

reduction in the duration of the trading session is appropriate at this time.

In connection with the proposed rule change adopting Phlx Rule 101, the Exchange committed to make future filings under Section 19(b)(3)(A) of the Act<sup>7</sup> any time it expands or changes FCO trading hours in connection with Phlx Rule 101.<sup>8</sup> The Exchange intends to notify its membership of the change in trading hours for physical delivery FCOs by issuing a circular to members. The new trading hours for physical delivery FCOs will be in effect beginning February 4, 2008.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### 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 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>11</sup> and Rule 19b-4(f)(1)<sup>12</sup> thereunder, because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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 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 No. SR-Phlx-2008-09 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-Phlx-2008-09. 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 such filing also will 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 Number SR-Phlx-2008-09 and should be submitted on or before March 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

[Docket No. OST-2007-27407]

### National Surface Transportation Infrastructure Financing Commission

**AGENCY:** Department of Transportation (DOT).

**ACTION:** Notice of meeting location and time.

**SUMMARY:** This notice lists the location and time of the ninth meeting of the National Surface Transportation Infrastructure Financing Commission.

**FOR FURTHER INFORMATION CONTACT:** John V. Wells, Chief Economist, U.S. Department of Transportation, (202) 366-9224, [jack.wells@dot.gov](mailto:jack.wells@dot.gov).

**SUPPLEMENTARY INFORMATION:** By **Federal Register** Notice dated March 12, 2007, and in accordance with the requirements of the Federal Advisory Committee Act ("FACA") (5 U.S.C. App. 2) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU") (Pub. L. 109-59, 119 Stat. 1144), the U.S. Department of Transportation (the "Department") issued a notice of intent to form the National Surface Transportation Infrastructure Financing Commission (the "Financing Commission"). Section 11142(a) of SAFETEA-LU established the National Surface Transportation Infrastructure Financing Commission and charged it with analyzing future highway and transit needs and the finances of the Highway Trust Fund and with making recommendations regarding alternative approaches to financing surface transportation infrastructure.

### Notice of Meeting Location and Time

The Commissioners have agreed to hold their ninth meeting from 8:30 a.m. to 4 p.m. on Wednesday, March 5, 2008. The meeting will be open to the public and is scheduled to take place at the Department's headquarters building, located at 1200 New Jersey Avenue, SE., Washington, DC 20590, in Conference Room W82-302.

If you need accommodations because of a disability or require additional information to attend this meeting,

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> See Securities Exchange Act Release No. 26087 (September 16, 1988), 53 FR 36930 (September 22, 1988) (SR-Phlx-88-25).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>12</sup> 17 CFR 240.19b-4(f)(1).

please contact John V. Wells, Chief Economist, U.S. Department of Transportation, (202) 366-9224, [jack.wells@dot.gov](mailto:jack.wells@dot.gov).

**John V. Wells,**

*Chief Economist, U.S. Department of Transportation, Designated Federal Official.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2007-29320]

#### Operating Limitations at John F. Kennedy International Airport; Notice of Order

**AGENCY:** Department of Transportation, Federal Aviation Administration (FAA).

**ACTION:** Notice of Order.

**SUMMARY:** The Federal Aviation Administration (FAA) is amending the Order Limiting Scheduled Operations at John F. Kennedy International Airport that published in the **Federal Register** on January 18, 2008. This amendment corrects technical errors in the Order. Specifically, this amendment clarifies that the use-or-lose provisions of the Order will mirror the IATA Worldwide Scheduling Guidelines; changes the office within the FAA responsible for handling appeals from the Air Traffic Organization to the Office of the Chief Counsel; and provides for a five-day notification period in the event a carrier transfers an operation within a marketing code for irregular operations. This document also clarifies several aspects of the Order without substantively changing the applicable requirements.

#### FOR FURTHER INFORMATION CONTACT:

Rebecca MacPherson, Assistant Chief Counsel for Regulations, Office of the Chief Counsel, AGC-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3073.

**SUPPLEMENTARY INFORMATION:** On January 18, 2008 the FAA published the *Order Limiting Scheduled Operations at John F. Kennedy International Airport* (JFK) (Order) in the **Federal Register** (73 FR 3510). The Order establishes a temporary limitation on the number of scheduled operations at JFK. The Acting Administrator of the FAA issued the order as a result of a persistent number of flights above capacity at JFK during the peak operating hours. The FAA intends the Order, as amended today, to relieve the substantial inconvenience to

the traveling public caused by excessive congestion-related flight delays at the airport, which magnify as they spread through the National Airspace System. Among other things, the order will reduce the average length of delays and provide for a more efficient use of the nation's airspace. The order takes effect at 6 a.m., Eastern Time, on March 30, 2008, and will expire at 11:59 p.m., Eastern Time, on October 24, 2009. The limits apply to all air carrier and foreign air carrier scheduled operations, excluding helicopters, from 6 a.m., Eastern Time, through 10:59 p.m., Eastern Time.

This amendment corrects technical errors in the Order. Specifically, this amendment clarifies that the use-or-lose provisions of the Order will mirror the IATA Worldwide Scheduling Guidelines (WSG); changes the office within the FAA responsible for handling appeals from the Air Traffic Organization to the Office of the Chief Counsel; and provides for a five-day notification period in the event a carrier transfers an operation within a marketing code for irregular operations. This document also clarifies several aspects of the Order without substantively changing the applicable requirements.

#### Changes to the Order

##### *Use-or-Lose Provisions*

As noted in the preamble to the Order published in January 2008, the FAA will calculate use-or-lose based on the WSG. The use-or-lose provision articulated in the Order largely mirrored the approach we have historically taken under the High Density Rule (HDR)<sup>1</sup> and the orders limiting operations at Chicago O'Hare International Airport (ORD) and LaGuardia Airport (LGA). The requirement articulated in the Order was in error, and the language in paragraph nine of the Order has been amended to reflect the agency's intent.

Under a strict seasonal use-or-lose provision, an operation that did not commence until June, or ended in September, would be returned to the slot coordinator for reallocation for the following summer season because the slot would not be used at least 80% of the time. The WSG protects seasonal or newly initiated service by allowing the carrier to declare in advance the stop and start dates of service.

Under the WSG, carriers are required to inform the coordinator of their intended summer and winter operations by January 31 and August 31, respectively. Any operations not

declared by these dates are surrendered and are not given historical status for the subsequent applicable scheduling season. However, they also are not counted against a carrier's slot holdings when determining use-or-lose. Thus, if a carrier were to advise the FAA that it would commence operations on June 1, 2008 and cease those operations on August 31, the only timeframe for determining use-or-lose would be June 1 through August 31, even though the summer scheduling season runs from March 30 to October 25. Assuming the carrier conducted enough flights under an Operating Authorization (OA) in the June through August timeframe to receive historical recognition, it would be given the OA for summer 2009 from June 1 through August 31.

The FAA believes this approach has merit. A strict seasonal use-or-lose policy would require carriers to operate flights on the shoulders of a scheduling season just to assure they would not lose the related OA. This unnecessary service would have the effect of increasing congestion during the spring and fall.

Accordingly, we are amending the Order to specify that for purposes of use-or-lose and historical allocation for subsequent seasons, carriers must tell the FAA when a particular operation will start and stop. Because it is too late to meet the submission date specified in the WSG for summer 2008, carriers who wish to have less than the entire summer season subject to the use-or-lose provision must report usage for this upcoming summer by February 29, 2008. Carriers are encouraged to submit information on all service scheduled for summer 2009 by February 29, to assist the FAA in finalizing schedules as soon as possible. Notification to the FAA for winter 2008/2009 and summer 2009 schedules will follow the WSG. For purposes of the winter 2008/2009 scheduling season, historic usage rights will be determined by the appendix to the Order since there were no capacity restraints at JFK in the 2007 winter scheduling season. The FAA will receive initial schedule requests for the winter 2008/2009 scheduling season by the May 15 deadline and coordinate with carriers at the June 2008 IATA Schedules Conference.

Paragraph nine of the Order also requires carriers to report on usage within 14 days for every two-month reporting period. Since the WSG use-or-lose requirement applies to an entire scheduling season, there is no need for carriers to report to the FAA every two months. That requirement has been changed. First, the FAA does not believe it needs reports every two months. One

<sup>1</sup> 14 CFR part 93, subpart K.