

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95219; File No. SR-Phlx-2022-28)

July 7, 2022

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx’s General 3 Membership Rules

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 June 27, 2022, Nasdaq PHLX LLC (“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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to delete the Exchange’s membership rules currently under Phlx General 3 (Membership and Access), and incorporate by reference The Nasdaq Stock Market LLC’s (“Nasdaq”) rules in the General 3 Rule 1000 Series, and make other related changes. The Exchange also proposes to relocate some rules currently within Phlx General 3 to General 2, Organization and Administration, Sections 10, 11, 23 and 24; Equity 2, Market Participants, Section 3; and Options 2, Options Market Participants, Section 2.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

General 3 of Phlx’s General Equity and Option Rules and Nasdaq’s General 3, Rules 1000 Series prescribe the qualifications and procedures for applying for membership, respectively, on Phlx and Nasdaq. Phlx proposes to delete in their entirety the rules under its General 3 title, entitled “Membership and Access,” and incorporate by reference the Nasdaq General 3, Rules 1000 Series (the “Nasdaq Rule 1000 Series” or “Nasdaq Membership Rules”) as described below.³

The Exchange also proposes to relocate some rules currently within Phlx General 3 to General 2, Organization and Administration, Sections 10, 11, 23 and 24; Equity 2, Market Participants, Section 3; and Options 2, Options Market Participants, Section 2. This proposal is part of the Exchange’s plan to harmonize its membership rules with the membership rules of Nasdaq, Nasdaq BX, Inc. (“BX”), Nasdaq GEMX, LLC (“GEMX”), Nasdaq MRX, LLC

³ The Exchange will separately request an exemption from the rule filing requirements of Section 19(b) of the Act for changes to General 3 to the extent such changes are affected solely by virtue of a change to the Nasdaq Rule 1000 Series. The Exchange’s proposed rule change will not become effective unless and until the Commission approves this exemption request.

(“MRX”), and Nasdaq ISE, LLC (“ISE”) exchanges (collectively the “Affiliated Exchanges”). The Exchange notes that the Affiliated Exchanges have made amendments to their membership rules that made their rules substantially similar to those of Nasdaq.⁴ To account for any differences that may exist between Phlx’s General 3 Rules and Nasdaq’s General 3 Rules, the proposed introductory paragraph lists instances in which cross references in the Nasdaq Series 1000 Rules to other Nasdaq rules shall be read to refer instead to the Exchange Rules, and references to Nasdaq terms (whether or not defined) shall be read to refer to the Exchange-related meanings of those terms. Specifically, references to defined terms “Exchange” or “Nasdaq” shall be read to refer to the Phlx Exchange; “Rule” or “Exchange Rule” shall be read to refer to the Exchange Rules; the defined term “Applicant” in the Nasdaq Rule 1000 Series shall be read to refer to an Applicant of the Phlx Exchange; the defined terms “Board” or “Exchange Board” in the Nasdaq Rule 1000 Series shall be read to refer to the Phlx Board of Directors; the defined term “Director” in the Nasdaq Rule 1000 Series shall be read to refer to a Director of the Board of the Phlx Exchange; the defined term “Exchange Review Council” in the Nasdaq Rule 1000 Series shall be read to refer to the Phlx Exchange Review Council; the defined term “Subcommittee” in the Nasdaq Rule 1000 Series shall be read to refer to a Subcommittee of the Phlx Exchange Review Council; the defined term “Interested Staff” in the Nasdaq Rule 1000 Series shall be read to refer to Interested Staff of Phlx; the defined term “Member” in the Nasdaq Rule 1000 Series shall be read to refer to a Phlx member (as defined

⁴ The Affiliated Exchanges’ membership rules were previously amended to incorporate by reference Nasdaq’s membership rules. See Securities Exchange Act Release Nos. 86425 (July 22, 2019), 84 FR 36139 (July 26, 2019) (SR-BX-2019-022); 90903 (January 12, 2021), 86 FR 5284 (January 19, 2021) (SR-ISE-2020-43); 91672 (April 26, 2021), 86 FR 23001 (April 30, 2021) (SR-GEMX-2021-02); and 91674 (April 26, 2021), 86 FR 23013 (April 30, 2021) (SR-MRX-2021-03).

under Phlx General 1, Section 1(16)) or member organization (as defined under Phlx General 1, Section 1(17)); the defined terms “Lead Market Maker” or “Market Maker” shall be read to refer to a Nasdaq Phlx Associated Person; the defined term “Associated Person” shall be read to refer to a Phlx Associated Person or Person Associated with a member organization (as defined under Phlx General 1, Section 1(2)); the defined terms “Exchange Membership Department” or “Membership Department” shall be read to refer to the Phlx Membership Department; and the defined term “Exchange Regulation Department” shall be read to refer to the Phlx Regulation Department.

Additionally, cross references in the Nasdaq Rule 1000 Series to “General 1 and Equity 1” shall be read as references to Phlx General 1, Section 1; cross references in the Nasdaq Rule 1000 Series to “General 9, Section 20” shall be read as references to Phlx General 9, Section 20 and Phlx Supplementary Material .01 of Options 10, Section 5; cross references in the Nasdaq Rule 1000 Series to “General 9, Section 37” shall be read as references to Phlx General 9, Section 37; and cross references to the “General 4, Rule 1200 Series” shall be read as references to Phlx General 4, Section 1.⁵

As compared to the Exchange’s existing General 3, by virtue of incorporating by reference the Nasdaq Membership Rules into the Exchange’s rulebook, the Exchange’s membership rules will be organized in a more logical order. The incorporated rules will eliminate unnecessary or vague provisions that exist under the current General 3 title, eliminate

⁵ The Exchange notes that its General 4 title (entitled “Registration Requirements”) currently incorporates by reference the rules contained in Nasdaq’s General 4 title. See Securities Exchange Act Release No. 85761 (May 2, 2019), 84 FR 20176 (May 8, 2019) (SR-Phlx-2019-18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete and Relocate the Exchange’s Current Registration, Qualification and Continuing Education Rules).

unnecessary complexity in the membership process, and otherwise streamline the Exchange's existing membership rules and their associated procedures.

Summary of Proposed Changes

A comparison between the Exchange's existing General 3 and the Nasdaq Membership Rules is summarized below. As a general matter, in comparison to the Exchange's existing membership rules, the Nasdaq Membership Rules provide for more specific membership procedures and due process. Moreover, as described below, some of the Nasdaq Rule 1000 Series rules have no analogue in the existing Exchange rules.

The Exchange notes that Nasdaq's General 4, Registration Requirements were previously streamlined across the Affiliated Exchanges. Phlx's General 4 Rules are incorporated by reference to Nasdaq General 4.

Proposed General 3, Rule 1001 (Phlx Regulatory Contract with FINRA)⁶

Nasdaq General 3, Rule 1001 states that Nasdaq and the Financial Industry Regulatory Authority ("FINRA") are parties to a Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions described in the Nasdaq General 3, Rule 1000 Series and the Nasdaq General 4, Rule 1200 Series on behalf of Nasdaq.⁷ Moreover, Nasdaq General 3, Rule 1001 provides that Nasdaq rules that refer to Nasdaq's Regulation Department, Nasdaq Regulation Department staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the Regulatory Contract.

⁶ For purposes of this rule change, references to proposed Phlx General 3 Rules shall mean the Nasdaq General 3 Rules which Phlx proposes to incorporate by reference.

⁷ Nasdaq's General 4, Section 1 (Registration, Qualification and Continuing Education) is currently incorporated by reference into the Exchange's General 4 title. See supra note 5.

Nasdaq General 3, Rule 1001 also provides that, notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with FINRA to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions. In addition, the rule informs that Nasdaq has incorporated by reference certain FINRA rules and that Nasdaq members shall comply with those rules and interpretations as if such rules and interpretations were part of Nasdaq's Rules.

Nasdaq General 3, Rule 1001 currently has no analogue rule under Phlx's membership rules. Current Phlx General 2, Section 5 does permit the Phlx Board to authorize any officer, on behalf of the Exchange, subject to the approval of the Board, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Act.⁸ Similar to Nasdaq, Phlx has entered into a Regulatory Services Agreement with FINRA. FINRA performs substantially similar services for Nasdaq pursuant to its Regulatory Services Agreement with FINRA as it performs for Phlx pursuant to Phlx's Regulatory Services

⁸ Phlx General 2, Section 5, Regulatory Services Agreements, provides, "The Board may authorize any officer, on behalf of the Exchange, subject to the approval of the Board, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Exchange Act. Any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision shall affect the oversight of such other self-regulatory organization by the Securities and Exchange Commission. Notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide."

Agreement with FINRA.⁹ Therefore, the language of proposed General 3, Rule 1001 is applicable to the Exchange, as the Exchange is, similarly, a signatory of a Regulatory Contract with FINRA, pursuant to which FINRA has agreed to perform certain membership functions on its behalf, and the Exchange also retains the ultimate legal responsibility for the performance of said functions. The Exchange believes that the incorporation by reference of Nasdaq General 3, Rule 1001 is not a substantive amendment to the Exchange rules.

Proposed General 3, Rule 1002 (Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction)

Nasdaq General 3, Rule 1002, which will be incorporated by reference under the Exchange's General 3 title, describes the qualifications of members, member organizations and Associated Persons, the registration of branch offices, and the designation of a member's or member organization's office of supervisory jurisdiction. The Exchange will adopt by incorporation the provisions of Nasdaq General 3, Rule 1002 and delete those under current Phlx General 3, Section 1. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of Nasdaq and other Affiliated Exchanges.

Proposed General 3, Rule 1002(a) provides that any registered broker or dealer shall be eligible for membership in Nasdaq (except for those excluded under paragraph (b) of the rule); additionally, paragraph (a) provides that any person shall be eligible to become an Associated Person of a member organization (except for those excluded under General 3, Rule 1002(b)).

⁹ For example, Phlx may act as a designated examining authority, while Nasdaq does not act as a designated examining authority. Therefore, FINRA performs certain regulatory functions for Phlx as the designated examining authority that would not be performed under the Nasdaq RSA.

Proposed General 3, Rule 1002(a) is similar to current Phlx General 3, Sections 1(b)¹⁰ and (f)(1)(i)¹¹ to the extent that it describes that brokers or dealers may become member organizations or an Associated Person of a member organization.¹² The Exchange believes that incorporating by reference Nasdaq General 3, Rule 1002(a) expands upon current Phlx General 3, Sections 1(b) and (f)(1)(i) by explicitly referencing an associated person of a member organization (“Associated Person”).¹³ Today, persons may be ineligible to be associated with a Phlx member organization under certain circumstances (e.g. statutory disqualification) notwithstanding the absence of specific language.

The Exchange believes the remaining provisions of current Phlx General 3, Section 1 are unnecessary or incorporated by reference in other sections of the Nasdaq Rule. Current Phlx

¹⁰ Phlx General 3, Sections 1(b) states, “Only an organization whose principal purpose is the transaction of business as a broker or dealer in securities may be qualified as a member organization.”

¹¹ Phlx General 3, Sections 1(f)(1)(i) states, “To obtain and maintain the status of a member organization, an organization shall: (i) be a broker or dealer duly registered under the Exchange Act...”.

¹² The term “member” means a permit holder which has not been terminated in accordance with the By-Laws and these Rules of the Exchange. A member is a natural person and must be a person associated with a member organization. Any references in the rules of the Exchange to the rights or obligations of an associated person or person associated with a member organization also includes a member. See Phlx General 1, Section 1(16). The term “member organization” means a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of General 3, Sections 5 and 10 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws. References herein to officer or partner, when used in the context of a member organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a member organization. See Phlx General 1, Section 1(17).

General 3, Section 1(a) provides that the Exchange's Board of Directors may permit a member of the Exchange to qualify an entity as a member organization, subject to such terms and conditions as may from time to time be prescribed by rule or may be imposed by the Board of Directors. Phlx's Membership Department reviews and approves all applicants for membership. The Exchange proposes to delete current Phlx General 3, Section 1(a). Instead, the Exchange would require all applications to be approved pursuant to the prescribed process detailed within the proposed General 3 Rules. Today, Nasdaq's General 3 Rules apply to all Affiliated Exchanges, except Phlx.¹⁴

Current Phlx General 3, Section 1(c) provides that a member organization shall be organized under the laws of a jurisdiction approved by the Membership Department. The Exchange has not restricted any broker dealer from becoming a member organization of the Exchange, provided the broker dealer meets all the membership requirements specified in Phlx's General 3 rules, notwithstanding the jurisdiction under which the member organization determines to be organized. The Exchange proposes to remove this rule as unnecessary. Additionally, no other Affiliated Exchange has a similar rule.

Additionally, current Phlx General 3, Section 1(d) states that if it appears to the Membership Department that the business form of a member organization is being used to evade financial responsibility, such organization shall not be registered as a member organization. The Exchange believes that the membership qualifications described in current Phlx General 3, Section 1(d) are consistent with the eligibility criteria described in proposed General 3, Rule

¹⁴ Today, all Affiliated Exchange General 3 Rules, except Phlx, incorporate by reference Nasdaq General 3.

1014(b)¹⁵ discussed below, with the exception of General 3, Rule 1014(b)(3) as discussed later in this section. The Exchange proposes to delete current Phlx General 3, Section 1(d) as that provision will be accounted for within proposed General 3, Rule 1014.

Moreover, current Phlx General 3, Section 1(e) states that no bank and no investment trust may be qualified or registered as a member organization. Today, a bank or an investment

¹⁵ Nasdaq General 3, Rule 1014(b), titled “Bases for Approval Conditional Approval, or Denial” states, “After considering the completed application, other information and documents provided by the Applicant, other information and documents obtained by the Department, and the public interest and the protection of investors, the Department shall approve an application under Rules 1013 or 1017 by an Applicant that is not, and is not required to become, a FINRA member unless the Department determines that such information or documents provide a basis for denial of membership: (1) The Department may deny (or condition) approval of an Applicant for the same reasons that the Commission may deny or revoke a broker or dealer registration and for those reasons required or allowed under the Act; (2) Without limiting the generality of the foregoing, the Department may deny (or condition) approval of an Applicant when the Applicant directly or indirectly: (A) is unable to satisfactorily demonstrate its present capacity to adhere to all applicable Exchange and Commission policies, rules, and regulations, including, without limitation, those concerning recordkeeping, reporting, finance, and trading procedures; (B) has previously violated, and there is a reasonable likelihood such Applicant will again engage in acts or practices violative of, any applicable Exchange or Commission policies, rules and regulations, including, without limitation, those concerning record-keeping, reporting, finance and trading procedures or those rules of other self-regulatory organizations of which such Applicant is or was a member; (C) has engaged, and there is a reasonable likelihood such Applicant will again engage, in acts or practices inconsistent with just and equitable principles of trade; (D) is not in compliance with the Commission's net capital rule (17 C.F.R. 240.15c3-1), or has financial difficulties involving an amount that is more than 5% of the Applicant's net worth; (E) has been itself, or is the successor to an entity which has been subject to any bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years; (F) has engaged in an established pattern of failure to pay just debts; (G) does not have such licenses and registrations as are required by governmental authorities and self-regulatory organizations; or (H) is unable satisfactorily to demonstrate reasonable adequate systems capacity and capability. (3) The Department will not approve an Applicant unless the Applicant is a member of another registered securities exchange or association that is not registered solely under Section 6(g) or Section 15A(k) of the Securities Exchange Act of 1934. An Applicant that will transact business with the public must be a member of FINRA.

trust would need to be registered as a broker dealer in order to apply to be a member organization of the Exchange. This is similar to the membership requirements of proposed General 3, Rule 1002(a)¹⁶ which also provides that registered broker or dealers are eligible for membership. The Exchange proposes to delete current Phlx General 3, Section 1(e) since the requirement to be a broker or dealer is clearly stated and a bank or an investment trust would be subject to the same requirements as all other applicants.

Current Phlx General 3, Section 1(f)(1) states,

To obtain and maintain the status of a member organization, an organization shall: (i) be a broker or dealer duly registered under the Exchange Act; (ii) be duly qualified by a permit holder who is primarily affiliated with such organization for purposes of nominating as provided in the By-Laws; (iii) have submitted to the Membership Department an application for such status in the form approved by the Membership Department and any other information and materials requested by the Membership Department; (iv) have had such application approved by the Membership Department; and (v) meet such other requirements as are set forth in these By-Laws or the Rules of the Exchange.

As stated above, the Exchange believes that the membership qualifications described in current Phlx General 3, Section 1(f)(1)(i) are consistent with the eligibility criteria described in proposed General 3, Rule 1002(a).¹⁷ The membership qualifications described in current Phlx General 3, Section 1(f)(1)(ii) are specific to Phlx in that in order to obtain and maintain the status of a Phlx member organization, an organization shall be duly qualified by a permit holder who is primarily

¹⁶ Nasdaq General 3, Rule 1002(a), titled “Persons Eligible to Become Members and Associated Persons,” states, “(1) Any registered broker or dealer shall be eligible for membership in the Exchange, except such registered brokers or dealers as are excluded under paragraph (b). (2) Any person shall be eligible to become an Associated Person of a Member, except such persons as are excluded under paragraph (b).”

¹⁷ The Exchange notes that while Phlx General 3, Section 1(f)(1) mentions a “permit holder,” that term is encompassed within the definition of “member” as defined within Phlx General 1, Section 1(16). The proposed General 3 rule notes the difference in the term “member” between Nasdaq’s and Phlx’s definitions.

affiliated with such organization for purposes of nominating as provided in the By-Laws. The Exchange proposes to retain this requirement by adding rule text within Phlx General 3 which states, “In order to obtain and maintain the status of a Phlx member organization, an organization shall be duly qualified by a permit holder who is primarily affiliated with such organization for purposes of nominating as provided in the By-Laws.” This proposed rule text will allow Phlx to retain this unique requirement while also incorporating by reference Nasdaq’s General 3 rules. The Exchange believes that the membership qualifications described in current Phlx General 3, Section 1(f)(1)(iii) are consistent with the eligibility criteria described further below in proposed General 3, Rule 1014. Further, approval by the Membership Department as described within current Phlx General 3, Section 1(f)(1)(iv) is inherent within the proposed General 3 membership rules and compliance with the By-Laws and Rules of the Exchange within current Phlx General 3, Section 1(f)(1)(v) is a catch-all provision which requires an applicant to meet other requirements set forth in the by-laws and rules of the Exchange. Today, every Phlx member and member organization is required to comply with the requirements set forth in the by-laws and rules of the Exchange and, therefore, this provision is unnecessary. Additionally, no other Affiliated Exchange has a similar rule, although all members of Affiliated Exchanges are required to meet other requirements set forth in the by-laws and rules of the exchange. Accordingly, the Exchange proposes to delete current Phlx General 3, Section 1(f)(1) as those provisions not covered by proposed General 3, Rule 1002(a) are covered within proposed General 3, Rule 1014, with the exception of General 3, Section 1(f)(1)(ii) which will be preserved in Phlx General 3’s rule text as described above.

With respect to current Phlx General 3, Section 1(f)(2),¹⁸ the Exchange proposes to remove this rule text because it is otherwise superseded by proposed General 3, Rule 1017(a)(5)(B) which provides that a member or member organization is required to file an application for approval if a material change in business operations occurs, which includes, “acting as a dealer or market maker for the first time.” Current Section 1(f)(2) provides that to obtain and maintain Market Maker status on PSX, a member organization whose market making has not previously been approved by FINRA, Nasdaq under General 3, or Nasdaq BX under General 3 shall submit an application and any other requested information and material to, and have it approved by, the Membership Department and meet such other requirements as are set forth in the By-Laws or Rules of the Exchange.¹⁹ The information to be provided shall include a business plan, an organizational chart, written supervisory procedures reflecting the change, and such other information as the Membership Department may request. Proposed General 3, Rule

¹⁸ Current Phlx General 3, Section 1(f)(2) provides, “To obtain and maintain the status of a Market Maker on PSX, a member organization whose market making has not previously been approved by FINRA under the NASD Rule 1000 Series (or such successor FINRA Rules as may be adopted by FINRA), Nasdaq under General 3, or Nasdaq BX under General 3 shall: (i) have submitted to the Membership Department an application for such status in the form approved by the Membership Department and any other information and material requested by the Membership Department; (ii) have had such application approved by the Membership Department; and (iii) meet such other requirements as are set forth in the By-Laws or Rules of the Exchange. The information to be provided shall include a business plan, an organizational chart, written supervisory procedures reflecting the change, and such other information as the Membership Department may request.”

¹⁹ Proposed General 3, Rule 1017(a)(5)(B) requires members and member organizations applying to become a Market Maker to seek Exchange approval and therefore would supersede Phlx Section 1(f)(2) as first time Market Makers would continue to be required to seek Exchange approval. Similar to current General 3, Section 1(f)(2), approval would not be required under proposed General 3, Rule 1017(a) if an exchange affiliated with the Exchange or a Member’s Designated Examining Authority has already approved the change in accordance with its respective rules.

1017 expands on current Phlx General 3, Section 1(f)(2) by explaining the process in more detail and requiring additional material such as pro forma financials.

Generally speaking, current Phlx General 3, Section 1(f)(3) describes the expedited process for membership applications. Today, Phlx accepts Nasdaq's and BX's membership process as a basis for membership on Phlx. Incorporating Nasdaq's rule would further support this reciprocity as an applicant would be subject to the same process for both Nasdaq and Phlx membership. Also, as discussed further below, proposed General 3, Rule 1013(b)(2)²⁰ is substantially similar to the provisions in current Phlx General 3, Section 1(f)(3).

Current Phlx General 3, Section 1(g) allows the Board to terminate the registration of a member organization by the affirmative vote of a majority of the Board if the member organization is found to have violated the terms and conditions, or fails to meet the requirements, of its registration. The Exchange believes that this rule is substantially similar to General 5, Rule 8310²¹ of the Exchange's disciplinary rules and is therefore not necessary to be retained within the Membership Rules.

Current Phlx General 3, Section 1(h) allows for a member organization or an Exchange member who has qualified a member organization to apply for termination of the registration of

²⁰ Proposed General 3, Rule 1013(b)(2) concerns the Special Application Procedures Applicable to Applicants that are Already Members of an Affiliated Exchange.

²¹ Nasdaq General 5, Rule 8310 concerns the Sanctions for Violation of the Rules.

the member organization.²² The Exchange believes that proposed General 3, Rule 1018,²³ discussed further below, is similar to, and consistent with the requirements of current Phlx General 3, Section 1(h) with respect to the ability to voluntarily terminate membership. Additionally, both rules (proposed General 3, Rule 1018 and Phlx General 3, Section 1(h)) provide that the effectiveness of the termination is contingent on all indebtedness to the Exchange has been paid. Phlx General 3, Section 1(h) also requires that commitments and liabilities have been discharged to its members and member organizations. This rule is a holdover from a time when members leased seats on Phlx prior to demutualization. The Exchange has not had occasion to enforce this rule in the recent past and believes this portion of the rule is unnecessary. The last provision in the Phlx rule, pertaining to death or incapacity of the member who has qualified the member organization is not necessary to be described within the membership rules. The proposed rules would not prohibit a legal representative from being used under such circumstances. Also, a member organization could make other legal arrangements to obtain proper consent, within the bounds of the law and their governing

²² Current Phlx General 3, Section 1(h) provides, “A member of the Exchange who has qualified a member organization or a member organization may apply to the Membership Department for termination of the registration of the member organization. Such termination shall become effective upon such date as the Membership Department may determine and in no event shall it be effective until and unless the member organization and the member have discharged all commitments and liabilities to the Exchange and to its members and member organizations, or have made provision therefor satisfactory to the Membership Department. If the member who has qualified the member organization is prevented by death or incapacity from applying for the termination of such registration, the application may be made under the same terms and conditions as herein provided by his legal representative.”

²³ Proposed General 3, Rule 1018 concerns the Resignation, Reinstatement, Termination, and Transfer of Membership.

documents, to effect the termination without violating the proposed rules. This would be the case in the event any officer of any member died or became incapacitated.

Lastly, current Phlx General 3, Section 1(i) provides, “During the unavoidable absence or disability of an officer (or person in a similar position) of a member organization who is a member of the Exchange, any officer or director (or person in a similar position) of such member organization shall have the privilege of effecting transactions on the Exchange in the name of the member organization.” This provision has never been invoked by any Phlx member or member organization. The Exchange believes that the provision is unnecessary and should be removed from Phlx’s Rules.²⁴

The Exchange proposes to incorporate Nasdaq General 3, Rule 1002 in its entirety.

Current Phlx General 3, Section 2(a) allows Phlx to deny a permit to, or condition the permit of, any person or bar and deny from becoming associated, or condition any association of, any person with a registered broker or dealer, or deny or condition the qualification or registration of any member organization, if any such person, registered broker or dealer or member organization is subject to a statutory disqualification, as that term is defined in the Act, as amended. This provision is similar to proposed General 3, Rule 1002(b)(1) and (2), which describe an Applicant’s ineligibility of certain persons for membership or association due to statutory disqualification.

Proposed General 3, Rule 1002(b)(1) and (2) describe the ineligibility of certain persons for Membership or Association on Phlx. Proposed General 3, Rule 1002(b)(1) provides that,

²⁴ A member’s or member organization’s governing documents and /or business continuity plans would allow a member or member organization to appoint alternative officers in such an event.

subject to certain exceptions, no registered broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if such broker, dealer, or Member fails or ceases to satisfy the qualification requirements established by the Rules, or if such broker, dealer, or Member is or becomes subject to a statutory disqualification, or if such broker, dealer, or Member fails to file such forms as may be required in accordance with such process as the Exchange may prescribe. Further, proposed General 3, Rule 1002(b)(2) provides, subject to certain exceptions, no person shall become associated with a Member, continue to be associated with a Member, or transfer association to another Member, if such person fails or ceases to satisfy the qualification requirements established by the rules (Phlx General 4 rules govern registration),²⁵ or if such person is or becomes subject to a statutory disqualification. Also, no broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if any person associated with it is ineligible to be an Associated Person pursuant to Phlx General 3, Section 2(b).

Proposed General 3, Rule 1002(b)(2) describes a statutory disqualification,²⁶ which was

²⁵ Phlx's General 4 rules are incorporated by reference to Nasdaq's General 4 rules.

²⁶ Proposed General 3, Rule 1002(b)(2) provides, "For purposes of "statutory disqualification" as such term is defined in Section 3(a)(39) of the Exchange Act the terms "person associated with a member" and "associated person" shall mean (1) a natural person who is registered or has applied for registration under the Rules of the Exchange; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the Exchange under its Rules; and (3) for purposes of Nasdaq General 5, Rule 8210, any other person listed in Schedule A of Form BD of a member."

recently adopted by Nasdaq.²⁷ Similar to Nasdaq, Phlx proposes to harmonize its description of statutory disqualification to align its application of statutory disqualification to FINRA and other Affiliated Exchanges. This proposal would avoid potentially different outcomes for members of both FINRA and Phlx with respect to ineligibility for membership and association. Additionally, other Affiliated Exchanges have adopted the FINRA defined term. Harmonizing the description of statutory disqualification would ensure that market participants that are members of both FINRA and Phlx, and members of another Affiliated Exchange and Phlx, are held to the same standard with respect to statutory disqualification.

Proposed General 3, Rule 1002(c)²⁸ establishes, as a condition to maintaining membership, that member organizations shall at all times maintain membership in a registered securities association that is not registered solely under Section 15A(k) of the Act, or another registered exchange that is not registered solely under Section 6(g) of the Act. Furthermore, the rule prescribes that members and member organizations that transact business with customers shall at all times be members of FINRA. The Exchange proposes to incorporate this rule by reference and provide within the General 3 rule text that members or member organizations may

²⁷ See Securities Exchange Act Release No.94473 (March 18, 2022), 87 FR 16804 (March 24, 2022) (SR-NASDAQ-2022-022) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend General 3, Rule 1002, Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction).

²⁸ Proposed General 3, Rule 1002(c) provides, “Membership in a Registered Securities Association or Another Registered Exchange. As a condition to maintaining membership in the Exchange, Members shall at all times maintain membership in a registered securities association that is not registered solely under Section 15A(k) of the Securities Exchange Act of 1934, or another registered exchange that is not registered solely under Section 6(g) of the Securities Exchange Act of 1934. Members that transact business with customers shall at all times be members of FINRA.”

comply with proposed General 3, Rule 1002(c) if Phlx is the member organization's designated examining authority ("DEA").²⁹ Because Phlx acts in the capacity of a DEA, applicants for membership who register Phlx as their DEA comply with proposed General 3, Rule 1002(c).

Current Phlx General 3, Section 2(b) allows the Exchange to deny or condition association or membership if the broker, dealer or member organization (1) is unable satisfactorily to demonstrate its present capacity to adhere to applicable provisions of (i) Sections 15 and 17 of the Act, as amended, and all rules and regulations promulgated thereunder or (ii) Exchange Rules relating to the maintenance of books and records; or (2) has previously been found to have violated and there is a reasonable likelihood the broker or dealer or member organization will again engage in acts or practices violative of (A) Sections 15 and 17 of the Act, as amended, and all rules and regulations promulgated thereunder, or (B) Rules relating to the maintenance of books and records of the Exchange or other self-regulatory organizations of which the broker or dealer or member organization is or was a member. The Exchange believes that the conditions for membership described in Phlx Section 2(b) are consistent with and are incorporated by reference into the eligibility criteria described further below in proposed General 3, Rule 1014(b)(2)(A) and (B), which the Exchange is adopting with this proposal. Further, current Phlx General 3, Section 2(c) allows the Exchange to deny or condition association or membership if the broker, dealer or member organization (1) does not successfully complete such written proficiency examinations as required by the Exchange to enable it to examine and verify the applicant's qualifications to function in one or more of the capacities applied for; (2)

²⁹ The Exchange proposes to add the following to the General 3 rule text: "Phlx members and member organizations may comply with General 3, Rule 1002(c) and General 3, Rule 1014(b)(3) if Phlx is the member's or member organization's designated examining authority."

does not meet such other standards of training, experience, and competence as may be established by the Exchange; (3) cannot demonstrate a capacity to adhere to all applicable policies, rules and regulations of the Exchange or any other self-regulatory organization, the SEC, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission contract market designated pursuant to Section 5 of the Commodity Exchange Act or futures association registered under Section 17 of such Act; (4) has been the subject of findings of fact rendered by any of the above mentioned entities such that the broker or dealer, person or member organization has engaged in acts or practices inconsistent with just and equitable principles of trade, and there is a reasonable likelihood the person will do so again; or (5) (i) is subject to any unsatisfied liens, judgments or unsubordinated creditor claims of a material nature, which remain outstanding (ii) has been or is the successor to an entity which has been subject to any bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years (iii) has been and/or remains associated as a general partner, principal, officer, director, stockholder, or registered trader for a member organization which has been subject to any unsatisfied liens, judgments or unsubordinated creditor claims of a material nature (iv) has engaged in a pattern of failure to pay just debts (v) would bring the Exchange into disrepute or (vi) for such other cause as the Membership Department reasonably may decide.

Proposed General 3, Section 1014(b)(1) provides that “[t]he Department may deny (or condition) approval of an Applicant for the same reasons that the Commission may deny or revoke a broker or dealer registration and for those reasons required or allowed under the Act.” Phlx’s General 4 rules requires members and member organizations to obtain certain registrations and further proposed General 3, Section 1014(b)(2)(G) permits denial if proper licenses and registrations are not obtained. This would be the equivalent of the proficiency examination requirements within

current Phlx General 3, Section 2(c)(1) as well as the standards of training, experience, and competence as may be established by the Exchange in other rules pursuant to current Phlx General 3, Section 2(c)(1).³⁰ Current Phlx General 3, Section 2(c)(3) requires a demonstration of a capacity to adhere to all applicable policies, rules and regulations of the Exchange or any self-regulatory organization, the Commission, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission contract market designated pursuant to Section 5 of the Commodity Exchange Act or futures association registered under Section 17 of such Act. General 3, Section 1014(b)(2)(A) is, in part, substantially similar to current Phlx General 3, Section 2(c)(3). While the provisions of Phlx General 3, Section 2(c)(3) are broader with respect to other agencies, the Exchange notes that to the extent a member or member organization is subject to the jurisdiction of other federal agencies, those same rules would apply.

Current Phlx General 3, Section 2(c)(4) concerns whether an applicant has engaged in acts or practices inconsistent with just and equitable principles of trade is substantially similar to proposed General 3, Section 1014(b)(2)(C). Current Phlx General 3, Section 2(c)(5)(i) related to unsatisfied liens, judgments or unsubordinated creditor claims of a material nature, which remain outstanding is substantially similar to proposed General 3, Section 1014(b)(2)(F). Current Phlx General 3, Section 2(c)(5)(ii) related to bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years is substantially similar to proposed General 3, Section 1014(b)(2)(E). Current Phlx General 3, Section 2(c)(5)(iii) and (iv) relating to unsatisfied liens, judgments or unsubordinated creditor claims of a material nature and failure to pay just debts is substantially similar to proposed General 3, Section 1014(b)(2)(F). Current

³⁰ E.g., Phlx By-Law Sec. 7-3, Membership Qualifications; General 9, Section 20, Supervision; and Options 8, Section 39, E-15 Options Trading Floor Training.

Phlx General 3, Section 2(c)(5)(v) would allow the Exchange to deny a permit to, or condition the permit of, any person that would bring the Exchange into disrepute. Current Phlx General 3, Section 2(c)(5)(vi) would allow the Exchange to deny a permit to, or condition the permit of, any person for such other cause as the Membership Department reasonably may decide. The proposed rules would eliminate the discretion under these two provisions.

Current Phlx General 3, Section 2(d) permits the Membership Department to waive proficiency examinations in exceptional cases where good cause is shown upon written request of the applicant. The waiver described within current Phlx General 3, Section 2(d) is similar to current Supplementary Material .03 of General 4, Section 1210³¹ with one exception. Today, Phlx General 3, Section 2(d) provides, “Advanced age, physical infirmity or experience in fields ancillary to the securities business will not individually of themselves constitute sufficient grounds to waive a proficiency examination.” This is different from the standard within Supplementary Material .03 of General 4, Section 1210 which states, “Experience in fields ancillary to the securities business may constitute sufficient grounds to waive a qualification examination.” Phlx has not waived proficiency examinations within the recent past on the

³¹ Phlx General 4 incorporates Nasdaq General 4 by reference. Supplementary Material .03 of General 4, Section 1210 states, in relevant part, “Pursuant to the Rule 9600 Series, the Exchange may, in exceptional cases and where good cause is shown, waive the applicable qualification examination(s) and accept other standards as evidence of an applicant's qualifications for registration. Age or disability will not individually of themselves constitute sufficient grounds to waive a qualification examination. Experience in fields ancillary to the securities business may constitute sufficient grounds to waive a qualification examination. The Exchange shall only consider waiver requests submitted by a member for individuals associated with the member who are seeking registration in a representative or principal registration category. Moreover, the Exchange shall consider waivers of the SIE alone or the SIE and the applicable representative and principal examination(s) for such individuals. The Exchange shall not consider a waiver of the SIE for individuals who are not associated persons or for associated persons who are not registering with the Exchange as representatives or principals.”

grounds of experience in fields ancillary to the securities business. Phlx proposes to remove Phlx General 3, Section 2(d) and instead waive proficiency examinations according to Supplementary Material .03 of General 4, Section 1210. By eliminating Phlx General 3, Section 2(d), Phlx will also eliminate the conflict that exists today between Phlx and its Affiliated Exchanges, thereby harmonizing the qualification examination waiver process across Affiliated Exchanges.

Proposed General 3, Rule 1002(d) describes the requirement to register a branch office and designate an office of supervisory jurisdiction. Phlx Options 10, Section 5, Branch Office, similarly provides an obligation to register branch offices with the Exchange and requires supervision of such branch offices. Additionally, General 9, Section 20(f) requires Phlx DEA members to file a list identifying each of its branch offices. Adopting this rule would require all Phlx members to likewise register branch offices and designate supervision of those branches. The adoption of this rule would make clear the uniform requirement that all Phlx members and member organizations have to report branch offices and designate supervision of those branches to the Exchange. This would include advising the Exchange, via electronic means or such other means as the Exchange may prescribe, of the opening, closing, relocation, change in designated supervisor, or change in designated activities of any branch office of such member organization not later than 30 days after the effective date of such change. The proposed rule provides that members and member organizations that are also FINRA members shall be deemed to have complied with this provision if they are in compliance with FINRA rules by keeping current Form BR. Finally, members and member organizations that are not FINRA members shall promptly advise the Exchange by submitting to the Exchange a Branch Office Disclosure Form.

Membership Proceedings and Proposed General 3, Rule 1011 (Definitions)

Proposed General 3, Rule 1011 contains definitions applicable to the Membership Rules. Proposed General 3, Rule 1011 has no analogue rule in the existing Exchange's General 3 title. By incorporating by reference Nasdaq Rule 1011 definitions under General 3, the Exchange believes it will further harmonize its rules with respect to the membership rules of Nasdaq and other Affiliated Exchanges. Nasdaq Rule 1011 states that terms used in the Nasdaq Rule 1000 Series and the General 4, Rule 1200 Series shall have the meaning as defined in General 1 and Equity 1. Similarly, proposed Phlx General 3 shall have the meaning as defined in General 1 and Equity 1. . The terms "Applicant,"³² "Department,"³³ "Interested Staff,"³⁴ "Securities

³² The term "Applicant" means a person that applies for membership in the Exchange under Rule 1013 or a Member that files an application for approval of a change in ownership, control, or business operations under Rule 1017. See proposed General 3, Rule 1011(a).

³³ The term "Department" means the Exchange's Membership Department located within the Exchange's Regulation Department. See proposed General 3, Rule 1011(c).

³⁴ The term "Interested Staff" means an employee who directly participates in a decision under Rule 1014 or 1017, an employee who directly supervises an employee with respect to such decision, an employee who conducted an investigation or examination of a member that files an application under Rule 1017, and the head of the Department. See proposed General 3, Rule 1011(e).

business,”³⁵ “Exchange Board,”³⁶ “principal place of business,”³⁷ “registered broker or dealer,”³⁸ “Representative,”³⁹ “sales practice event,”⁴⁰ and “Subcommittee,”⁴¹ have not been defined in the Exchange’s rulebook. The term “associated person” as defined in Phlx General 1, Section 1(2) is substantially similar to the definition of associated person within Nasdaq General 3, Rule 1011(b). The term “Director” is substantially similar to the term “Director” within General 1, Section 1(9). The term “statutory disqualification” as defined within proposed General 3, Rule

³⁵ The term “securities business” means the business 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 General 3, Rule 1011(f).

³⁶ The term “Exchange Board” means the Board of Directors of the Exchange. See proposed General 3, Rule 1011(h).

³⁷ The term “principal place of business” means the executive office from which the sole proprietor or the officers, partners, or managers of the Applicant direct, control, and coordinate the activities of the Applicant, unless the Department determines that the principal place of business is where: (1) the largest number of Associated Persons of the Applicant are located; or (2) the books and records necessary to provide information and data to operate the business and comply with applicable rules are located. See proposed General 3, Rule 1011(i).

³⁸ The term “registered broker or dealer” means any broker or dealer, as defined in Section 3(a)(48) of the Act, that is registered with the Commission under the Act. See proposed General 3, Rule 1011(j).

³⁹ The term “Representative” shall have the meaning assigned to it in General 4, Rule 1220(b)(1). All Representatives of the Exchange Members are required to be registered with the Exchange, and Representatives that are so registered are referred to herein as “Registered Representatives.” See proposed General 3, Rule 1011(k).

⁴⁰ The term “sales practice event” means any customer complaint, arbitration, or civil litigation that has been reported to the Central Registration Depository, currently is required to be reported to the Central Registration Depository, or otherwise has been reported to the Exchange. See proposed General 3, Rule 1011(l).

⁴¹ The term “Subcommittee” means a subcommittee of the Exchange Review Council that is constituted pursuant to Rule 1015 to conduct a review of a Department decision issued under the Rule 1010 Series. See proposed General 3, Rule 1011(m).

1011(n) aligns with the Act definition. Relatedly, the term “Proprietary Trading Firm” as defined in proposed Nasdaq General 3, Rule 1011(o) is substantially similar to the definition of “proprietary trading firm” within Phlx General 1, Section 1(33). The Exchange proposes to adopt by incorporation the text of Nasdaq General 3, Rule 1011 in its entirety. The Exchange believes that incorporating by reference this rule will further the Exchange’s objective to provide uniformity and clarity to its rules by aligning them with the membership rules of Nasdaq and other Affiliated Exchanges.

Proposed General 3, Rule 1012 (General Application Provisions)

Proposed General 3, Rule 1012 (“General Application Provisions”) provides a detailed outline of the requirements that an Applicant must follow in order to file an application for membership. In contrast, the Exchange’s General 3 membership rules do not describe in detail the manner in which an application shall be submitted or how service shall be performed. The Exchange believes that adopting proposed General 3, Rule 1012 will provide a more detailed set of instructions for Applicants, members, member organizations, and Associated Persons to submit materials and the requirements for service of documents. The Exchange believes that incorporating proposed General 3, Rule 1012 by reference will further the Exchange’s objective to provide uniformity and clarity to its rules by aligning them with the membership rules of Nasdaq and other Affiliated Exchanges.

Proposed General 3, Rule 1012(a) provides that Applicants, members and member organizations may submit an application or other documents and information to the Exchange by first-class mail, overnight courier, hand delivery, or by electronic means (or facsimile if the Department and the Applicant, member, or member organization agree); this section also provides that the Exchange shall serve a notice or decision issued under the Membership Rules

by first-class mail or electronic means on the Applicant, member or member organization, or its counsel, unless an Exchange rule specifies a different method of service; finally, this section also details when service by the Exchange or filing by an Applicant or member or member organization shall be deemed complete. The current Exchange membership rules contain no such provision. The Exchange believes that incorporating proposed General 3, Rule 1012(a) by reference improves its membership application process by adopting specific provisions regarding the manner of submission and service of documents.

Proposed General 3, Rule 1012(b) provides a definition of the term “calendar day” and describes the manner in which times under the Membership Rule shall be computed. The current Exchange membership rules contain no such provision. The Exchange believes that adopting this rule by incorporation will provide further clarity to the calculation of days under its membership rules.

Proposed General 3, Rule 1012(c) describes a(n) Applicant’s, member’s, member organization’s and Associated Person’s duty to ensure that the information they provide to the Exchange at the time of the filing is accurate, complete, and current. Moreover, this provision requires that an Applicant, member, member organization, and Associated Person ensure that membership applications and supporting materials filed with the Exchange remain accurate, complete, and current at all times by filing supplementary amendments, which must be filed within 15 business days of their learning of the facts or circumstances giving rise to the need for an amendment. Furthermore, this section requires that Applicants, members, member organizations, and Associated Persons promptly notify the Exchange, in writing, of any material adverse change in their financial condition. The current Exchange membership rules contain no such provision. The Exchange believes that incorporating proposed General 3, Rule 1012(c) by

reference improves its membership rules by adopting provisions concerning a member's and member organization's duty to ensure the accuracy, completeness, and current nature of membership information.

As previously stated, the Exchange proposes to adopt by incorporation the text of proposed General 3, Rule 1012 in its entirety, as the rule's provisions provide clear instructions concerning the submission of membership applications and other materials; the requirements for service of documents; and the Applicants', members', member organizations', and Associated Persons' duty to ensure that the information filed with the Exchange is kept current.

Proposed General 3, Rule 1013 (New Member Application)

Proposed General 3, Rule 1013 sets forth the procedure for filing applications for new membership on the Exchange. The Exchange proposes to incorporate Nasdaq General 3, Rule 1013 by reference under its General 3 title. The Exchange is incorporating Nasdaq General 3, Rule 1013 as it expands upon and provides clarity to the procedure currently in place in the Exchange's rules within current General 3, Section 5, Member Applications.⁴² The Exchange

⁴² Phlx General 3, Section 5, Member Application, provides, "(a) Every applicant for a membership or a permit and every non-member seeking admission as a member upon acquisition of an existing membership shall file an application in writing with the Membership Department of the Exchange in such form as the Membership Department may prescribe from time to time, shall appear before such department if required thereby, and shall submit such information as such department may direct. (b) All applications will be reviewed preliminarily by the staff of the Exchange. If the staff recommends that the applicant not be issued a membership or a permit the applicant shall be notified in writing of the reasons therefor and may, within fifteen (15) days of the receipt thereof, file a request with the Membership Department for its consideration of the application, together with a written statement setting forth the applicant's opinion as to why the staff recommendation is in error or insufficient to preclude the issuance of a membership or a permit. (c) The Membership Department shall review and act upon the membership application or permit application. (d) Absent a showing of good cause, an application filed pursuant to this Rule shall lapse after a 90 calendar day period if an applicant fails to provide the requisite documentation provided for in this Rule or any subsequent written request for information or documents pursuant to this Rule within such time period

believes that incorporating proposed General 3, Rule 1013 by reference will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of Nasdaq and other Affiliated Exchanges.

Proposed General 3, Rule 1013(a) describes in detail the membership application process. Subsection (a)(1) ("Where to File; Contents"), provides that an application shall include (A) a copy of the Applicant's current Form BD, if not otherwise available to the Exchange electronically through the Central Registration Depository ("CRD"); (B) an original Exchange-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2 and for whom a fingerprint card has not been filed with another self-regulatory organization (SRO), if such fingerprints are not otherwise available electronically to the Exchange through CRD; (C) payment for such fee as may be required under the Rules; (D) a description of the Applicant's proposed trading activities on the Exchange, such as the types of securities it will trade, whether it will be a market maker, or an order entry firm, and/or engage in block trading activities, and the extent to which the Applicant is conducting such activities as a member of other SROs; (E) a copy of the Applicant's most recent audited financial statements and a description of any material changes in the Applicant's financial condition since the date of the financial statements; (F) an organizational chart; (G) the intended location of the Applicant's principal place of business and all other branch offices, if any, and the names of the persons who will be in charge of each office; (H) a description of the communications and operational systems the Applicant will employ to conduct business and the plans and procedures the Applicant will employ to

agreed to by the Membership Department. If such time period elapses, an applicant seeking membership to the Exchange shall be required to file a new application pursuant to this Rule. The applicant will be required to pay an additional application fee at that time. The Exchange will not refund any fees for lapsed applications."

ensure business continuity, including: system capacity to handle the anticipated level of usage; contingency plans in the event of systems or other technological or communications problems or failures; system redundancies; disaster recovery plans; and system security; (I) a copy of any decision or order by a federal or state authority or SRO taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person; (J) a statement indicating whether the Applicant or any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any SRO, the foreign equivalent of a SRO, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act ("CEA") or any substantially equivalent foreign statute or regulation, a futures association registered under the CEA or any substantially similar foreign statute or regulation, the Commission or any other "appropriate regulatory agency" (as defined in the Act), the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the CRD, together with all relevant details, including any sanctions imposed; (K) a statement indicating whether any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any SRO, the foreign equivalent of an SRO, a foreign or international securities exchange, a contract market designated pursuant to the CEA or any substantially equivalent foreign statute or regulation, a futures association registered under the CEA or any substantially similar foreign statute or regulation, the Commission or any other "appropriate regulatory agency", the CFTC, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the CRD, together with all relevant details, including any sanctions imposed; (L) a copy of any

contract or agreement with another broker-dealer, a bank, a clearing entity, a service bureau or a similar entity to provide the Applicant with services regarding the execution or clearance and settlement of transactions effected on the Exchange; (M) if the Applicant proposes to make markets on the Exchange, a description of the source and amount of Applicant's capital to support its market making activities on the Exchange, and the source of any additional capital that may become necessary; (N) a description of the financial controls to be employed by the Applicant with respect to anti-money laundering compliance rules as set forth in General 9, Section 37; (O) a copy of the Applicant's written supervisory procedures with respect to the activities identified in paragraph (a)(1)(D); (P) a list of the persons conducting the Applicant's market making and other trading activities, and a list of the persons responsible for such persons' supervision, together with the CRD numbers; (R) a copy of the Applicant's most recent "FOCUS Report" (Form X-17A-5) filed with the SEC pursuant to SEC Rule 17a-5; (S) all examination reports and corresponding responses regarding the Applicant for the previous two years from the SROs of which it is a member; (T) a copy of the Exchange's Membership Agreement, duly executed by the Applicant, which includes, among other things: (1) an agreement to comply with the federal securities laws, the rules and regulations thereunder, Exchange rules, and all rulings, orders, directions, and decisions issued and sanctions imposed under Exchange rules; (2) an agreement to pay such dues, assessments, and other charges in the manner and amount as from time to time shall be fixed pursuant to Exchange rules; and (U) such other reasonable information with respect to the Applicant as the Exchange may require.

In contrast, current Phlx General 3, Section 5(a) states simply that every applicant for a membership or a permit and every non-member seeking admission as a member upon acquisition of an existing membership shall file an application in writing with the Membership Department

of the Exchange in such form as the Membership Department may prescribe from time to time, shall appear before such department if required thereby, and shall submit such information as such department may direct.

The Exchange believes that deleting current Phlx General 3, Section 5 is appropriate because the Exchange's current rule contains broad language that permits the Membership Department to apply the same standard that is set forth in proposed General 3, Rule 1013(a)(1) to processing applications today. Proposed General 3, Rule 1013(a)(1) will now be incorporated by reference. This rule lists in detail all of the supplementary application materials required for submission by an Applicant. Incorporating this provision by reference will further standardize the Exchange's membership application process.

Proposed General 3, Rule 1013(a)(2) provides that the Membership Department will deem an application to be filed on the date when it is substantially complete, which is interpreted to be the date on which the Membership Department receives from the Applicant all material documentation and information required under proposed General 3, Rule 1013. This rule also provides that the Exchange will notify the Applicant in writing when it deems the Applicant's application to be substantially complete. Phlx does not have a comparable rule.

Proposed General 3, Rule 1013(a)(3) provides the procedure concerning incomplete applications (including the conditions necessary for the refund of application fees); and the request for additional documents or supporting information. Specifically, proposed General 3, Rule 1013(a)(3)(A) ("Lapse of Applications that are not Substantially Complete") provides that if an application that was initiated under proposed Rule 1013 is not deemed to be substantially complete by the Membership Department within 90 calendar days after an Applicant initiates it, then absent a showing of good cause by the Applicant, the Membership Department may, at its

discretion, deem the application to have lapsed without filing, and the Membership Department will take no action in furtherance of the application. If the Membership Department deems an application to have lapsed, then the Membership Department shall serve a written notice of that determination on the Applicant. If an Applicant still wishes to apply for membership on the Exchange after receiving notice of a lapse in its application, then the Applicant will be required to submit a new application pursuant to Membership Rules and pay a new application fee for doing so, if applicable. The Membership Department will refund fees that an Applicant has paid to the Exchange in connection with a lapsed application, in accordance with Exchange rules regarding fees, provided that the Exchange has not proceeded to process the application at the time it lapses. The rule also provides that, for purposes of proposed Rule 1013(a)(3)(A), the Membership Department will deem an application to be not “substantially complete” if the Applicant fails to submit to the Membership Department materially important information or documentation that is required or requested under these Rules.

Current Phlx General 3, Rule 5(d) provides that absent a showing of good cause, an application filed pursuant to this Rule shall lapse after a 90 calendar day period if an applicant fails to provide the requisite documentation provided for in this Rule or any subsequent written request for information or documents. The applicant would be required to file a new application and pay an additional application fee at that time. The Exchange will not refund any fees for lapsed applications. Current Phlx General 3, Rule 5(d) would be replaced by proposed General 3, Rule 1013. While the rules are substantially similar, proposed General 3, Rule 1013(a)(3)(A) provides that the Department will refund fees that an Applicant has paid to the Exchange in connection with a lapsed application, in accordance with its Rules regarding fees, provided that the Exchange has not proceeded to process the application at the time it lapses. This carve-out

for permitting refunds would be a new provision as Phlx has no such carve-out today. The Exchange believes adopting the carve-out as specified within proposed General 3, Rule 1013(a)(3)(A) and otherwise removing current Phlx General 3, Rule 5(d) would serve to align Phlx's rules with that of Nasdaq and other Affiliated Exchanges.

Proposed General 3, Rule 1013(a)(3)(B) ("Rejection of Filed Applications that Remain or Become Incomplete After Filing") provides that if an application that was initiated under proposed General 3, Rule 1013 is substantially complete and thus is deemed to be filed with the Exchange under proposed General 3, Rule 1013(a)(2), but the application nevertheless remains or becomes incomplete with respect to any required or requested information or documentation, then the Membership Department shall serve written notice to the Applicant of such incompleteness and describe the missing information or documentation. If the Applicant fails to submit to the Exchange the missing information or documentation within a reasonable period after it receives a notice of incompleteness, then absent a showing of good cause by the Applicant, the Membership Department may, at its discretion, reject the application. If the Membership Department rejects an application on the basis of incompleteness, then the Membership Department shall serve a written notice on the Applicant of the Membership Department's determination and the reasons therefor. The Exchange shall not refund the application fees that an Applicant has paid to the Exchange in connection with an application that the Exchange rejects. If the Applicant determines to continue to seek membership on the Exchange, then the Applicant shall submit a new application and pay a new application fee in accordance with the Exchange rules.

Current Phlx General 3, Section 5(c), similar to proposed General 3, Rule 1013, provides that the Membership Department shall review and act upon the membership application or

permit application. Proposed General 3, Section 1013 would obviate the need for current Phlx General 3, Section 5(c). Similarly, current Phlx General 3, Section 5(b) provides that all applications will be reviewed preliminarily by the staff of the Exchange. Proposed General 3, Rule 1014(a) implies that an application will be reviewed by the Membership Department. Further, current Phlx General 3, Section 5(b) provides that the Exchange shall notify the applicant in writing if a membership or permit will not be issued.⁴³ The applicant would have 15 days from the day of receipt of the notice to request a consideration of the application by providing a written statement setting forth the applicant's opinion as to why the staff recommendation is in error or insufficient to preclude the issuance of a membership or a permit. Further, pursuant to Phlx's current rules under General 3, Section 16(a)(i) within 25 days after service of a decision of an adverse action described above, an applicant may file a written request for review with the Exchange Review Council. A request for review shall state with specificity why the applicant believes that the Department's decision is inconsistent with the bases for denial set forth in General 3, Section 2, or otherwise should be set aside, and state whether a hearing is requested. The applicant simultaneously shall file by first-class mail a copy of the request with the Department. The Exchange notes that the rule text within current Phlx General 3, Section 16(a)(i) is the same as the rule text within Nasdaq General 3, Rule 1015(a). This proposal would therefore eliminate the first level of appeal by the Membership Department.

⁴³ The term "permit" is not necessary in the proposed new rules because the Exchange's membership rules govern membership in the same manner as the Nasdaq rules. An applicant that is approved for membership on Phlx would be entitled to the issuance of a permit pursuant to Phlx General 3, Section 11, Rights and Privileges of A-1 Permits. The Exchange proposes to retain Phlx General 3, Section 11 and relocate that rule to new Phlx General 2, Section 23, as described within this proposal. The concept of a "permit" will continue to separately exist within the Phlx rules and would continue to be tied to the membership process through the definition of a member. See General 1, Section 1(16).

Similar to Affiliated Exchanges, with the proposed rules, an applicant would have the right to review before the Exchange Review Council. Despite the elimination of the first level of review by the Membership Department, the Exchange believes the review by the Exchange Review Council provides an applicant with appropriate due process as the review is conducted by an independent panel.

The Exchange plans to replace current Phlx General 3, Section 5(d) by incorporating by reference Nasdaq General 3, Rule 1013(a)(3) which provides well-defined processes for the treatment of applications that become stale or result in the Applicant's failure to pursue membership by not responding to requests for additional information.

Proposed General 3, Rule 1013(a)(4) ("Requests by the Department for Additional Documents or Information from the Applicant or from Third Parties") establishes that (A) at any time before the Membership Department serves its decision as to an application for new membership in the Exchange, the Membership Department may serve a written request for additional information or documentation, from the Applicant or from a third party, if the Membership Department deems such information or documentation to be necessary to clarify, verify, or supplement the application materials. The Membership Department may, at its discretion, request that the Applicant or the third party provide the requested information or documentation in writing or through an in-person or telephonic interview. In the written request, the Membership Department shall afford the Applicant or the third party a reasonable period of time within which to respond to the request; moreover, (B) in the event that the Membership Department obtains information or documentation about an Applicant from a third party that the Membership Department reasonably believes could adversely impact its decision on an application, then the Membership Department shall promptly inform the Applicant in writing and

provide the Applicant with a description of the information or a copy of the documentation that the Membership Department obtained, where appropriate under the circumstances. Prior to rendering an application decision on the basis of information or documentation obtained from a third party source, the Membership Department shall afford the Applicant with a reasonable opportunity to discuss or to otherwise address the information or documentation that the Membership Department obtained from the third party.

The provisions under proposed General 3, Rule 1013(a)(4) are similar to the Exchange's current practice to the extent that the Membership Department has made written requests for documentation in furtherance of their review of the membership applications. Proposed General 3, Rule 1013(a)(4) specifically provides for the Exchange's authority to request additional documents or information from the Applicant, or a third party. The Exchange believes that incorporating by reference proposed Nasdaq Rule 1013(a)(4) into its membership rules will provide a greater degree of detail concerning the Exchange's discretion and authority to request additional information.

Proposed General 3, Rule 1013(b)(1)(A) sets forth the procedure that allows an Applicant who is a FINRA member to "waive-in" to become an Exchange member or member organization and to register with the Exchange all persons associated with it whose registrations FINRA has approved (in categories recognized by the Exchange's rules). This section defines the term "waive-in" to mean that the Membership Department will rely substantially upon FINRA's prior determination to approve the Applicant for FINRA membership when the Membership Department evaluates the Applicant for Exchange membership. That is, the Membership Department will normally permit a FINRA member to waive-into Exchange membership without conducting an independent examination of the Applicant's qualifications for membership on the

Exchange, provided that the Membership Department is not otherwise aware of any basis set forth in proposed General 3, Rule 1014 to deny or condition approval of the application. Today, General 3, Section 1(f)(3) permits an applicant that is an approved member in good standing of Nasdaq or BX to apply to become a member of the Exchange and to register with the Exchange all associated persons of the firm whose registrations with the firm are approved with Nasdaq or BX in categories recognized by the Rules of the Exchange through an expedited process. The expedited process requires applicants to complete an Organization Membership Application and attest that the application material previously provided and reviewed as part of the Nasdaq or BX application is complete and accurate but does not require the applicant to submit duplicative documentation which was previously produced. By incorporating the Nasdaq General 3 rules, Phlx would be able to similarly waive-in a member of any of the other Affiliated Exchanges (ISE, GEMX or MRX). This would expand Phlx's current ability to offer a waive-in application process (similar to Phlx's "expedited process") to all Affiliated Exchanges, not just members of Nasdaq and BX.

Proposed General 3, Rule 1013(b)(1)(B) provides that waive-in membership that is granted to a FINRA member pursuant to this provision shall terminate in the event that the Applicant ceases to be a FINRA member and otherwise fails to comply with Rule 1002(c). Proposed General 3, Rule 1013(b)(1)(C) provides that in lieu of submitting an application as set forth in paragraph (a), an Applicant may waive-in to Exchange membership as provided in subparagraph (b)(1) by filing with the Exchange a waive-in application form and an executed Exchange Membership Agreement. Proposed General 3, Rule 1013(b)(1)(D) provides that the Membership Department will act upon a duly submitted application to waive-into Exchange membership under paragraph (b)(1) by serving upon the Applicant a written notification of its

decision within a reasonable time frame not to exceed 20 days of submission of the application, unless the Department and the Applicant agree that the Department may issue its decision at a later date. A failure of the Department to issue a decision within this time frame shall be subject to proposed General 3, Rule 1014(c)(3). The Department will normally grant a duly submitted application to waive-into Exchange membership, provided that the Applicant submits the required materials, the Department verifies that the Applicant is a FINRA member, and that the Department is not otherwise aware of any basis to deny or condition approval of the application, as set forth in proposed General 3, Rule 1014. A decision issued under this provision shall have the same effectiveness as set forth in proposed General 3, Rule 1014 and shall be subject to review as set forth in proposed General 3, Rules 1015 and 1016. By incorporating Nasdaq's General 3 Rules by reference, the Exchange's rules would become similar to FINRA's 1000 Series membership rules. Therefore, with this proposal, a FINRA member would be permitted to waive-in with the adoption of General 3, Rule 1013 as is the case today for Nasdaq and BX and would be the case for all other Affiliated Exchanges (ISE, GEMX, and MRX) upon adoption of this proposal. Today, Phlx's membership rules differ from FINRA's membership rules.

The second special application process, which is set forth in proposed General 3, Rule 1013(b)(2)(A), permits Applicants for membership that are already approved members or member organizations of one or more of the Affiliated Exchanges to waive-into the Exchange. In this context, "waive-in" means that the Membership Department will rely substantially upon an Affiliated Exchange's prior determination to approve the Applicant for membership. The procedures in proposed General 3, Rule 1013(b)(2) for an Applicant to submit a waive-in application under this provision and for the Membership Department to issue a decision based upon such an application are identical to the procedures described above for FINRA members

that seek to waive-into the Exchange membership. Applicants who meet the criteria for this waive-in review process have already demonstrated their ability to meet membership standards on one or more of the Affiliated Exchanges which eliminates the need for a full review.

Proposed General 3, Rule 1013(b)(2)(B) provides that in lieu of submitting an application as set forth in paragraph (a), an Applicant may waive-into Exchange membership as provided in subparagraph (b)(2) by filing with the Department a waive-in application form. As part of this form, the Applicant must attest to the fact that it has made no unapproved material changes to its broker-dealer business subsequent to its approval as a member of an affiliated exchange. Finally, proposed General 3, Rule 1013(b)(2)(C) provides that the Department will act upon a duly submitted application to waive-into Exchange membership under paragraph (b)(2) by serving upon the Applicant a written notification of its decision within a reasonable time frame not to exceed 20 days of submission of the application, unless the Department and the Applicant agree that the Department may issue its decision at a later date. A failure of the Department to issue a decision within this time frame shall be subject to General 3, Rule 1014(c)(3). The Department will normally grant a duly submitted application to waive-into Exchange membership, provided that the Applicant submits the required materials, the Department verifies that the Applicant is a member of an exchange affiliated with the Exchange, and that the Department is not otherwise aware of any basis to deny or condition approval of the application, as set forth in General 3, Rule 1014. A decision issued under this provision shall have the same effectiveness as set forth in General 3, Rule 1014 and shall be subject to review as set forth in General 3, Rules 1015 and 1016. As noted above, an applicant that is an approved member in good standing of Nasdaq or BX to apply may become a member of the Exchange and register with the Exchange all associated persons of the firm whose registrations with the firm are approved with Nasdaq or BX

in categories recognized by the Rules of the Exchange through an expedited process. The process to approve members in good standing of Nasdaq and BX that is described in current Phlx General 3, Section 1(f)(3) is not detailed. Proposed General 3, Rule 1013(b)(2) will provide Phlx a more detailed process to continue to allow it to accept members of Nasdaq and BX and also permit it to accept members of other Affiliated Exchanges similar to the process that occurs today on Nasdaq and other Affiliated Exchanges with respect to Phlx members and member organizations.

Nasdaq General 3, Rule 1013(b) (“Special Application Procedures”) was adopted by Nasdaq to expedite the membership application process of Applicants who were already members of FINRA or members of one of the Affiliated Exchanges. The Exchange proposes to adopt by incorporation these same provisions to facilitate Applicants who meet the rule requirements. The adoption of this rule will offer members of FINRA, Nasdaq, and other Affiliated Exchanges the option to apply for membership on the Exchange through an expedited membership application process.

As noted above, current Phlx General 3, Section 1(f)(3) permits an applicant that is an approved member in good standing of Nasdaq or Nasdaq BX, Inc. to have the option to apply to become a member of Phlx through an expedited process. The adoption of proposed General 3, Rule 1013(b) would expand the scope of markets by which an applicant could utilize an expedited process. The Exchange believes that incorporating by reference the waive-in provisions within proposed General 3, Rule 1013(b) will further the Exchange’s objective to provide uniformity and clarity to its rules by aligning its membership application process with Nasdaq and other Affiliated Exchanges.

Proposed General 3, Rule 1014 (Department Decision)

Proposed General 3, Rule 1014 (“Department Decision”) describes the Membership Department’s process for the issuance of a decision. The Exchange proposes to incorporate by reference proposed General 3, Rule 1014 in its entirety as it provides a more organized, detailed, and logical description of the procedure currently described in current Phlx General 3, Sections 2 and 5. Incorporating proposed General 3, Rule 1014 by reference in the Exchange’s rules will improve the membership application and decision making process by better defining the Membership Department’s authority and obligations, describing the basis for approval, conditional approval or denial of an application. Further, the Exchange believes that this proposed change provides consistency in the treatment of Exchange Applicants.

Proposed General 3, Rule 1014(a) describes the Membership Department’s authority to act on an application by approving it, denying it, or approving it subject to restrictions: (1) that are reasonably designed to address a specific (financial, operational, supervisory, disciplinary, investor protection, or other regulatory) concern; or (2) that mirror a restriction placed upon the Applicant by FINRA or an Affiliated Exchange.

Proposed General 3, Rule 1014(b), entitled “Bases for Approval, Conditional Approval, or Denial,” provides that the Membership Department will approve, grant conditional approval, or deny a membership application filed under proposed General 3, Rules 1013 and 1017 by an Applicant that is not, and is not required to become, a FINRA member. Proposed General 3, Rule 1014(b)(1) indicates that the Membership Department may deny or condition membership approval for the same reasons that the Commission may deny or revoke a broker or dealer’s registration; this Rule parallels current Phlx General 3, Section 2(a) and (b), which describes the

Exchange's authority to deny an application for the same reasons that the SEC may deny or revoke a broker-dealer registration and for those reasons required or allowed under the Act.

Proposed General 3, Rule 1014(b)(2) enumerates the reasons for denial or conditional approval of a membership application in the cases when the Applicant (A) is unable to satisfactorily demonstrate its capacity to adhere to the Exchange and Commission rules; (B) has previously violated, and there is a reasonable likelihood that such Applicant will again engage in violative acts or practices, of any Exchange or Commission policies, rules, and regulations; (C) has engaged in acts or practices inconsistent with just and equitable principles of trade, and there is a reasonable likelihood that such Applicant will again engage in violative acts or practices, of any Exchange or Commission policies, rules, and regulations; (D) is not in compliance with the Commission's net capital rule or has financial difficulties greater than 5% of their net worth; (E) has been itself, or is the successor to an entity subject to a bankruptcy, proceeding, receivership, or arrangement for the benefit of creditors within the past 3 years; (F) has engaged in an established pattern of failure to pay just debts; (G) does not hold required licenses or registrations; or (H) is unable to satisfactorily demonstrate reasonably adequate systems capacity and capability.

The Exchange notes that the basis for denial listed under current Phlx General 3, Section 2, includes statutory disqualification at Section 2(a), violations of Section 15 and 17 of the Act and books and records violations at Section 2(b), and the following list of reasons under Section 2(c): (i) failure to complete proficiency examinations or meet other standards of competence; and (ii) failure to adhere to applicable policies, rules and regulations of the Exchange or any other self-regulatory organization, the SEC, the Board of Governors of the Federal Reserve System and the contract market designated pursuant to Section 5 of the Commodity Exchange Act or

futures association registered under Section 17 of such Act; (iii) unsatisfied liens, judgments or unsecured creditor claims of a material nature, which remain outstanding; subject to any bankruptcy proceeding, receivership or arrangement within three years; associated as a general partner, principal, officer, director, stockholder, or registered trader for a member organization which has been subject to any unsatisfied liens, judgments or unsecured creditor claims of a material nature; (iv) engaged in a pattern of failure to pay just debts; and (v) generally, for such other cause as the Membership Department reasonably may decide.

The Exchange believes that the provisions under proposed General 3, Rule 1014(b)(2) are very similar to the Exchange's current provisions for denial. While Phlx does not currently have specific provisions for net capital or adequate systems capacity and capability, it currently does have a catch-all provision within current Phlx General 3, Section 2(c) that would allow the Exchange to deny membership for those reasons.

The Exchange notes that current Phlx General 3, Section 2(a), which refers to the basis for membership denial as it relates to statutory disqualification, is substantially similar to proposed General 3, Rule 1002(b)(1) and (2), which describe an Applicant's ineligibility for membership or association due to statutory disqualification. As stated above, the Exchange proposes to incorporate proposed General 3, Rule 1002 in its entirety.

Proposed General 3, Rule 1014(b)(3) provides that the Membership Department will not approve an Applicant unless the Applicant is a member of another registered securities exchange or association that is not registered solely under Section 6(g) or Section 15A(k) of the Act. As noted herein, the Exchange acts in the capacity of a DEA and, therefore, applicants for membership may register to have Phlx as their DEA. As such, a member or member organization that registers with Phlx as its DEA may meet the requirement of proposed General

3, Rule 1014(b)(3) without the need to be a member of another registered securities exchange or association. Further, because Phlx is distinct from Nasdaq with respect to its DEA capacity, the Exchange proposes to add rule text which provides for this distinction within General 3.

Proposed General 3, Rule 1014(b)(3) also provides that an Applicant that will transact business with the public must be a member of FINRA. While Phlx's rules currently do not indicate that an Applicant that transacts business with the public must be a member of FINRA, this is the case today. Proposed General 3, Rule 1014(b)(3) will make clear that an Applicant must also be a member of FINRA if an Applicant transacts business with the public.

The Exchange proposes to incorporate by reference proposed General 3, Rule 1014(c) to establish the time and content of a decision and the recourse available to an Applicant if the Membership Department fails to timely issue a decision on a membership application. Current Phlx General 3, Section 5(c), broadly states that the Membership Department shall review and act upon the membership application or permit. Proposed General 3, Rule 1014(c) outlines this process in greater detail. Proposed General 3, Rule 1014(c)(1) requires the Membership Department to serve a decision on the membership application within a reasonable time period, not to exceed 45 (calendar) days after the Applicant files and provides to the Exchange all required and requested information or documents in connection with the application.

Additionally, the rule allows the Membership Department and the Applicant the ability to agree to further extensions of the decision deadlines. Phlx has no comparable rule. Proposed General 3, Rule 1014(c)(2) also provides that the decision will detail the reason(s) for the denial of membership or the approval of the application subject to restrictions. This provision is similar to current Phlx General 3, Section 5(b), which provides that if Exchange staff recommends that the applicant not be issued a membership or a permit the applicant shall be notified in writing of the

reasons therefor. Moreover, proposed General 3, Rule 1014(c)(3) provides that if the Membership Department fails to timely serve a decision, the rule prescribes that the Applicant may request the Exchange Board to direct the Membership Department to serve a decision. The rule further provides that the Exchange Board, within seven days, will direct the Membership Department to serve its decision or to show good cause for a time extension. If the Membership Department shows good cause, the Exchange Board may grant the Membership Department up to 45 days to issue the decision. Phlx has no comparable rule.

Proposed General 3, Rule 1014(e) prescribes that service of the Membership Department's decision shall be made pursuant to proposed General 3, Rule 1012. Further, the rule provides that the decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Exchange is issued under proposed General 3, Rules 1015 or 1016, unless otherwise directed by the Exchange Review Council, the Exchange Board, or the Commission. Current Phlx General 3, Section 5(b) prescribes that a notice of the Exchange's decision shall be provided to the Applicant if the staff recommends not to issue a membership or a permit but is silent on providing a decision to approve membership. The Exchange believes that incorporating this rule by reference clarifies the process for serving the Membership Department's decision on applications.

Proposed General 3 Rules 1014(f) and (g), respectively, provide for the effectiveness of restrictions on an approved application and what constitutes final action in the Membership Department's decision. Proposed General 3, Rule 1014(f) establishes that a restriction imposed under proposed General 3, Rule 1014 shall remain in effect and bind the Applicant and all successors to the ownership or control of the Applicant unless (1) it is removed or modified by a decision constituting final action of the Exchange issued under proposed General 3, Rules 1015,

1016, or 1017; or (2) stayed by the Exchange Review Council, the Exchange Board, or the Commission. Proposed General 3, Rule 1014(g) provides that unless the Applicant files a written request for a review under proposed General 3, Rule 1015, the Membership Department's decision shall constitute final action by the Exchange. Phlx has no comparable rule.

Proposed General 3, Rule 1015 (Review by Exchange Review Counsel)

The Exchange proposes to incorporate by reference Nasdaq General 3 Rule 1015 in its entirety under its General 3 title. Proposed General 3, Rule 1015, subsections (a) through (j) are substantially similar to the current provisions concerning a review by the Exchange Review Council detailed in current Phlx General 3, Section 16(a).

Phlx will no longer retain the introductory sentence within current Phlx General 3, Section 16 which provides, "If the Membership Department takes an adverse action with respect to a membership application, permit application, or other matter for which the Membership Department has responsibility, the department will notify the applicant in writing of the specific grounds for denial and the applicant shall have a right to a hearing." This rule text is covered within proposed General 3, Rule 1014(g) and 1015.

The Exchange proposes to incorporate by reference Nasdaq General 3, Rules 1015(k) and (l) (respectively, "Ex Parte Communications" and "Recusal or Disqualification"). Proposed General 3, Rule 1015(k) prohibits ex parte communications involving membership decisions subject to review between an Applicant, a counsel or representative of an Applicant, or an Interested Staff and certain Exchange staff, members of the Exchange Review Council, members of a Subcommittee of the Council, and Directors, unless notice was provided along with an opportunity for an Applicant and Interested Staff to participate. Further, pursuant to General 3,

Rule 1015(k)(3), in the instance that a Director, a member of the Exchange Review Council or a Subcommittee, or an Exchange employee participating or advising in the decision of such a person, who receives, makes, or knowingly causes to be made a communication prohibited by this paragraph shall place in the record of the membership proceeding all written communications, memoranda stating the substance of all such oral communications, and all written responses and memoranda stating the substance of all oral responses to all such communications. Proposed General 3, Rule 1015(l) governs the recusal and disqualification of a member of the Exchange Review Council, a Subcommittee thereof, or a Director from participating in a review of a membership decision, where that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. The Exchange has no parallel provisions in its rulebook to proposed General 3, Rules 1015(k) and (l). The Exchange believes that incorporating proposed General 3, Rules 1015(k) and (l) by reference enhances the Exchange Review Council's procedures and is in line with the Exchange's goal of harmonizing its rules with those of the Nasdaq and other Affiliated Exchanges.

Proposed General 3, Rule 1016 (Discretionary Review by the Exchange Board)

Aside from their respective internal cross-references, the text in proposed General 3, Rule 1016 and current Phlx General 3, Section 16(b) (both entitled "Discretionary Review by the Exchange Board") are identical. The Exchange proposes to incorporate by reference Nasdaq General 3, Rule 1016 under its General 3 title. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq and other Affiliated Exchanges.

Proposed General 3, Rule 1017 (Application for Approval of Change in Ownership, Control, or Material Business Operations)

Proposed General 3, Rule 1017, “Application for Approval of Change in Ownership, Control, or Material Business Operations,” has no analogue rule in the current Phlx General 3 title, other than current Phlx General 3, Section 1(f)(2) which discussed PSX Participants who commence market making. Incorporating Nasdaq General 3, Rule 1017 by reference in its entirety in the Exchange’s rules will enhance the Exchange’s ongoing regulatory oversight capabilities by clearly identifying events that would trigger the requirement for an approved member or member organization to file an application with the Exchange. As stated below, proposed General 3, Rule 1017 outlines in detail the circumstances that trigger the filing of an application pursuant to this rule. While the Exchange has no corresponding rule, it does have a similar process in place that it administers procedurally. For example, if an existing member organization of the Exchange is seeking Market Maker status for the first time, the current Exchange process is to require that the member organization submit an amended Exchange application along with relevant supplementary material.⁴⁴ The Exchange believes that incorporating proposed General 3, Rule 1017 by reference further harmonizes its process with that of Nasdaq and other Affiliated Exchanges and improves its current practice. As stated previously, the objective is to eventually harmonize membership rules across all Affiliated Exchanges in order to advance uniformity within the membership rules and procedures.

Proposed General 3, Rule 1017(a) prescribes the events that require member organizations to file applications with the Exchange. Paragraph (a) provides that a member organization shall file an application for approval prior to effecting the following changes: (1) a

⁴⁴ See Phlx General 3, Section 1(f)(2).

merger of the member organization with another member organization; (2) a direct or indirect acquisition by the member organization of another member organization; (3) direct or indirect acquisitions or transfers of 25% or more in the aggregate of the member organization's assets or any asset, business line or line of operations that generates revenues comprising 25% or more in the aggregate of the member organization's earnings measured on a rolling 36 month basis; (4) a change in the equity ownership or partnership capital of the member organization that results in one person or entity directly or indirectly owning or controlling 25% or more of the equity or partnership capital; or (5) a material change in business operations, which includes, but is not limited to, (A) removing or modifying a membership restriction; (B) acting as a dealer or a market maker for the first time; (C) adding business activities that require a higher minimum net capital under SEC Rule 15c3-1; or (D) adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in the proposed Rule 1000 Series.

Proposed General 3, Rule 1017(b), governs the filing and content of applications filed under proposed General 3, Rule 1017. This Rule provides that the application shall be filed with the Membership Department; if the Applicant seeks approval of change of ownership or control or a material change in the member organization's business operations, the application shall (A) provide a detailed description of the proposed change, (B) provide a business plan, pro forma financials, an organizational chart, and written supervisory procedures reflecting the proposed change; and (C) if the application requests approval of a change in ownership or control, the application also shall include the names of the new owners, their percentage of ownership, and the sources of their funding for the purchase and recapitalization of the member organization.

Furthermore, proposed General 3, Rule 1017(b) provides that if the application requests the removal or modification of a membership restriction, the application also shall, (A) present facts showing that the circumstances that gave rise to the restriction have changed; and (B) state with specificity why the restriction should be modified or removed in light of the applicable bases for denial or standards for approval set forth in proposed General 3, Rules 1014 or 1017 and the articulated rationale for the imposition of the restriction. Moreover, the Rule indicates that if the application requests approval of an increase in Associated Persons involved in sales, offices, or markets made, the application shall set forth the increases in such areas during the preceding 12 months.

Proposed General 3, Rule 1017(c) indicates when an application shall or may be filed. Specifically, the Rule provides that (1) an application for approval of a change in ownership or control shall be filed at least 30 days prior to such change; (2) that an application to remove or modify a membership restriction may be filed at any time (clarifying that an existing restriction shall remain in effect during the pendency of the proceeding); and that (3) an application for approval of a material change in business operations, other than the modification or removal of a restriction, may be filed at any time, but the member organization may not effect such change until the conclusion of the proceeding, unless the Membership Department and the member organization otherwise agree.

Proposed General 3, Rule 1017(d) prescribes that an application will be deemed to be filed on the date when it is substantially complete, meaning the date on which the Membership Department receives from the Applicant all material documentation and information required under this Rule, and that the Membership Department will notify the Applicant in writing when the Membership Department deems the Applicant's application to be substantially complete.

Proposed General 3, Rule 1017(e) indicates that, pursuant to proposed General 3, Rule 1013(a)(3), the Membership Department may treat an application filed under this Rule as having lapsed or it may reject such an application, except that the Membership Department may treat an application as having lapsed if it is not substantially complete for 30 days or more after the Applicant initiates it.

Proposed General 3, Rule 1017(f) provides that the Membership Department, at any time before it serves its decision, may request additional information or documentation from the Applicant or from a third party in accordance with proposed General 3, Rule 1013(a)(4).

Proposed General 3, Rule 1017(g) establishes that a Membership Department's decision shall be issued in accordance with proposed General 3, Rule 1014, except that (1) In rendering a decision on an application submitted under the Rule that requests the modification or removal of a membership restriction, the Membership Department shall consider whether maintenance of the restriction is appropriate in light of: (A) the applicable bases for denial or standards for approval set forth in proposed General 3, Rule 1014; (B) the circumstances that gave rise to the imposition of the restriction; (C) the Applicant's operations since the restriction was imposed; (D) any change in ownership or control or supervisors and principals; and (E) any new evidence submitted in connection with the application. Furthermore, this Rule provides that the Membership Department shall serve a written decision on an application filed under this Rule in accordance with proposed General 3, Rule 1013(c). Moreover, the Rule provides that in the event that a proposed change in ownership, control, or business operations by a member organization requires such member organization to become a member of FINRA, the Membership Department shall not be required to serve a written decision under this Rule until 10 business days after the member organization becomes a FINRA member.

Proposed General 3, Rule 1017(h) provides that service of the decision on the Applicant shall be made in accordance with proposed General 3, Rule 1012. Moreover, the Rule indicates that the decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Exchange is issued under proposed General 3, Rules 1015 or 1016, unless otherwise directed by the Exchange Review Council, the Exchange Board, or the Commission.

Proposed General 3, Rule 1017(i) indicates that an Applicant may file a written request for review of the Membership Department's decision with the Exchange Review Council pursuant to proposed General 3, Rule 1015. The rule further clarifies that the procedures set forth in proposed General 3, Rule 1015 shall apply to such review, and the Exchange Review Council's decision shall be subject to discretionary review by the Exchange Board pursuant to proposed General 3, Rule 1016. If the Applicant does not file a request for a review, the Membership Department's decision shall constitute final action by the Exchange.

Proposed General 3, Rule 1017(j) prescribes that the Membership Department shall modify or remove a restriction on its own initiative if the Membership Department determines such action is appropriate in light of the considerations set forth in paragraph (g)(1) of the Rule. The Membership Department shall notify the member in writing of the Membership Department's determination and inform the member that it may apply for further modification or removal of a restriction by filing an application under proposed General 3, Rule 1017(a).

Proposed General 3, Rule 1018 (Resignation, Reinstatement, Termination, and Transfer of Membership)

Proposed General 3, Rule 1018, "Resignation, Reinstatement, Termination, and Transfer of Membership," has no analogue rule in the Exchange's current General 3 title. The Exchange proposes to incorporate the rule by reference under its General 3 title. Proposed General 3, Rule

1018 outlines the process for resignation, reinstatement, termination, and transfers of memberships. Incorporating Nasdaq General 3, Rule 1018 by reference will eventually allow the Exchange to standardize the processing of these requests across all the Affiliated Exchanges.

Proposed General 3, Rule 1018(a) provides that membership may be voluntarily terminated only by formal resignation. Resignations of members and member organizations must be filed via electronic process or such other process as the Exchange may prescribe. Any member or member organization may resign from the Exchange at any time. Such resignation shall not take effect until all indebtedness due to the Exchange from such member or member organization shall have been paid in full and so long as any complaint or action is pending against the member or member organization under the Rules. The Exchange, however, may in its discretion declare a resignation effective at any time.

Proposed General 3, Rule 1018(b) indicates that no member organization may transfer its membership or any right arising therefrom; the membership of a corporation, partnership, or any other business organization that is a member organization shall terminate upon its liquidation, dissolution, or winding up; and the membership of a sole proprietorship that is a member organization shall terminate at death, provided that all obligations of membership under the Rules have been fulfilled. Moreover, the Rule provides that the consolidation, reorganization, merger, change of name, or similar change in any corporate member organization shall not terminate the membership of such corporate member organization, provided that the Exchange member organization or surviving corporation, if any, shall be deemed a successor to the business of the corporate member organization, and the member organization or the surviving organization shall continue in the securities business, and shall possess the qualifications for membership in the Exchange. Furthermore, the death, change of name, withdrawal of any

partner, the addition of any new partner, reorganization, consolidation, or any change in the legal structure of a partnership member organization shall not terminate the membership of such partnership member organization, provided that the member organization or surviving organization, if any, shall be deemed a successor to the business of the partnership member organization, and the member organization or surviving organization shall possess the qualifications for membership in the Exchange. If the business of any predecessor member organization is to be carried on by an organization deemed to be a successor organization by the Exchange, the membership of such predecessor member organization shall be extended to the successor organization subject to the notice and application requirements of the Rules and the right of the Exchange to place restrictions on the successor organization pursuant to the Rules; otherwise, any surviving organization shall be required to satisfy all of the membership application requirements of the Exchange's Rules.

Proposed General 3, Rule 1018(c) establishes that any membership or registration suspended or canceled under the Rules may be reinstated by the Exchange upon such terms and conditions as are permitted under the Act and the Exchange rules; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in the Exchange.

Proposed General 3, Rule 1019 (Application to Commission for Review)

Proposed General 3, Rule 1019 ("Application to Commission for Review") has no analogue rule in the Exchange's current General 3 title. Proposed General 3, Rule 1019 allows an aggrieved person to request the Commission to review an Exchange final action under the proposed General 3, Rule 1010 Series. Incorporating proposed General 3, Rule 1019 by

reference standardizes the process by which an Applicant may dispute any final action of the Exchange.

Proposed General 3, Rule 1019 provides that a person aggrieved by the Exchange's final action under Membership Rules may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing of an application for review shall not stay the effectiveness of a decision constituting final action of the Exchange, unless the Commission otherwise orders.

Proposed General 3, Rule 1030 (Member Access to the Exchange)

Current Phlx General 3, Rule 1030 is identical to proposed General 3, Rule 1030. The Exchange intends to incorporate Nasdaq General 3, Rule 1030 in order to continue to harmonize Phlx's membership rules with Nasdaq and other Affiliated Exchanges.

Current Phlx General 3, Section 7, Registration

Current Phlx General 3, Section 7, Registration, is proposed to be deleted in part and relocated in part.

Current Phlx General 3, Section 7(a) provides that each member and member organization shall register with the Membership Department an address where notices may be served. Subsequent changes in address must be provided to the Membership Department of the Exchange before the effective date thereof. This provision is no longer necessary as the Membership Department has access to Web CRD and monitors for member organization address changes which are available to the Exchange through Web CRD. All Phlx members and member organizations are required to register within Web CRD to fulfill their General 4 registration requirements.⁴⁵

⁴⁵ See Nasdaq General 4, Rule 1210. Phlx's General 4 rules incorporate by reference Nasdaq's General 4 rules.

Current Phlx General 3, Section 7(b) provides that each member and member organization shall register with the Exchange, on such form or forms as may from time to time be required by the Membership Department. Registration forms shall include, but not be limited to, (i) the name and address of the individual member having qualified such member organization in accordance with General 3, Section 1 and (ii) the name and address of the Executive Representative designated by such member organization in accordance with General 3, Section 13(b). Finally, members and member organizations must use Web CRD to submit Form U4, Uniform Application for Securities Industry Registration or Transfer registration filings. Members and member organizations shall amend Form U4 filings not later than thirty (30) days after the filer knew or should have known of the facts which gave rise to the amendment. The Exchange proposes to delete current Phlx General 3, Section 7(b) as proposed General 3, Rule 1013 describes the content of an application that would be required to seek membership with the Exchange. Also, Phlx General 4 describes the manner in which members and member organizations must be registered and utilize Form U-4 and Web CRD.⁴⁶

Current Phlx General 3, Section 7(c) provides that each member organization applicant that is a registered broker or dealer pursuant to Section 15 of the Act must use Web CRD to submit a Uniform Application for Broker-Dealer Registration, Form BD. Member organizations shall amend Form BD filings not later than thirty (30) days after the filer knew or should have known of the facts which gave rise to the amendment.⁴⁷ The Exchange proposes to delete this rule text as Nasdaq General 3, Rule 1013(a)(1)(A) requires an applicant to provide a copy of the

⁴⁶ Id.

⁴⁷ See Phlx General 3, Section 7(c)(2).

Form BD and all broker-dealers are required to amend their Form BD or Uniform Application for Broker-Dealer Registration. Pursuant to Article IV, Section 1(c) of the FINRA By-Laws, a broker-dealer is required to promptly update Form BD information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason. Finally, Section 15 of the Act requires broker-dealers to use Web CRD to submit a Form BD and to amend Form BD filings not later than thirty days after the filer knew or should have known of the facts which gave rise to the amendment.

Current Phlx General 3, Section 7(d) is being relocated to General 2, Section 11 which is proposed to be titled “Contact Information Requirements.” The Exchange proposes to remove the sentence which provides, “In addition to the requirements of paragraph (a) above, each member organization must comply with the contact information requirements of this paragraph (d)” and re-letter the rule. This sentence is no longer necessary given the relocation of this rule. Nasdaq has the same rule within General 2, Section 11 of its rules.

Current Phlx General 3, Section 8, Status Verification

The Exchange proposes to delete current Phlx General 3, Section 8, Status Verification. This rule provides that upon the request of any member or member organization, the Membership Department of the Exchange shall provide such member or member organization (as applicable) with reasonable written verification of its status as a member or member organization. No member or member organization has requested verification in recent history. This rule is obsolete and unnecessary. No other Affiliated Exchanges have a similar provision. If requested, the Exchange would provide such verification as a courtesy.

Current Phlx General 3, Section 9, Administration of Rules by Membership Department

The Exchange proposes to delete current Phlx General 3, Section 9, Administration of Rules by Membership Department. This rule, which simply states that the Membership Department shall administer General 3, is unnecessary. No other Affiliated Exchanges have a similar provision.

Current Phlx General 3, Section 10, General Powers and Duties of Membership Department

The Exchange proposes to delete current Phlx General 3, Section 10, General Powers and Duties of Membership Department.

Current Phlx General 3, Section 10(a) indicates that the Membership Department shall have jurisdiction over the issuance of memberships (in respect of members and member organizations) and permits and over applications by nonmembers for admission as members. The Membership Department shall also have jurisdiction over the revocation of memberships and permits. All applications for a membership or a permit, all applications by non-members for admission as members, all applications for reinstatement of any membership or permit suspended for insolvency of its holder, and any application for readmission of a person who has been expelled from the Exchange shall be referred to the Membership Department for review and action. Proposed General 3, Rule 1013 makes clear that the Membership Department handles memberships. Proposed General 3, Rule 1018 describes the resignation, reinstatement, termination, and transfer of memberships. The Exchange proposes to delete current Phlx General 3, Section 10(a) in light of the proposed rules. No other Affiliated Exchanges have a similar provision.

Current Phlx General 3, Section 10(b) provides that all applications to qualify and register a corporation or other entity as a member organization and all applications for reinstatement of any qualification or registration of a member organization shall be referred to

the Membership Department which shall investigate and act thereon. The Membership Department shall have supervision over member corporation (and similar) arrangements, and copies of the articles of incorporation, by-laws and all amendments thereto shall be filed with the Membership Department for approval. Proposed General 3, Rule 1013 makes clear that all applications for membership are handled by the Membership Department, which would include a corporation's request for membership. The Exchange proposes to delete this rule as proposed General 3, Rule 1013 would govern. Additionally, today, the Membership Department does not collect articles of incorporation, by-laws and all amendments to those documents on an on-going basis beyond a request from the Membership Department associated with the application to become a member. Any arrangements that a corporation may have in terms of "events" would be handled by the Membership Department pursuant to proposed General 3, Rule 1017(a). No other Affiliated Exchanges have a similar provision.

Current Phlx General 3, Section 10(c) provides for a situation where a member organization's only officer who was a member of the Exchange dies or resigns and the remaining officers may request the Membership Department to permit the corporation to have the status of a member organization for such period, not exceeding sixty (60) days from the date of such death or resignation. The Membership Department in its discretion may, at any time during such period, withdraw such permission and upon such withdrawal such status shall terminate. The Exchange notes that such a request has never been made to the Membership Department in recent history and the Exchange believes that such discretion is not necessary. No other Affiliated Exchanges have a similar provision.

Current Phlx General 3, Section 11, Rights and Privileges of A-1 Permits

Current Phlx General 3, Section 11, Rights and Privileges of A-1 Permits, is proposed to be relocated to new General 2, Section 23, with one change within subparagraph (c)(ii) to update a rule citation from General 3, Section 13(a) to General 3, Rule 1002(a). The rule would retain the current title.

Current Phlx General 3, Section 12, Member and Member Organization Participation

Current Phlx General 3, Section 12, Member and Member Organization Participation, is being relocated into Equity 2, Section 3, which is currently reserved, and Options 2, Section 2, which is currently reserved. The rules would retain the same title. The Exchange proposes to amend proposed Equity 2, Section 3(a)(3) to remove references to FBMS, which is related to options, and the collective definition of “System”. The rule is otherwise being relocated to Equity 2, Section 3, without change. Nasdaq has a similar rule within Equity 2, Section 3. Also, the Exchange proposes to amend proposed Options 2, Section 2(a)(3) to remove references to PSX, which is related to equities, and the collective definition of “System”. The rule is otherwise being relocated to Options 2, Section 3 without change.

Current Phlx General 3, Section 13, Qualification; Designation of Executive Representative

Current Phlx General 3, Section 13, Qualification; Designation of Executive Representative, is being relocated to General 2, Section 10, which is currently reserved. This rule is being relocated without change. The current title would be retained.

Current Phlx General 3, Section 14, Transfer of Accounts

The Exchange proposes to relocate General 3, Section 14, Transfer of Accounts, to new General 2, Section 24, without change. The current title would be retained.

Current Phlx General 3, Section 15, Certificate of Incorporation

The Exchange proposes to delete current Phlx General 3, Section 15, Certificate of Incorporation. This rule requires a certificate of incorporation and by-laws of a proposed member organization to be filed with the Membership Department and approved as well as other authorization documents. Also, amendments to the certificate of incorporation and by-laws of a member organization are required to be reviewed by the Membership Department for approval. Phlx has not approved amendments to the certificate of incorporation and by-laws of a member organization. Proposed General 3, Rule 1013 includes a list of required documentation which may include a certificate of incorporation and by-laws, if requested by the Membership Department. The Exchange proposes to delete current Phlx General 3, Section 15 because it is redundant and unnecessary.

Conclusion

The amendments proposed herein will allow the Exchange to harmonize its membership rules and processes with those of Nasdaq and other Affiliated Exchanges. These amendments will provide uniform criteria across the Affiliated Exchanges for membership qualifications and a consistent process across the Affiliated Exchanges for processing membership applications. The proposal will also provide for full membership reciprocity between the Affiliated Exchanges so that a member of one Affiliated Exchange would receive expedited treatment in applying for membership on any other Affiliated Exchange. Similarly, harmonized membership rules and processes will benefit Exchange Applicants, members and member organizations by establishing consistent membership requirements and processes that must be followed to apply for membership on the Exchange.

Moreover, as to the Exchange itself, the proposed changes described herein will render the Exchange's membership rules and processes clearer, better organized, simpler, and easier to

comply with. Again, such changes will provide benefits both to the Exchange's Membership Department and to Exchange Applicants.

The proposed membership rules and processes are similar to the existing rules and process, and where there are differences between the new and old processes, the Exchange believes that the new process does not disadvantage its members, member organizations or Associated Persons. To the contrary, the Exchange believes that the new rules and processes will benefit all parties as it again provides greater clarity, simplicity, and efficiency than the retired rules and processes.

Implementation

As noted in footnote 3 above, the Exchange's proposed rule change will not become effective unless and until the Commission approves the exemption request. To facilitate an orderly transition from the existing rules under the General 3 title and the Nasdaq Membership Rules to be incorporated by reference, the Exchange is proposing to apply the existing Rules to all applications which have been submitted to the Exchange (including applications that are not yet complete) and are pending approval prior to the operative date. The Exchange also will apply the existing Rules to any appeal of an Exchange membership decision or any request for the Board to direct action on an application pending before the Exchange Review Council, the Board, or the Commission, as applicable. As a consequence of this transition process, the Exchange will retain the existing processes during the transition period until such time that there are no longer any applications or matters proceeding under the existing rules. To facilitate this transition process, the Exchange will retain a transitional rulebook that will contain the Exchange's membership rules as they are at the time that this proposal is filed with the Commission. This transitional rulebook will apply only to matters initiated prior to the

operational date of the changes proposed herein and it will be posted to the Exchange’s public rules website. When the transition is complete, the Exchange will remove the transitional rulebook from its public website.

The Exchange will announce and explain this transition process in a regulatory alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴⁸ in general, and furthers the objectives of Section 6(b)(5) and of the Act,⁴⁹ in particular, in that 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. It is also consistent with Section 6(b)(7) of the Act in that it provides for a fair procedure for denying Exchange membership to any person who seeks it, barring any person from becoming associated with an Exchange member or member organization, and prohibiting or limiting any person with respect to access to services offered by the Exchange or a member or member organization thereof.⁵⁰

As a general matter, the Exchange believes that its proposal to delete its existing membership rules, incorporate by reference the Nasdaq Membership Rules, and other related changes will promote a free and open market, and will benefit investors, the public, and the markets, because the new rules will be clearer, better organized, and simpler, and will enhance consistency for membership procedures across all of Nasdaq’s Affiliated Exchanges.

⁴⁸ 15 U.S.C. 78f(b).

⁴⁹ 15 U.S.C. 78f(b)(5).

⁵⁰ 15 U.S.C. 78f(b)(7).

The proposal is just and equitable because it will render the Exchange’s membership rules easier for Applicants, members and member organizations to read and understand, including by doing the following:

- Establishing a “roadmap” paragraph as shown in proposed General 3, Rule 1014(a) that sets forth the basic authority of the Membership Department to approve, approve with conditions, or deny applications for membership before the Rule goes on to enumerate criteria for the Membership Department to apply when taking each of those actions;
- Making the titles of the rules more accurate and descriptive (e.g., proposed General 3, Rule 1014(b));
- Grouping logically-related provisions together in the rules (e.g., provisions governing resignation, termination, transfer, and reinstatement of membership; recusals and disqualifications);
- Clarifying when the Membership Department will deem an application to be filed (when the application is “substantially complete,” as set forth in proposed General 3, Rule 1013(a)(2)) and by requiring the Membership Department to notify an Applicant in writing of the filing date;
- Clarifying what the Exchange means when it states that an Applicant may “waive-in” to Exchange membership (as set forth in proposed General 3, Rule 1013(b)); and

The proposal will also make compliance with the membership rules simpler and less burdensome for Applicants, members and member organizations by, codifying the below practices which are not currently specified within the rules:

- Eliminating obsolete requirements to submit paper articles of incorporation and by-laws, pursuant to Phlx General 3, Section 10(b), unless requested;
- Permitting electronic filing of applications (proposed General 3, Rule 1012(a)(1));
- Allowing payment of application fees by means other than paper check (proposed General 3, Rule 1013(a)(1)(C)); and
- Harmonizing Phlx's disparate procedures under proposed General 3, Rules 1013 and 1017 for filing, evaluating, and responding to initial membership applications and applications for approval of business changes as compared to the Affiliated Exchanges.

Finally, the proposal will also make compliance with the membership rules simpler and less burdensome for Applicants, members and member organizations by, for example, detailing the circumstances in which an Applicant may waive-into Exchange membership to include the Applicant's membership in any of the Affiliated Exchanges and defining procedures for processing and responding to waive-in applications (proposed General 3, Rule 1013(b)).

In sum, the foregoing changes will update, rationalize, and streamline the Exchange's membership rules and processes, and enhance consistency with membership rules and processes of the Affiliated Exchanges, all to the benefit of Applicants, members and member organizations. Moreover, these changes will not adversely impact the rights of Applicants, members or member organizations to appeal adverse Membership Department decisions under these Rules or to request Board action to compel the Membership Department to render decisions on applications.

Last, the Exchange believes that its proposal to phase-in the implementation of the new membership rules and processes is consistent with Section 6(b)(7) of the Act⁵¹ because both the current and proposed processes provide fair procedures for granting and denying applications for becoming an Exchange member or member organization, becoming an Associated Person, and making material changes to the business operations of a member or member organization. The Exchange is proposing to provide advanced notice of the implementation date of the new processes, and will apply the new processes to new applications, appeals, and requests for Board action that are initiated on or after that implementation date.⁵² Any application, appeal, or request for Board action initiated prior to the implementation date will be completed using the current processes. As a consequence, the Exchange will maintain a transitional rulebook on the Exchange's public rules website which will contain the Exchange Rules as they are at the time of filing this rule change. These transitional rules will apply exclusively to applications, appeals, and requests for Board action initiated prior to the implementation date. Upon conclusion of the last decision on a matter to which the transitional rules apply, the Exchange will remove the defunct transitional rules from its public rules website. Thus, the transition will be conducted in a fair, orderly, and transparent manner. Lastly, the proposed transition process is the same process that Nasdaq and other Affiliated Exchanges implemented during its transition to new membership rules.

⁵¹ 15 U.S.C. 78f(b)(7).

⁵² See footnote 3 above. Additionally, the Exchange will issue a regulatory alert to provide members and member organizations notice of this rule change and the implementation date.

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. The Exchange does not expect that its proposed changes to the membership rules will have any competitive impact on its existing or prospective membership. The proposed changes will apply equally to all similarly situated Applicants, members and member organizations and they will confer no relative advantage or disadvantage upon any category of Exchange Applicant, member, or member organization. Moreover, the Exchange does not expect that its proposal will have an adverse impact on competition among exchanges for members; to the contrary, the Exchange hopes that by clarifying, reorganizing, and streamlining its membership rules and enhancing consistency across all Nasdaq Affiliated Exchanges, the Exchange's membership process will be less burdensome for Applicants, members, and member organizations. Also, the proposal will improve Phlx's competitive standing relative to other exchanges by expanding its waive-in process to all Affiliated Exchanges, not just Nasdaq and BX, as well as FINRA members, thereby simplifying the process for additional market participants to become a Phlx member or member organization.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁵³ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁵⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 Number SR-Phlx-2022-28 on the subject line.

Paper comments:

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

⁵³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR-Phlx-2022-28. 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 website (<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 website 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-Phlx-2022-28 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.⁵⁵

J. Matthew DeLesDernier
Assistant Secretary

⁵⁵ 17 CFR 200.30-3(a)(12).