

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50336; File No. SR-Phlx-2004-54)

September 9, 2004

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Continuing Education Requirements for Registered Persons

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 August 18, 2004, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Exchange has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ On August 26, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.⁶ On September 3, 2004, the Exchange filed Amendment No. 2 to the proposed rule change.⁷ The Commission is publishing

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Phlx asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

⁶ See letter from Mark I. Salvacion, Director and Counsel, Phlx to Katherine A. England, Assistant Director, Division of Market Regulation (“Division”), Commission, dated August 24, 2004 (“Amendment No. 1”). In Amendment No. 1, the Phlx replaced the original proposed rule change in its entirety.

⁷ See letter from Mark I. Salvacion, Director and Counsel, Phlx to Katherine A. England, Assistant Director, Division, Commission, dated September 2, 2004 (“Amendment No. 2”). In Amendment No. 2, the Phlx made minor changes to the proposed rule text. For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on September 3, 2004, the date the Phlx filed Amendment No. 2. See Rule 19b-4(f)(2), 17 CFR 240.19b-4(f)(2).

this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Phlx, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder,⁸ proposes to amend Exchange Rule 640(a) to allow members and member organizations ("Member Firms") to administer the Continuing Education Regulatory Element Program to its registered persons⁹ by instituting an in-firm program acceptable to the Exchange. The text of the proposed rule change is below. Proposed new language is in *italics*.

Continuing Education For Registered Persons

Rule 640(a)(1)-(3) No change.

(4) In-Firm Delivery of the Regulatory Element -- Members and member organizations will be permitted to administer the continuing education Regulatory Element program to their registered persons by instituting an in-firm program acceptable to the Exchange.

The following procedures are required:

(A) Principal/Officer In-Charge. The firm has designated a principal/officer-in-charge to be responsible for the in-firm delivery of the Regulatory Element.

(B) Site Requirements:

(i) The location of all delivery sites will be under the control of the firm.

⁸ 17 CFR 240.19b-4.

⁹ For purposes of Exchange Rule 640 the term "registered person" means any member, registered representative or other person registered or required to be registered under Exchange rules, but does not include a person whose activities are limited solely to the transaction of business on the floor with members or registered broker-dealers. See Exchange Rule 640, Commentary .01.

(ii) The delivery of Regulatory Element continuing education will take place in an environment conducive to training. (Examples: a training facility, conference room or other area dedicated to this purpose would be appropriate. Inappropriate locations would include a personal office or any location that is not or cannot be secured from traffic and interruptions.)

(iii) Where multiple delivery terminals are placed in one room, adequate separation between terminals will be maintained.

(C) Technology Requirements. The communication links and firm delivery computer hardware must comply with standards defined by the Exchange or its designated vendor.

(D) Supervision

(i) The firm's written supervisory procedures must contain the procedures implemented to comply with requirements of in-firm delivery of the Regulatory Element continuing education.

(ii) The firm's supervisory procedures must identify the principal/officer-in-charge designated pursuant to paragraph (A) above and contain a list of individuals authorized by the firm to serve as proctors.

(iii) Firm locations for delivery of the Regulatory Element continuing education will be specifically listed in the firm's written supervisory procedures.

(E) Proctors.

(i) All sessions will be proctored by an authorized person during the entire Regulatory Element continuing education session. Proctors must be present in the session room or must be able to view the person(s) sitting for Regulatory Element continuing education through a window or by video monitor.

(ii) The individual responsible for proctoring at each administration will sign a certification that required procedures have been followed, that no material from Regulatory Element continuing education had been reproduced, and that no candidate received any assistance to complete the session. Such certification may be part of the sign-in log required under paragraph (F) below.

(iii) Individuals serving as proctors must be persons registered with an SRO and supervised by the designated principal/officer-in-charge for purposes of in-firm delivery of the Regulatory Element continuing education.

(iv) Proctors will check and verify the identification of all individuals taking Regulatory Element continuing education.

(F) Administration

(i) All appointments will be scheduled in advance using the procedures and software specified by the Exchange to communicate with the Exchange's system and designated vendor.

(ii) The firm/proctor will conduct each session in accordance with administrative appointment scheduling procedures established by the Exchange or its vendor.

(iii) A sign-in log will be maintained at the delivery facility. Logs will contain the date of each session, the name and social security number of the individual taking the session, that required identification was checked, the sign-in time, the sign-out time, and the name of the individual proctoring the session. Such logs are required to be maintained pursuant to SEC Rules 17a-3 and 17a-4.

(iv) No material will be permitted to be utilized for the session nor may any session-related material be removed.

(v) Delivery sites will be made available for inspection by the SROs.

(vi) Before commencing in-firm delivery of the Regulatory Element continuing education, members are required to file with their Designated Examining Authority ("DEA"), a letter of attestation (*as specified below) signed by a principal/officer-in-charge executive officer or executive representative, attesting to the establishment of required procedures addressing principal/officer-in-charge, supervision, site technology proctors and administrative requirements. Letters filed with Exchange should be sent to Examinations Department, Philadelphia Stock Exchange, 1900 Market Street, Philadelphia, Pennsylvania, 19103.

*Letter of Attestation for In-Firm Delivery of Regulatory Element Continuing Education [Name of member or member organization] has established procedures for delivering Regulatory Element continuing education on its premises. I have determined that these procedures are reasonably designed to comply with SRO requirements pertaining to in-firm delivery of Regulatory Element continuing education, including that such procedures have been implemented to comply with principal/officer in-charge, supervision, site, technology, proctors, and administrative requirements.

Signature:

Printed Name:

Title: [Must be signed by a Principal Executive Officer (or Executive Representative) of the Member Organization.]

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 Phlx 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 Exchange proposes to amend Exchange Rule 640(a) to allow Member Firms to administer the Continuing Education Regulatory Element Program ("Regulatory Element") to their registered persons by instituting an in-firm program acceptable to the Exchange. The Regulatory Element currently requires registered persons to complete a computer-based training program on the second anniversary of their registration, and every three years thereafter. The program includes topics related to sales practices, customer communications, compliance, ethics, and other subjects pertinent to conducting a securities business.¹⁰ Currently, Member Firms generally use third-party testing centers to administer the Regulatory Element.

At the recommendation of the Securities Industry/Regulatory Council on Continuing Education ("Council"),¹¹ the Exchange proposes to adopt amendments to Exchange Rule 640(a) to permit member organizations to administer the Regulatory Element of the Continuing Education Program to their registered persons by instituting firm programs acceptable to the Exchange. The proposed rule requires that member organizations meet certain conditions for in-

¹⁰ See Securities Exchange Act Release No. 35341 (February 8, 1995), 60 FR 8426 (February 14, 1995). See also Securities Exchange Act Release No. 39802 (March 25, 1998), 63 FR 15474 (March 31, 1998).

¹¹ The Council is comprised of representatives from broker-dealers and self-regulatory organizations whose duties include recommending and helping develop specific content and questions for the Regulatory Element, as well as minimum core curricula for the Firm Element. The Council has developed a model under which member organizations may deliver the computer-based training in-house.

house delivery relating to the security of the training delivery environment. The proposed rule change sets forth the delivery requirements as specified by the Council. The Exchange believes that the proposed rule change is consistent with recent changes made to similar rules by other self-regulatory organizations.¹²

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest by ensuring that Member Firms have adequate opportunities to provide training in the Regulatory Element to their registered persons. The Exchange also believes that the proposed rule change is consistent with Section 6(c)(3) of the Act.¹⁵ Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. The Exchange has proposed this rule change to establish an additional mechanism for the administration of the Regulatory Element of the Program, which will help to enable registered persons to satisfy their continuing education obligations.

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

¹² The proposed change is identical in substance, and substantially similar in wording, to American Stock Exchange Rule 341A, New York Stock Exchange Rule 345a, Interpretation /03, National Association of Securities Dealers Rule 1120, and Chicago Board Options Exchange Rule 9.3A.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(c)(3).

competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange satisfied the five-day pre-filing requirement. The Exchange further requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change immediately operative. The Commission notes that the proposed rule change, as amended, is similar to proposed rule changes that previously have been approved by the Commission that were subject to the full notice and comment period,¹⁹ and thus does not raise new issues of regulatory concern. For these reasons, the Commission, consistent with the protection of investors and the public interest, has waived the 30-day operative date

¹⁶ 15 U.S.C. 78s(b)(3)(A)

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ See supra, note 12.

requirement for this proposed rule change, and has determined to designate the proposed rule change as operative on August 18, 2004, the date it was submitted to the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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.²⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2004-54 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2004-54. 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

²⁰ For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on September 3, 2004, the date the Phlx filed Amendment No. 2.

of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2004-54 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).