

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70327; File No. SR-Phlx-2013-85)

September 5, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 640, Continuing Education for Registered Persons and Adopt a Corresponding Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 22, 2013, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. Phlx has designated the proposed rule change as constituting a non-controversial rule change under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 amend Rule 640, Continuing Education for Registered Persons, as described below, and to adopt a corresponding fee.

The text of the proposed rule change is below; proposed new language is underlined; proposed deletions are in brackets.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

## Rule 640. Continuing Education for Registered Persons

### (a) Regulatory Element

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

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

Content. The content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the Rule. The following Regulatory Elements administered by FINRA shall be required:

Persons registered solely as Proprietary Traders pursuant to Rule 613(f) must complete the S501.

Persons registered as General Securities Representatives pursuant to Rule 613(e) must complete the S101.

Persons registered in a supervisory capacity pursuant to Rules 611 and 612 must complete the S201.

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## NASDAQ OMX PHLX LLC<sup>1</sup> PRICING SCHEDULE

ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ OMX PSX FEES, PROPRIETARY DATA FEED FEES AND CO-LOCATION SERVICES FEES. AS OF JANUARY 3, 2011, THE EXCHANGE WILL CALCULATE FEES ON A TRADE DATE BASIS

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### VII. OTHER MEMBER FEES

#### A. OPTION TRADING FLOOR FEES

No change.

#### B. PORT FEES

No change.

#### C. FINRA Fees

Continuing Education Fees [\$75.00]

- The Continuing Education Fee will be assessed as to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to

Exchange Rule 640. This fee is paid directly to FINRA.

\$60.00 for each individual who is required to complete the Proprietary Trader Regulatory Element (S501).

\$100.00 for each individual who is required to complete the S101 or S201).

FINRA, on behalf of the Exchange, will bill and collect these fees

The following fees will be collected and retained by FINRA via the Web CRD registration system for the registration of associated persons of Exchange members that are not also FINRA members:

(b) - (c) No change.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to codify in Rule 640 the specific continuing education requirements that currently apply and to adopt a continuing education requirement for persons registered as Proprietary Traders. The Exchange also

proposes to adopt a fee for the new continuing education program applicable to Proprietary Traders.

The Exchange adopted the Proprietary Trader<sup>5</sup> registration in 2012, working with various other exchanges and Financial Industry Regulatory Authority (“FINRA”). At that time, the Exchange stated that, as a result of the new registration requirements, additional persons will become subject to the Exchange’s continuing education requirements in Rule 640. The Exchange stated that it would announce to the membership when these new requirements will be implemented and available for member organizations to access.<sup>6</sup>

At this time, the new continuing education program for Proprietary Traders will soon become available and will be administered by FINRA. The new program, the S501, is intended to address the specific continuing education of Proprietary Traders, based on the content outline for the Series 56 exam, which covers the main categories of rules and regulations generally applicable to such persons.<sup>7</sup> The Continuing Education Regulatory Element is a computer-based education program administered by FINRA on behalf of the Exchange to help ensure that registered persons are kept current on regulatory, compliance and trading practice matters in the industry.

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<sup>5</sup> A Proprietary Trader is a person who is engaged solely in proprietary trading, market making or effecting transactions on behalf of a broker-dealer account. Phlx Rule 613(f).

<sup>6</sup> See Securities Exchange Act Release No. 66840 (April 20, 2012), 77 FR 25003 (April 26, 2012) (SR-Phlx-2012-23).

<sup>7</sup> These generally include recordkeeping and recording requirements, types and characteristics of securities and investments, trading practices and display execution and trading systems. See Securities Exchange Act Release No. 66645 (March 22, 2012), 77 FR 19042 (March 29, 2012) (SR-Phlx-2012-37).

The Exchange proposes to amend Rule 640(a) to specify the required Regulatory Element for each category of registered persons. Currently, Rule 640(a) provides that no member organization shall permit any registered person to continue to, and no registered person shall continue to perform duties as a registered person, unless such person has complied with the continuing education requirements of paragraph (a).<sup>8</sup> Each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their [sic] second registration anniversary date(s), and every three years thereafter or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the "base date," shall establish the cycle of anniversary dates for purposes of this Rule. This applies to persons registered as Proprietary Traders as well.

The Rule further provides that the content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the Rule. The Exchange now proposes to make this a separate "Content" section and to make clear which specific programs are required, including both existing programs (S101 and S201) as well as the new Proprietary Trader continuing education

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<sup>8</sup> Rule 640.01 exempts most floor persons from this requirement. Nevertheless, pursuant to Rule 625, Phlx requires periodic mandatory training. Training topics include, but are not limited to, training related to that person's function at the Exchange, changes in existing automated systems or any new technology that is utilized by the Exchange, compliance with Exchange Rules and federal securities laws, and issues related to conduct, health and safety on the trading floor. In addition, floor members shall complete mandatory training programs, on at least a semi-annual basis, that address compliance with the federal securities laws and the Exchange's Rules in place to prevent and deter unlawful trading by floor members.

program (S501). The following Regulatory Elements administered by FINRA shall be required:

Persons registered solely as Proprietary Traders pursuant to Rule 613(f) must complete the S501.

Persons registered as General Securities Representatives pursuant to Rule 613(e) must complete the S101.

Persons registered in a supervisory capacity pursuant to Rules 611 and 612 must complete the S201.

The Exchange believes that specifying the applicable Regulatory Element in the Rule should be helpful to members and member organizations in complying with the Rule. Only one Regulatory Element is required. For example, members registered as supervisors are subject to the S201 only; they do not also have to complete the Regulatory Element applicable to their prerequisite registration, such as the S501 or the S101.<sup>9</sup> This proposal does not change the registration requirements

The Exchange also proposes to adopt a fee applicable to Proprietary Trader Regulatory Element. Currently, the applicable fee for the Regulatory Element (S101 and S201) is \$100.<sup>10</sup> The Exchange proposes to adopt a \$60.00 fee for the S501. FINRA administers these programs on behalf of the exchanges and therefore the fees are payable directly to FINRA.<sup>11</sup> The \$60 fee will only be used for the administration of the S501

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<sup>9</sup> In the event that a person is registered both as a Proprietary Trader and a General Securities Representative, only one Regulatory Element is required – the “higher” of the two, which is the S101.

<sup>10</sup> The Exchange’s fee schedule incorrectly states that the fee is \$75.00; the Exchange is proposing to correct this.

<sup>11</sup> The S501 was established for those registrants who have passed the Series 56 Qualification Exam as reflected in WebCRD. WebCRD is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a

versus the S101 which utilizes the \$100 fee for both development and administration. The costs associated with the development of the S501 are included in the examination fee.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of : (1) Section 6(c)(3)(B) of the Act,<sup>13</sup> pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons; and (2) Section 6(b)(5) of the Act,<sup>14</sup> in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by requiring registered persons to complete the applicable continuing education program. The Exchange believes that a strong continuing education program should bolster the integrity of the Exchange by helping to ensure that all associated persons engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions. The Exchange does not believe that the proposal is unfairly discriminatory with respect to persons registered as a General Securities Representative who function in their current job as a Proprietary Trader, even though these persons are

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combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78(c)(3)(B).

<sup>14</sup> 15 U.S.C. 78f(b)(5).



subject to the more stringent S101 rather than the S501; such persons are registered and qualified (Series 7) in a “higher” capacity and are therefore qualified to function in a capacity other than a Proprietary Trader, whether they choose to or not. Accordingly, requiring the S101 for such persons is appropriate and facilitates them being able to maintain their “higher” registration. The Exchange also believes that permitting General Securities Representatives functioning as Proprietary Traders to be [sic] complete the S501 would be confusing and difficult to monitor.

The Exchange also believes that the proposal furthers the objectives of Section 6(b)(4) of the Act,<sup>15</sup> in that it provides for an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities. Specifically, the new \$60 fee is applicable to persons registered as a Proprietary Trader, which is a limited registration under Exchange rules. Accordingly, the proposed S501 Regulatory Element specifically correlates to the rules and obligations applicable to Proprietary Traders, which are fewer than those applicable to persons registered in other categories. Thus, the S501 is a more limited form of continuing education. Therefore, the Exchange believes that the lower fee (\$60 rather than \$100) is reasonable.<sup>16</sup> The proposed fee is equitable, because it applies equally to all persons registered solely as Proprietary Traders.

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<sup>15</sup> 15 U.S.C. 78f(b)(4).

<sup>16</sup> The Commission notes that in the Purpose section of this filing, Phlx accurately states that the \$100 fee for the S101 covers the costs associated with both development and administration of the continuing education program, while the \$60 fee for the S501 only covers the cost of administration.

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. Because the Regulatory Element is administered by FINRA, the fees are paid to FINRA, which does not raise competition issues. All of the exchanges that recognize the Proprietary Trader registration category are expected to adopt the same continuing education fee. All Proprietary Traders, regardless of where they are registered, will be subject to same continuing education requirements and the same continuing education fees. Thus, the proposal treats similarly situated persons in the same way.

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)(ii) of the Act<sup>17</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>18</sup>

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>18</sup> 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.

The Exchange has requested that the Commission waive the 30-day operative delay. The proposed rule change: specifies the continuing education requirements that currently apply to registered persons; adopts a continuing education requirement, the S501, and a related fee for persons registered as Proprietary Traders; and corrects the Exchange's fee schedule to reflect the proper fee, \$100 rather than \$75, for the S101 and S201. Waiver of the operative delay would allow the Exchange to clarify and correct its rules and implement the proposed rule change at once, enabling its Members to comply with their continuing education requirements in a timely manner, and thus is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.<sup>19</sup>

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change 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:

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<sup>19</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2013-85 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2013-85. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2013-85 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.<sup>20</sup>

Kevin M O'Neill  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).