

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51816; File No. SR-Phlx-2005-23)

June 9, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Retroactive Amendment of Exchange Rule 640(a) Pertaining to the Continuing Education Regulatory Element Requirement

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 April 15, 2005 the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I and II below, which Items have been prepared by Phlx. On May 10, 2005, the Exchange filed Amendment No. 1 to the proposed rule change to make the effective date of the proposed rule change April 4, 2005. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended from interested persons, and is approving the proposed rule change, as amended, on an accelerated basis.

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

The Phlx proposes to amend Phlx Rule 640(a) to eliminate all exemptions from the requirement to complete the Regulatory Element of the Continuing Education Program. Below is the text of the proposed rule change. Proposed new language is in *italics*. Proposed deletions are in [brackets].

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Continuing Education For Registered Persons

Rule 640. (a) Regulatory Element [--]

(1) Requirements--No member or participant organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of paragraph (a) of this Rule.

Each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their second registration anniversary date(s), and every three years thereafter or as otherwise prescribed by the Exchange. On each occasion[s], the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the "base date," shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the rule.

[(1) Persons who have been continuously registered for more than ten years as of the effective date of this Rule are exempt from the requirements of this rule relative to participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to any disciplinary action within the last ten years as enumerated in subparagraph (a)(3)(i) and (ii) of this Rule. However, persons delegated supervisory responsibility or authority pursuant to PHLX Rule 748 and registered in such supervisory capacity are exempt from participation in the Regulatory Element under this provision only if they have been continuously registered in a supervisory capacity for more than ten years as of the effective date of this rule

and provided such supervisory person has not been subject to any disciplinary action under paragraphs (a)(3)(i) and (ii) of this Rule.]

[In the event that a registered person who is exempt from participation in the Regulatory Element subsequently becomes the subject of a disciplinary action as enumerated in subsection (a)(3)(i) and (ii), such person shall be required to satisfy the requirements of the Regulatory Element as if the date the disciplinary action becomes final is the person's initial registration anniversary date.]

(2) No change.

(3) Disciplinary Actions [Re-entry into program]--Unless otherwise determined by the Exchange, a registered person will be required to re-take [re-enter] the Regulatory Element of the program and satisfy the program's requirements in their entirety in the event such person:

(i) becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934;

(ii) becomes subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(iii) is ordered as a sanction in a disciplinary action to re-take [re-enter] the Regulatory Element [continuing education program] by any securities governmental agency or securities self-regulatory organization.

The retaking of the Regulatory Element [Re-entry] shall commence with [initial] participation within 120 days of the registered person becoming subject to the statutory disqualification, in the

case of (i) above, or the disciplinary action becoming final, in the case of (ii) or (iii) above. The date that the disciplinary action becomes final will be deemed the person's new base date [of initial registration anniversary date] for purposes of this Rule.

(4) No change.

(b) No change.

Commentary

.01 No change.

.02 No change.

.03 Any registered person who has terminated association with a registered broker or dealer and who has, within two years of the date of termination, become reassociated in a registered capacity with a registered broker or dealer shall participate in the Regulatory Element at such intervals that may apply (second registration anniversary and every three years thereafter) based on the initial registration also known as the “base date”, anniversary date, rather than based on the date of reassociation in a registered capacity.

Any former registered person who becomes reassociated in a registered capacity with a registered broker or dealer more than two years after termination as such will be required to satisfy the program's requirements in their entirety, (second registration anniversary and every three years thereafter) based on the most recent registration date.

.04 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of, and basis for the proposed rule change, as amended and discussed any comments it had received on the proposed rule change as amended. The text of these statements may be examined at the places specified in Item III below. 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 Phlx represents that the purpose of the proposed rule change is to eliminate all exemptions from the Continuing Education Regulatory Element Program for registered representatives and, as such, to make Phlx Rule 640(a) consistent with applicable rules of other self-regulatory organizations ("SROs").³

Currently, Phlx Rule 640(a) sets forth the rules governing the requirements for registered representatives to participate in the Continuing Education Regulatory Element Program (the

³ See Securities Exchange Act Release Nos. 50404 (September 16, 2004), 69 FR 57126 (September 23, 2004); 50456 (September 27, 2004), 69 FR 59285 (October 4, 2004); 50557 (October 18 2004), 69 FR 62311 (October 25, 2004); and 50651 (November 10, 2004) 69 FR 67374 (November 17, 2004).

"Regulatory Element").⁴ The Regulatory Element is a computer-based education program administered by the National Association of Securities Dealers ("NASD") to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice matters in the industry.⁵ Unless exempt, each registered person is required to complete the Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date.⁶ There are three Regulatory Element programs: the S201 Supervisor Program for registered principals and supervisors, the S106 Series 6 Program for Series 6 representatives, and the S101 General Program for Series 7 and all other registrations.

According to the NASD, approximately 135,000 registered persons are exempt from the Regulatory Element. These include registered persons who, when the Continuing Education Program was adopted in 1995, had been registered for at least ten years and who did not have a

⁴ The Continuing Education Program also has a "Firm Element." See Phlx Rule 640(b). The Firm Element of the Continuing Education Program applies to any person registered with an NASD member firm who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, any person registered as a research analyst pursuant to NASD Rule 1050, and to the immediate supervisors of such persons (collectively called "covered registered persons"). The requirement stipulates that each member firm must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill and professionalism. Each firm has the requirement to annually conduct a training needs analysis, develop a written training plan, and implement the plan.

⁵ Phlx Rule 640(a)(4) permits a member firm to deliver the Regulatory Element to registered persons on firm premises ("In-Firm Delivery") as an alternative to having persons take the training at a designated center provided that firms comply with specific requirements relating to supervision, delivery site(s), technology, administration, and proctoring. In addition, Phlx Rule 640(a)(4)(E)(iii) requires that persons serving as proctors for the purposes of In-Firm Delivery must be registered.

⁶ This is the current Regulatory Element schedule, as amended in 1998.

significant disciplinary action⁷ in their CRD record for the previous ten years (so-called "grandfathered" persons). These also include those persons who had "graduated" from the Regulatory Element by satisfying their tenth anniversary requirement before July 1998, when Phlx Rule 640 was amended and the graduation provision eliminated, and who did not have a significant disciplinary action in their CRD record for the previous ten years.⁸

At its December 2003 meeting, the Securities Industry/Regulatory Council on Continuing Education ("Council")⁹ discussed the current exemptions from the Regulatory Element and agreed unanimously to recommend that the SROs repeal the exemptions and require all registered persons to participate in the Regulatory Element. In reaching this conclusion, the Council was of the view that there is great value in exposing all industry participants to the

⁷ For purposes of Phlx Rule 640(a), a significant disciplinary action generally means a statutory disqualification, a suspension or imposition of a fine of \$5,000 or more, or being subject to an order from a securities regulator to re-take the Regulatory Element. See Phlx Rule 640(a)(3).

⁸ When Phlx Rule 640 was first adopted in 1995, the Regulatory Element required registered persons to satisfy the Regulatory Element on the second, fifth, and tenth anniversary of their initial securities registration. After satisfying the tenth anniversary requirement, a person was "graduated" from the Regulatory Element. A graduated principal re-entered the Regulatory Element if he or she incurred a significant disciplinary action. A graduated person who was not a principal re-entered if he or she acquired a principal registration or incurred a significant disciplinary action.

⁹ As of the date of this filing, the Council consists of 17 individuals, six representing SROs, and 11 representing the industry. The Council was organized in 1995 to facilitate cooperative industry/regulatory coordination of the Continuing Education Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping to develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element, developing and updating information about the program for industry-wide dissemination, and maintaining the program on a revenue-neutral basis while assuring adequate financial reserves.

benefits of the Regulatory Element, in part because of the significant regulatory issues that have emerged over the past few years. The Regulatory Element programs include teaching and training content that is continuously updated to address current regulatory concerns as well as new products and trading strategies. Exempt persons currently do not have the benefit of this material.

In addition, the Council introduced a new content module to the Regulatory Element programs that specifically addresses ethics and requires participants to recognize ethical issues in given situations. Participants are required to make decisions in the context of, for example, peer pressure, the temptation to rationalize, or a lack of clear-cut guidance from existing rules or regulations. The Council strongly believes that all registered persons, regardless of their years of experience in the industry, should have the benefit of this training.

Consistent with the Council's recommendation, the proposed rule change to Phlx Rule 640(a) would eliminate the current Regulatory Element exemptions. The other SRO members of the Council also supported eliminating the exemptions and are pursuing amendments to their respective rules.

Phlx will announce the April 4, 2005 effective date of the proposed rule change in a notice to membership to be published upon approval of the proposed rule change by the Commission.¹⁰ Following approval of the proposed rule change, implementation will be based on the application of the existing requirements of the Regulatory Element (Phlx Rule 640(a)(1))

¹⁰ Telephone conversation between Edith H. Hallahan, Senior Vice President and Deputy General Counsel and Mia C. Zur, Attorney, Division of Market Regulation, Commission (June 7, 2005).

to all registered persons. The way in which CRD applies these requirements is as follows. CRD establishes a "base date" for each registered person and calculates anniversaries from that date. Usually, the base date is the person's initial securities registration. However, the base date may be revised to be the effective date of a significant disciplinary action in accordance with Phlx Rule 640(a)(3) or the date on which a formerly registered person re-qualifies for association with an NASD member by qualification exam. Using the base date, CRD creates a Regulatory Element requirement on the second anniversary of the base date and then every three years thereafter. Beginning on or after the effective date of the proposed rule change, registered persons formerly exempt from the Regulatory Element requirement must satisfy such requirement on the occurrence of a Regulatory Element base date anniversary (i.e., the second anniversary of the base date and every three years thereafter). (see examples in the Table below)

Registered Person	Initial Registration Date	First Regulatory Element Requirement Of A Registered Person Formerly Exempt From The Regulatory Element (assuming an effective date of April 4, 2005)
A	4/4/85 ¹¹	4/4/05
B	7/1/83	7/1/06

¹¹ A registered person with an initial registration date of April 4, 1985 will have a Regulatory Element anniversary date on April 4 of 1987, 1990, 1993, 1996, 1999, 2002 and 2005.

C	8/1/84	8/1/07
D	4/3/85	4/3/08

In addition, the proposed rule amendment would replace references in Phlx Rule 640(a)(3) to "re-entry" in the Regulatory Element with a requirement to "re-take" the Regulatory Element to clarify that the significant disciplinary action provisions apply to all registered persons and not only to currently exempt persons. A person's base date may also be revised to be the date on which a formerly registered person re-qualifies for association with a member or member firm.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6(c) of the Act,¹² in general and furthers the objectives of Section 6(c)(3)(B) of the Act,¹³ in particular, since under that section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations.

Additionally, under Section 6(c)(3)(B) of the Act,¹⁴ the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the

¹² 15 U.S.C. 78f(c).

¹³ 15 U.S.C. 78f(c)(3)(B).

¹⁴ Id.

rules of the Exchange. Pursuant to this statutory obligation, the Exchange is rescinding all currently effective exemptions from required participation in the Regulatory Element programs, as prescribed by Phlx Rule 640(a).

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

Phlx believes that the proposed rule change, as amended, does 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

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2005-23 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Phlx-2005-23. 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. Copies of the filing also will be available for inspection and copying at the principal offices of 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-2005-23 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Finding and Order Granting Accelerated Approval of Proposed Rule Change

The Commission find good cause pursuant to Section 19(b)(2) of the Act¹⁵ for approving the proposed rule change and Amendment No. 1 prior to the thirtieth day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to Phlx and, in particular, the requirements of Section 6(c)(3)(B) and the rules and regulations thereunder.¹⁶ After review the Commission finds that the proposed rule change is consistent with the requirements of Section 6(c)(3)(B) of the Act¹⁷ because under this section the Exchange must

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 15 U.S.C. 78f(b)(3)(B).

¹⁷ Id.

prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations.¹⁸ Specifically, the Commission believes that the proposed rule change should help to ensure that all registered persons are kept up-to-date on regulatory, compliance, and sales practice-related industry issues. The Commission also believes that the proposed rule change, as amended, will reinforce the importance of compliance with just and equitable principles of trade by exposing all registered industry participants to the full benefits of the Regulatory Element programs, which include a new Regulatory Element module that focuses specifically on ethics.

The Commission further believes that accelerating the approval of the proposed rule change and allowing for retroactive effectiveness of the Exchange's proposed rule change to April 4, 2005 is necessary to make Phlx rules consistent with respect to elimination of exemptions from the continuing education requirement and to have a consistent implementation date.¹⁹

Based on the above, the Commission believes that there is good cause, consistent with Section 19(b)(2) of the Act²⁰ to approve the proposal, as amended, on an accelerated basis.

¹⁸ In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁹ See infra, note 6.

²⁰ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-Phlx-2005-23) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Margaret H. McFarland
Deputy Secretary

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).