

that are Phlx specialists, alternate specialists, or other Phlx floor members would become XLE Participants, including market makers, upon approval of XLE. This proposed rule change would amend the definition of margin member in SCCP's rules to add the term market maker<sup>7</sup> and to remove the word floor from the term Phlx floor member. This would allow SCCP members that are currently margin members under Rule 1 of SCCP's rules to maintain their status as margin members following Phlx's transition to XLE.

SCCP believes that the proposed rule change is consistent with Section 17A of the Act<sup>8</sup> because the proposed rule change is designed to allow current SCCP Margin Members to maintain their status as they transition from the current floor based trading environment on Phlx to an electronic trading system, XLE, and would thereby promote the prompt and accurate clearance and settlement of securities transactions and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance of securities transactions.

#### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

SCCP does not believe that the proposed rule change would 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*

No written comments were solicited or received.

### **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 self-regulatory organization consents, the Commission will:

(A) By order approve the 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. 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-SCCP-2006-02 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-SCCP-2006-02. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP and on SCCP's Web site at [http://www.phlx.com/SCCP/memindex\\_sccpproposals.html](http://www.phlx.com/SCCP/memindex_sccpproposals.html). 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-SCCP-2006-02 and should be submitted on or before October 20, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-15984 Filed 9-28-06; 8:45 am]

BILLING CODE 8010-01-P

## **DEPARTMENT OF TRANSPORTATION**

### **Surface Transportation Board**

[STB Finance Docket No. 34929]

#### **Jeffrey L. Sutch—Continuance in Control Exemption—SMS Rail Lines of New York, LLC**

Jeffrey L. Sutch (applicant) has filed a verified notice of exemption to continue in control of SMS Rail Lines of New York, LLC (SMSNY), upon SMSNY's becoming a Class III rail carrier.

The transaction was scheduled to be consummated on or after September 8, 2006.

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34928, *SMS Rail Lines of New York, LLC—Acquisition and Operation Exemption—Northeastern Industrial Park, Inc.* In that proceeding, SMSNY seeks to acquire by lease from Northeastern Industrial Park, Inc., and to operate approximately 15 miles of rail line in Albany County, NY.

Applicant is a noncarrier that currently controls SMS Rail Service, Inc. (SMSRS), a Class III rail carrier. Applicant states that: (1) The rail lines operated by SMSRS do not connect with the rail line being acquired by lease and operated by SMSNY; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail line being acquired by lease and operated by SMSNY with applicant's rail lines or with those of any other railroad within applicant's corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2). The purpose of the transaction is to allow applicant to continue in control of SMSNY after SMSNY becomes a Class III rail carrier.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve only Class III rail

<sup>7</sup> The proposed rule change File No. SR-Phlx-2006-43 would define the term "market maker" in Phlx Rule 1, Definitions, paragraph (m). It would also add new rules 170 through 174 to set forth the registration requirements, rights, and obligations of Phlx market makers.

<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34929, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Fritz R. Kahn, Fritz R. Kahn, PC, 1920 N St., NW., Eighth Floor, Washington, DC 20036-1601.

Board decisions and notices are available on our Web site at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided: September 22, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
Secretary.

[FR Doc. E6-16037 Filed 9-28-06; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### Release of Waybill Data

The Surface Transportation Board has received a request from Baker & Miller, on behalf of the University of Denver's Intermodal Transportation Institute (WB981-7/28/06), for permission to use certain data from the Board's 1987-2005 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565-1541.

**Vernon A. Williams,**  
Secretary.

[FR Doc. E6-16038 Filed 9-28-06; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### Release of Waybill Data

The Surface Transportation Board has received a request from Mayer, Brown, Rowe & Maw on behalf of The BNSF Railway Company (BNSF) (WB461-13-8/31/2006) for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565-1541.

**Vernon A. Williams,**  
Secretary.

[FR Doc. E6-16039 Filed 9-28-06; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### Release of Waybill Data

The Surface Transportation Board has received a request from Michael Behe representing FRN, LLC (WB604-4-7/6/06) for permission to use certain data from the Board's 2005 Carload Waybill Sample. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565-1541.

**Vernon A. Williams,**  
Secretary.

[FR Doc. E6-16041 Filed 9-28-06; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### Release of Waybill Data

The Surface Transportation Board has received a request from Schmeltzer, Aptaker & Shepard, P.C. on behalf of Trinity Industries, Inc. (WB605-2-7/28/2006) for permission to use certain data from the Board's 2005 Carload Waybill Sample. A copy of the requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565-1541.

**Vernon A. Williams,**  
Secretary.

[FR Doc. E6-16042 Filed 9-28-06; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34924]

#### Black Hills Transportation, Inc., d/b/a Deadwood, Black Hills & Western Railroad—Modified Rail Certificate

On August 30, 2006, Black Hills Transportation, Inc., d/b/a Deadwood, Black Hills & Western Railroad (DBHWR), filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C, *Modified Certificate of Public Convenience and Necessity*, to operate approximately 9.01 miles of rail line extending from milepost 0.0, at Whitewood, to milepost 9.01, at Deadwood, in Lawrence County, SD.

The line was formerly a portion of the Chicago & North Western Railway Company and was authorized for abandonment by the Interstate Commerce Commission in *Chicago & North Western Railway Co.—Abandonment—Lawrence County, SD*, Finance Docket No. 26079 (ICC served May 20, 1970). Although authorized for abandonment, the line was subsequently acquired by the State of South Dakota and ownership was