

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62509; File No. SR-Phlx-2010-91)

July 15, 2010

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc., as Modified by Amendment No. 1 Thereto, Relating to Registration and Qualification Requirements for PSX

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 June 29, 2010, NASDAQ OMX PHLX, 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 Exchange. On July 13, 2010, Phlx filed Amendment No. 1 to the proposed rule change. 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 Exchange, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ proposes to amend Rule 604 to adopt several new provisions governing the registration and qualification of members and persons associated with member organizations that are registered with the Exchange for the purpose of trading NMS Stocks⁵ through the facilities of the Exchange. Specifically, the Exchange proposes to adopt Rule 604(h) to govern the registration of representatives and Supplementary Material .04 to Rule 604 regarding the category of such

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ See Rule 1(t).

registration. In addition, with respect to principal registration, the Exchange proposes to adopt Rule 604(g), Principal Registration, and Supplementary Material .01 - .03 governing the specific categories of principal registration, to require that every member organization covered by these rules have at least two registered Principals as well as a Financial/Operations Principal. The Exchange also proposes to adopt Rule 604(i) to establish which persons are exempt from registration.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, on the Commission's Web site at <http://www.sec.gov>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 Exchange 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 Exchange 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 adopt new registration provisions applicable to member organizations that are registered with the Exchange for the purpose of trading NMS Stocks through the facilities of the Exchange. Thus, these new provisions would cover members that trade on the Exchange's proposed new equity trading platform for NMS

Stocks, NASDAQ OMX PSX (“PSX”).⁶ The proposed rules are substantially similar to the rules of The NASDAQ Stock Market, FINRA and NASDAQ OMX BX. As a result of the change, PSX users will be required to register representatives and principals with the Exchange in accordance with such rules. All such registered persons will be required to pass an appropriate qualification examination, as outlined below, all of which will be recorded in WebCRD. In sum, these new rules are intended to strengthen the Exchange’s requirements to help ensure an effective supervisory structure for those conducting business on PSX.⁷

Representative Registration

New Rule 604(h) will govern the registration of representatives⁸ with the Exchange. Specifically, new Rule 604(h)(1) will require that all persons engaged or to be engaged in the investment banking or securities business⁹ of a member organization who are to function as

⁶ See SR-Phlx-2010-79. PSX will not be used for trading any securities other than NMS Stocks. Existing rules would continue to govern registration of associated persons of member organizations that trade options but not cash equities through Phlx. Phlx will, at a later date, amend these rules to reflect consistent registration standards being developed by Phlx and other self-regulatory organizations in consultation with the Commission.

⁷ Currently, Rule 748, Supervision, establishes the supervisory requirement for member organizations, including that all locations and activities of a member organization be supervised by a qualified supervisor. Accordingly, the new principal registration requirement in proposed Rule 604(g) supplements this rule.

⁸ The term "representative" will now be defined in Rule 1 as a member or an associated person of a registered broker or dealer, including assistant officers other than principals, who is engaged in the investment banking or securities business for the member organization including the functions of supervision, solicitation or conduct of business in securities or who is engaged in the training of persons associated with a broker or dealer for any of these functions. To the extent provided in Rule 604, all representatives are required to be registered with the Exchange, and representatives that are so registered are referred to herein as "Registered Representatives." See proposed Rule 1(uu).

⁹ The term “investment banking or securities business” means the business, carried on by a broker or dealer, of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others. See proposed Rule 1(ww). Of course, the federal securities laws may require broker-dealers to become members of the

representatives shall be registered as such with the Exchange through WebCRD in the category of registration appropriate to the function to be performed as specified in Supplementary Material .04. Before their registration can become effective, they shall pass the Series 7 examination.

The rule also provides that a member organization shall not maintain a representative registration with the Exchange for any person (1) who is no longer active in the member organization's investment banking or securities business, (2) who is no longer functioning as a representative, or (3) where the sole purpose is to avoid the examination requirement. A member organization shall not make application for the registration of any person as representative where there is no intent to employ such person in the member organization's investment banking or securities business. A member may, however, maintain or make application for the registration as a representative of a person who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the member organization, or a person who performs administrative support functions for registered personnel, or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member organization. This provision is intended to ensure that firms register only those persons to whom the requirement is pertinent.

Pursuant to new paragraph (h)(2) of Rule 604, any person whose registration has been revoked by the Exchange as a disciplinary sanction or whose most recent registration as a Representative or Principal has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application shall be required to pass the

Financial Industry Regulatory Authority (“FINRA”) in order to perform some of these functions. See e.g., 15 U.S.C. 78o(b)(8).

Series 7 examination. This provision is intended to ensure that, in these situations, persons are subject to retesting to assure proper qualification.

Furthermore, new Rule 604(h)(3), Qualification Requirements, states that no member organization shall permit any member or person associated with it¹⁰ to engage in the investment banking or securities business unless the member organization determines that such person satisfies the qualification requirements established by the Board and is not subject to statutory disqualification as defined in Section 3(a)(39) of the Act. Thus, firms are responsible for compliance with this registration requirement for their relevant employees.

New Supplementary Material .04 to Rule 604 contains the basic requirement¹¹ that each member and each person associated with a member organization who is included within the definition of a representative in Rule 1(uu) shall be required to register with the Exchange as a General Securities Representative and shall pass the Series 7 examination before such registration may become effective.¹² The appropriate registration category on WebCRD is “GS.”

This provision is intended to capture traditional securities personnel in a rule similar to that of several other SROs.¹³ The Exchange believes that the requirement is broad and should

¹⁰ The term “associated person” or “person associated with” a member organization means any partner, officer, director, or branch manager of an Exchange member organization or applicant (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member organization or applicant, or any employee of such member or applicant, except that any person associated with a member organization or applicant whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of the Exchange Rules. See proposed Rule 1(vv).

¹¹ This provision is the same as NASDAQ OMX BX Rule 1032.

¹² The Exchange is not currently adopting any limited registration provisions, but may determine to do so in the future.

¹³ See e.g., NASDQ [sic] OMX BX Rules 1031 and 1032, NASDAQ Rules 1031 and 1032, and NASD Rules 1031 and 1032.

not generate gaps that permit a member organization to operate differently than under the registration rules of NASDAQ OMX BX, The NASDAQ Stock Market or FINRA.

Principal Registration

In summary, new Rule 604(g)¹⁴ will provide that every member organization must register two Principals with the Exchange,¹⁵ unless an exception applies. As a result, each Principal must successfully complete the General Securities Principal Examination (“Series 24”) and submit a Form U4 via WebCRD reflecting registration as such, using the category “GP,” unless a different category of Principal registration applies to such person.

Specifically, Rule 604(g)(1) provides that all persons engaged or to be engaged in the investment banking or securities business of a member organization who are to function as Principals shall be registered as such with the Exchange through WebCRD in the category of registration appropriate to the function to be performed as specified in new Supplementary Material .01 - .03 of Rule 604. Before their registration can become effective, they shall pass a Qualification Examination for Principals appropriate to the category of registration as specified by the Board, which is further explained below, in proposed Supplementary Material .01 - .03 to Rule 604.

Rule 604(g)(1) further provides that a member organization shall not maintain a Principal registration with the Exchange for any person (1) who is no longer active in the member organization's investment banking or securities business, (2) who is no longer functioning as a Principal, or (3) where the sole purpose is to avoid the examination requirement of this rule. A member organization shall not make application for the registration of any person as Principal

¹⁴ This new rule is similar to NASDAQ Rule 1021, NASDAQ OMX BX Rule 1021 and NASD Rule 1021.

¹⁵ All persons who engage in specified supervisory functions will be registered as Principals.

where there is no intent to employ such person in the member organization's investment banking or securities business. A member organization may, however, maintain or make application for the registration as a Principal of a person who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the member organization or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member organization. Similar to a provision in proposed Rule 604(h)(1) above applicable to registered representatives, this provision is intended to ensure that firms register only those persons to whom the requirement is pertinent.

New Rule 604(g)(2) states that persons associated with a member organization who are actively engaged in the management of the member organization's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member organization for any of these functions are designated as Principals. Such persons shall include: sole proprietors, officers, partners, managers of offices of supervisory jurisdiction,¹⁶ and directors of corporations.

New Rule 604(g)(3), Requirements for Examination on Lapse of Registration, states that any person whose registration has been revoked by the Exchange as a disciplinary sanction or

¹⁶ The Exchange is defining this term to mean any office of a member organization at which any one or more of the following functions take [sic] place: order execution and/or market making; structuring of public offerings or private placements; maintaining custody of customers' funds and/or securities; final acceptance (approval) of new accounts on behalf of the member organization; review and endorsement of customer orders; final approval of advertising or sales literature for use by persons associated with the member organization, pursuant to Rule 605, except for an office that solely conducts final approval of research reports; or responsibility for supervising the activities of persons associated with the member organization at one or more other branch offices of the member organization. This definition is drawn from NASD Rule 3010. The Exchange is adopting the reference to this term in order to cover these managers in the new principal registration requirement. The Exchange is not, at this time, adopting a comprehensive program with regard to such offices, such as that found in NASD Rule 3010.

whose most recent registration as a Principal has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application shall be required to pass a Qualification Examination for Principals appropriate to such person's category of registration. This is similar to the provision applicable to registered representatives and is intended to ensure that persons' qualifications are properly tested.

Pursuant to new Rule 604(g)(4), Application for Principal Status, any person associated with a member organization as a Registered Representative whose duties are changed by the member organization so as to require registration in any Principal classification shall be allowed a period of 90 calendar days following the change in his or her duties during which to pass the appropriate Qualification Examination for Principals. Upon elevation, the member organization shall submit to the Exchange an amended "Uniform Application for Securities Industry Registration or Transfer" and any applicable fees. In no event may a person function as a Principal beyond the initial 90 calendar day period following the change in his or her duties without having successfully passed the appropriate Qualification Examination. This provision shall apply to a person: (i) associated with a member organization of another registered national securities exchange or association who is required to register in a Principal classification under Exchange Rules but who is not required to be so registered under the rules of the other exchange or association; and (ii) associated with a member organization who was not required to register with the Exchange as a Principal prior to the adoption of this Rule 604(g) by the Exchange. This provision is intended to be a catch-all to cover persons who become subject to Principal registration rules for different reasons, whether a job change or a change in exchange rules.

Further, any person not presently associated with a member organization as a Registered Representative seeking registration as a Principal shall submit the appropriate application for

registration and any required registration and examination fees, pursuant to new Rule 604(g)(4)(B). Such person shall be allowed a period of 90 days after all applicable prerequisites¹⁷ are fulfilled to pass the appropriate Qualification Examination for Principals. In no event may a person previously unregistered in any capacity applying for Principal status function as a Principal until fully qualified.

New Rule 604(g)(5) contains a requirement of at least two Registered Principals.¹⁸ Specifically, an Exchange member organization, except a sole proprietorship, shall have at least two officers or partners who are registered as Principals with respect to each aspect of the member organization's investment banking and securities business pursuant to the applicable provisions of Rule 604(g); provided, however, that a proprietary trading firm with 25 or fewer registered representatives shall only be required to have one officer or partner who is registered as a Principal. This exception to the two Principal requirement is similar to that of several other exchanges and reflects that such firms do not necessitate the same level of supervisory structure as firms who have customers or larger firms.

The term “proprietary trading firm” means a member organization or applicant with the following characteristics: (A) the applicant is not required by Section 15(b)(8) of the Exchange Act to become a FINRA member but is a member of another registered securities exchange not registered solely under Section 6(g) of the Exchange Act; (B) all funds used or proposed to be used by the applicant for trading are the applicant's own capital, traded through the applicant's own accounts; (C) the applicant does not, and will not have customers; and (D) all Principals and

¹⁷ Principals are subject to prerequisite registration and qualification requirements pursuant to proposed Rule 604(h).

¹⁸ All persons who engage in specified supervisory functions must be registered as Principals.

Representatives of the applicant acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the applicant.

The rule also provides that the Exchange may waive the two Principal requirement in situations that indicate conclusively that only one person should be required to register as a Principal. This provision is identical to that of several other exchanges, and the Exchange believes that such waiver is appropriate in certain situations, but should be carefully applied; for example, the Exchange may determine to apply this provision to a very small firm, with only a few employees in one location.

In addition, the Exchange proposes to adopt a requirement that certain member organizations register a Limited Principal – Financial and Operations, or FINOP, as described below. Specifically, pursuant to new Rule 604(g)(5)(C), an applicant for membership shall have at least one person qualified for registration as a FINOP, which is described in detail below.

To help determine how specifically a person should register as a Principal, the Exchange is proposing to adopt Supplementary Material .01 - .03 to Rule 604 to enumerate the three categories of Principal registration. First, Rule 604.01 provides that each member or person associated with a member organization to which Rule 604(g) applies and who is included within the definition of Principal in Rule 604(g), and each person designated as a Chief Compliance Officer on Schedule A of Form BD of a member organization to which Rule 604(g) applies shall be required to register with the Exchange as a General Securities Principal and shall pass the Series 24 examination before such registration may become effective unless such person's activities are so limited as to qualify such person for one or more of the limited categories of Principal registration specified hereafter.¹⁹ A person whose activities in the investment banking

¹⁹ However, pursuant to proposed Rule 604.01(c), a person registered solely as a General

or securities business are so limited is not, however, precluded from attempting to become qualified for registration as a General Securities Principal, and if qualified, may become so registered. The Exchange believes that offering these categories of Principal registration, including limited Principal registration, should help ensure that Principals are properly qualified.

Each person seeking to register and qualify as a General Securities Principal must, prior to or concurrent with such registration, become registered either as a General Securities Representative or as a Limited Representative—Corporate Securities. A person who has been designated as a Chief Compliance Officer on Schedule A of Form BD for at least two years immediately prior to January 1, 2002, and who has not been subject within the last ten years to any statutory disqualification as defined in Section 3(a)(39) of the Act; a suspension; or 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, shall be required to register as a General Securities Principal, but shall be exempt from the requirement to pass the Series 24 examination.²⁰

Secondly, in addition to the basic Principal requirement, the Exchange also proposes to adopt as new Rule 604.02 a requirement that each member organization of the Exchange that is subject to Rule 604(g) and that is operating pursuant to the provisions of SEC Rule 15c3-

Securities Principal shall not be qualified to function as a FINOP or a Limited Principal – General Securities Sales Supervisor unless that person is also qualified and registered as such.

²⁰ In addition, except as provided in Rule 604(g)(3), a person who was registered with FINRA as a Principal, shall not be required to pass the Series 24 examination and shall be qualified as a General Securities Principal. See proposed Rule 604.01(b).

1(a)(1)(ii), (a)(2)(i) or (a)(8), designate as Limited Principal—Financial and Operations (“FINOP”) those persons associated with it, at least one of whom shall be its chief financial officer, who perform the following duties: final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; final preparation of such reports; supervision of individuals who assist in the preparation of such reports; supervision of and responsibility for individuals who are involved in the actual maintenance of the member organization's books and records from which such reports are derived; supervision and/or performance of the member organization's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act; overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member organization's back office operations; or any other matter involving the financial and operational management of the member organization. Each FINOP must register with the Exchange and pass the Series 27 examination. This provision is intended to ensure that persons handling the financial affairs of a firm are properly registered and qualified.

Third, the Exchange also proposes to adopt a limited Principal requirement in new Rule 604.03, Limited Principal – General Securities Sales Supervisor, to provide that each person associated with a member organization who is included in the definition of Principal in Rule 604(g) may register with the Exchange as a Limited Principal—General Securities Sales Supervisor, or “SU,” if: (A) his or her supervisory responsibilities in the investment banking and securities business are limited to the securities sales activities of a member organization, including the training of sales and sales supervisory personnel and the maintenance of records of original entry and/or ledger accounts of the member organization required to be maintained in branch offices by SEC record keeping rules; (B) he or she is registered pursuant to Exchange

Rules as a General Securities Representative; and (C) he or she is qualified to be so registered by passing an appropriate examination, which is the Series 9 or 10. Nevertheless, Rule 604.03(b) provides that a person registered in this category solely on the basis of having passed the Series 9 or 10 examination shall not be qualified to: function in a Principal capacity with responsibility over any area of business activity not described above; be included for purposes of the Principal numerical requirements of Rule 604(g)(5); or perform for a member organization any or all of the following activities: (i) supervision of the origination and structuring of underwritings; (ii) supervision of market making commitments; (iii) final approval of advertisements as these are defined in Rule 605; (iv) supervision of the custody of firm or customer funds and/or securities for purposes of SEC Rule 15c3-3; or (v) supervision of overall compliance with financial responsibility rules for broker/dealers promulgated pursuant to the provisions of the Act.

In order to make clear how this category of limited Principal registration operates, the Exchange proposes to adopt an explanation in subparagraph (c) to Supplementary Material .03 to state that the Limited Principal—General Securities Sales Supervisor is an alternate category of registration designed to lessen the qualification burdens on principals of general securities firms who supervise sales. Without this category of limited registration, such principals could be required to separately qualify pursuant to the rules of multiple exchanges. While persons may continue to separately qualify with all relevant SROs, the Limited Principal—General Securities Sales Supervisor Examination permits qualification as a supervisor of sales of all securities by one examination. Persons registered as Limited Principals—General Securities Sales Supervisor may also qualify in any other category of principal registration. Persons who are already

qualified in one or more categories of principal registration may supervise sales activities of all securities by also qualifying as Limited Principals—General Securities Sales Supervisor.²¹

The explanation in subparagraph (c) further spells out the functions that may be performed by Limited Principals—General Securities Sales Supervisors, as well as the functions that may not,²² emphasizing that such Principal may supervise only sales activities. The commentary also states that qualification as a General Securities Representative is a prerequisite for registration as a Limited Principal—General Securities Sales Supervisor, and that persons qualified only as Limited Principals—General Securities Sales Supervisor are not included for purposes of the two principals requirements of Rule 604(g)(5). The Exchange believes that this category of principal registration should be useful to persons whose supervisory functions are limited in this way and should help ensure that such persons are properly qualified for those functions.

In total, these principal registration requirements are new to the Exchange, although various other supervisory rules currently operate, such as Phlx Rule 748. The Exchange believes that the proposed new principal registration requirement, particularly the General Securities Principal category, should strengthen the framework of supervisory rules that will apply to Exchange member organizations doing business on PSX.

²¹ As stated above, a person registered solely as a General Securities Principal shall not be qualified to function as a Limited Principal—Financial and Operations or Limited Principal—General Securities Sales Supervisor unless that person is also qualified and registered as such. See proposed Rule 604.01(c).

²² These include supervisory responsibility for the origination and structuring of underwritings, market-making, final approval of advertising, custody of firm or customer funds and/or securities for purposes of SEC Rule 15c3-3 and overall compliance with financial responsibility rules for broker/dealers.

Other Rules

The Exchange proposes to adopt new Rule 604(i), Persons Exempt from Registration, to state that the following persons associated with a member organization are not required to be registered with the Exchange: (1) persons associated with a member organization whose functions are solely and exclusively clerical or ministerial; (2) persons associated with a member organization who are not actively engaged in the investment banking or securities business; (3) persons associated with a member organization whose functions are related solely and exclusively to the member organization's need for nominal corporate officers or for capital participation; and (4) persons associated with a member organization whose functions are related solely and exclusively to: (A) effecting transactions on the floor of another national securities exchange and who are registered as floor members with such exchange; (B) transactions in municipal securities; (C) transactions in commodities; (D) transactions in security futures, provided that any such person is registered with FINRA or a registered futures association; (E) transactions in variable contracts and insurance premium funding programs and other contracts issued by an insurance company; (F) transactions in direct participation programs; (G) transactions in government securities; or (H) effecting sales as part of a primary offering of securities not involving a public offering pursuant to Section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder. These registration exemptions are intended to make clear that registration of certain, specific persons is not necessary and is based on exemptions contained in, for example, NASDAQ Rule 1060 and NASDAQ OMX BX Rule 1060. Furthermore, the persons described in (E) through (H) immediately above²³ are covered within the proposed new definitions in Rule 1(uu)-(ww) thereby triggering the Series

²³ This correlates to proposed Rule 604(i)(D)(v)-(viii).

7/Registered Representative requirement in proposed new Rule 604(h); the registration of such persons would inadvertently result in a Series 7/Registered Representative requirement on the Phlx for persons who, under FINRA rules, rather than the Series 7/Registered Representative category, register in that specific, limited capacity in categories not available in WebCRD for Phlx registrants.²⁴ Of course, the federal securities laws may require broker-dealers to become members of FINRA in order to perform these functions.²⁵ Thus, the Exchange believes that these registration exemptions are appropriate and any applicable FINRA registration requirements would continue to apply to firms that are members/member organizations of both Phlx and FINRA.

Rule 604(i)(2) provides that member organizations, and persons associated with a member organization, may pay to nonregistered foreign persons transaction-related compensation based upon the business of customers they direct to member organizations under certain conditions detailed in the rule. This provision is intended to cover the payment of fees to finders.²⁶

Rule 604(j) provides that the Exchange may, in exceptional cases and where good cause is shown, waive the applicable Qualification Examination and accept other standards as evidence of an applicant's qualifications for registration. Advanced age or physical infirmity will not individually of themselves constitute sufficient grounds to waive a Qualification Examination. Experience in fields ancillary to the investment banking or securities business may constitute

²⁴ Specifically, the IR/Series 6, DR/Series 22, RG/Series 72 and PR/Series 82 categories are not available to Phlx, as well as many other exchanges, through WebCRD.

²⁵ See e.g., 15 U.S.C. 78o(b)(8).

²⁶ This provision is identical to NASDAQ Rule 1060(b) and NASDAQ OMX BX Rule 1060(b).

sufficient grounds to waive a Qualification Examination. The rule is based on corresponding rules of FINRA, NASDAQ and NASDAQ OMX BX.

Lastly, the Exchange proposes to amend Rule 640, Continuing Education For Registered Persons, to delete reference to “XLE” from Commentary .01. Currently, Commentary .01 provides that, for purposes of this Rule, the term "registered person" means any member, registered representative or other person registered or required to be registered under Exchange rules, but does not include such person whose activities are limited solely to the transaction of business on the floor or XLE, with members or registered broker-dealers. XLE was the Exchange’s old trading system for NMS Stocks, which ceased operations in 2008.²⁷ Accordingly, the Exchange is removing reference to that system; any new trading system for NMS Stocks, such as the Exchange’s proposed PSX System, would not be exempt, such that registered persons would be subject to the continuing education requirements of Rule 640.

Conclusion

The Exchange believes that these proposed new rules should form a solid framework for registration with respect to PSX.²⁸ As a result of the new registration requirements, additional persons will become subject to the Exchange’s continuing education requirement in Rule 640. The Exchange believes that the new requirements will cover the scope of persons who do business on PSX and should provide a solid framework for Representative and Principal

²⁷ See Securities Exchange Act Release No. 58613 (September 22, 2008), 73 FR 57181 (October 1, 2008) (SR-Phlx-2008-65).

²⁸ The Exchange intends to separately revise its registration and qualification rules related to activity other than business conducted on PSX, including its options business. The Exchange understands that other self-regulatory organizations are expected to adopt a framework that requires more fulsome registration and qualification requirements clearly spelled out in rules. The Exchange supports the Commission’s commitment to ensure that such rules are adopted by all self-regulatory organizations on a consistent basis.

registration and qualification. The proposal specifies which qualification examinations are required for each category of registration.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act²⁹ in general, and furthers the objectives of : (1) Section 6(c)(3)(B) of the Act,³⁰ pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons; and (2) Section 6(b)(5) of the Act,³¹ in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, 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, by adopting provisions requiring principals to register and pass qualification examinations and by enhancing the registration requirements covering persons trading NMS Stocks through the facilities of the Exchange.

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.

²⁹ 15 U.S.C. 78f(b).

³⁰ 15 U.S.C. 78f(c)(3)(B).

³¹ 15 U.S.C. 78f(b)(5).

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 Exchange consents, the Commission shall: (a) by order approve such 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. Please include File No. SR-Phlx-2010-91 on the subject line.

Paper comments:

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

All submissions should refer to File No. SR-Phlx-2010-91. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office 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 No. SR-Phlx-2010-91 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Florence E. Harmon
Deputy Secretary

³² 17 CFR 200.30-3(a)(12).