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May 20, 2011



By *Federal Express*

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: April 29, 2011 Petition for Rulemaking Filed by PennMont Securities

Dear Ms. Murphy:

I write on behalf of NASDAQ OMX PHLX, Inc. (the "Exchange").

It has come to the Exchange's attention that PennMont Securities ("PennMont") has filed with the Commission a Petition, dated April 29, 2011, requesting pursuant to 17 C.F.R. § 201.192 that the Commission amend Exchange Rule 651. PennMont has aired the concerns set forth in the Petition (both as to the substance of the Rule and its manner of adoption) time and again with the Commission and the federal courts since the Exchange adopted the Rule in 2004, and in each instance PennMont's concerns have been rejected.¹

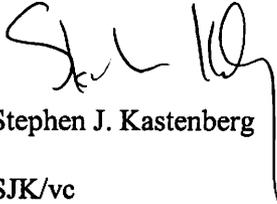
¹ The Commission and the federal courts have addressed Rule 651 in: In re PennMont Securities, Exch. Act Rel. No. 61967, 2010 WL 1638720 (April 23, 2010) (dismissing PennMont's application for review of the Exchange's enforcement of Rule 651 against PennMont), *pet. for review denied*, No. 10-2375, slip. op., 2011 WL 658560 (3d Cir. Feb. 24, 2011); Penn Mont Securities v. Frucher, 534 F.Supp.2d 538 (E.D. Pa. 2008) (dismissing PennMont's challenge of Exchange's enforcement of Rule 651), *vacated*, 586 F.3d 242, 243 (3d Cir. 2009) (vacating District Court decision with instructions to dismiss on other grounds), *cert. denied*, 130 S. Ct. 1698 (2010); In re Feinberg, Exch. Act. Rel. No. 59577, 2009 WL 649659 (March 13, 2009) (finding that Rule 651 did not apply to an insider trading case brought by a PennMont partner because that case did not relate to the business of the Exchange); In re Gage, Exch. Act Rel. No. 54600, 2006 WL 2987058, at *3 n.16, *5, *6 n.45 (Oct. 13, 2006) (dismissing an Exchange member's appeal concerning the Exchange's adoption of Rule 651 and finding that the rule was "consistent with existing precedent and [presented] no novel issues"); and Self-Regulatory Organizations, Philadelphia Stock Exchange, Inc., Notice Of Filing And Immediate Effectiveness Of Proposed Rule Change Relating To Legal Fees Incurred By The Exchange, Exch. Act Rel. No. 50159, 2004 WL 2049378 (Aug. 5, 2004) (finding

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Accordingly, unless the Commission requires further comment or elaboration, the Exchange requests that the Commission decline to take the requested actions for the reasons already explained by the Commission and courts.

Sincerely,

A handwritten signature in black ink, appearing to read "SJK", with a vertical line extending downwards from the end of the signature.

Stephen J. Kastenberg

SJK/vc

that Rule 651 was “consistent with existing precedent and [presented] no novel issues,” and thus designating Rule 651 as “effective and operative upon filing with the Commission”). In addition, during the 60-day period during which the Commission may summarily abrogate effective-upon-filing rules, PennMont, through one of its principals, raised a number of PennMont’s current concerns, and the Commission declined to take any action with respect to the rule. *See* Letter from R. Feinberg to Commission, dated Sept. 24, 2004, available on the Commission’s website at <http://www.sec.gov/rules/sro/phlx/phlx200447/rbfeinberg5223.htm>. The Exchange would be pleased to provide copies of any of the foregoing upon request.