registrant must state in the withdrawal application that the

registrant plans to undertake a subsequent private offering in reliance on the rule. Without this statement, the Commission would not be able to monitor issuers' reliance on, and compliance with, Rule 155(c). The likely respondents will be companies. We estimate that 300 issuers will file Rule 477 submissions annually at an estimated one-hour per response for a total annual burden of 300 hours. We estimate that 100% of the reporting burden is prepared by the issuer.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: March 31, 2004.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04-7823 Filed 4-6-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49509; File No. SR-ISE-2004-10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. Relating to the Extension and Expansion of the Pilot Program for Quotation Spreads

March 31, 2004.

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 March 30, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange")

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. The proposed rule change has been filed by the ISE under Rule 19b-4(f)(6) of the Act.³ 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

On March 19, 2003, the Commission approved an ISE proposal to establish a pilot program permitting the allowable quotation spread for options on up to 50 equity securities to be \$5, regardless of the price of the bid ("Pilot Program").⁴ The ISE proposes to extend the Pilot Program until June 29, 2004, and to expand the Pilot Program to include all equity options trading on the ISE. Pursuant to Rule 19b-4(f)(6) under the Act, the ISE requests that the Commission waive the 30-day pre-operative requirement contained in Rule 19b-4(f)(6)(iii).⁵

The text of the proposed rule change appears below. Additions are *italicized*; deletions are bracketed.

Rule 803. Obligations of Market Makers

* * * * *

Supplementary Material to Rule 803

.01 Pursuant to paragraph (b)(4) of Rule 803, during a [six-month] pilot period expiring on [March 31] *June 29, 2004*, [the Exchange may designate options on up to fifty (50) underlying securities that] *all options classes* may be quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid.

* * * * *

(a) Inapplicable.

(b) Inapplicable.

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 ISE 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 ISE has prepared

³ 17 CFR 240.19b-4(f)(6).

⁴ See Securities Exchange Act Release No. 47532, 68 FR 14728 (March 26, 2003) (order approving File No. SR-ISE-2001-15) ("Pilot Program Approval Order").

⁵ 17 CFR 240.19b-4(f)(6)(iii).

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 ISE's rules contain maximum quotation spread requirements that vary from \$.25 to \$1.00, depending on the price of the option. On March 19, 2003, the Commission approved a proposal to amend Supplementary Material .01 to ISE Rule 803, "Obligations of Market Makers," to establish a six-month Pilot Program in which the allowable quotation spread for options on up to 50 underlying equity securities would be \$5, regardless of the price of the bid.⁶ The Pilot Program has been extended twice.⁷ As required by the Pilot Program Approval Order, the ISE has submitted to the Commission a report detailing the ISE's experience with the Pilot Program.

The ISE believes that the Pilot Program has been successful, and the ISE has filed a proposal with the Commission to make the Pilot Program permanent and to apply it to all ISE listed equity options.⁸ The purpose of the current proposal is to expand the Pilot Program to cover all equity options trading on the ISE and to extend the Pilot Program until June 29, 2004, while the Commission considers the ISE's proposal to make the Pilot Program permanent. During the extension, the ISE will provide the Commission with an updated Pilot Program report that covers all of the equity options classes in the expanded Pilot Program. The ISE will provide the updated report to the Commission by June 15, 2004.

2. Statutory Basis

According to the ISE, the statutory basis for the proposal is the requirement under section 6(b)(5) of the Act⁹ that a national securities exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in

⁶ See Pilot Program Approval Order, *supra* note 4.

⁷ See Securities Exchange Act Release Nos. 48514 (September 22, 2003), 68 FR 55685 (September 26, 2003) (notice of filing and immediate effectiveness of File No. SR-ISE-2003-21) (extending the Pilot Program through January 31, 2004); and 49149 (January 29, 2004), 69 FR 05627 (notice of filing and immediate effectiveness of File No. SR-ISE-2004-02) (extending the Pilot Program through March 31, 2004).

⁸ See File No. SR-ISE-2003-22.

⁹ 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

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

The ISE does not believe that the proposed rule change imposes 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 ISE has not solicited, and does not intend to solicit, comments on the proposed rule change. The ISE has not received any unsolicited written comments from members or other interested persons.

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

The ISE has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹ Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. As required under Rule 19b-4(f)(6)(iii), the ISE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE has requested that the Commission waive the 30-day operative delay to prevent a lapse in the operation of the Pilot Program.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

because it will permit the Pilot Program to continue without interruption through June 29, 2004, and will expand the Pilot Program to include all equity options trading on the ISE, thereby helping the ISE to assess the effects of the \$5 spreads permitted under the Pilot Program.¹² For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.

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 it 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-ISE-2004-10. The file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE-2004-10 and should be submitted by April 28, 2004.

¹² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04-7824 Filed 4-6-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49514; File No. SR-Phlx-2004-03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to the Rescission of Exchange Rule 713

April 1, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on February 9, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. On March 29, 2004, the Phlx amended the proposal.³ The Exchange filed the proposed rule change under Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6)⁵ thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to rescind Exchange Rule 713, Statements Available to Customers. Proposed deleted text is in brackets.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See March 26, 2004 letter from Mark I. Salvacion, Director and Counsel, Phlx, to Rose Wells, Division of Market Regulation, Commission and attachments ("Amendment No. 1"). Amendment No. 1 replaces and supersedes the original filing in its entirety.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6). The Phlx provided the Commission with written notice of its intention to file the proposed rule change on January 28, 2004. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have begun on March 29, 2004, the date of filing of Amendment No. 1.

[Statements Available to Customers]

[Rule 713. Each member organization shall make available to any customer of such organization at his request a statement of its financial condition as of the date of its most recent answer to the financial questionnaire of the Exchange or as of a date subsequent thereto. The financial statement shall fairly present the financial condition of such organization.]

As used herein, the term "customer" means any person who, in accordance with the ordinary usage of the trade, would be considered a customer at the time of the request.]

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 Phlx 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 Phlx 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 rescind Exchange Rule 713, because it is obsolete.

Currently, Rule 713 provides that each member organization shall make available to any customer of such organization at his request a statement of its financial condition as of the date of its most recent answer to the financial questionnaire of the Exchange or as of a date subsequent thereto. The Exchange no longer utilizes the financial questionnaire referred to in Rule 713. Those member organizations that are required to provide annual audited financial statements currently do so pursuant to Rule 17a-5(c)⁶ under the Act, rather than Rule 713.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the

objectives of Section 6(b)(5) of the Act⁸ in particular, in that it is intended to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general it is intended to protect investors and the public interest by eliminating obsolete and outdated rules applicable to exchange member firms.

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

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

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act⁹ and Rule 19b-4(f)(6) thereunder¹⁰ because the proposed rule change (1) does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Phlx has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.¹¹ 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 the furtherance of the purposes of the Act.¹²

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ As required under Rule 19b-4(f)(6)(iii), the Phlx provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, on January 28, 2004.

¹² 15 U.S.C. 78s(b)(3)(C).

⁶ Amendment No. 1 contained a typographical error: Rule 17a-5(d) was referenced instead of Rule 17a-5(c). As a result of a telephone conversation between Commission staff and Mark I. Salvacion on April 1, 2004, Commission staff corrected the error without requiring that an amendment be filed.

⁷ 15 U.S.C. 78f(b).