

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58175; File No. SR-Phlx-2008-12)

July 16, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to an Exemption from Examination Requirements for Off-Floor Traders

On April 14, 2008, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Phlx Rule 604(e)(iii) to modify the category of persons who are exempt from the requirement that Off-Floor Traders³ complete the Series 7 General Securities Registered Representative Examination (“Series 7”). On May 30, 2008, Phlx filed Amendment No. 1 to the proposed rule change.⁴ The proposal was published for comment in the Federal Register on June 12, 2008.⁵ The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

Phlx states that the Series 7 exemption meant to apply to persons who traded on its equity trading floor and were associated with either a specialist organization or a floor brokerage

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Phlx Rule 604(e)(i) defines an off-floor trader as a “person who is compensated directly or indirectly by a member or participant organization for which the Exchange is the DEA [Designated Examining Authority], or any other associated person of such member or participant organization, and who executes, makes trading decisions with respect to, or otherwise engages in proprietary or agency trading of securities, including, but not limited to, equities, preferred securities, convertible debt securities or options off the floor of the Exchange.”

⁴ Amendment No. 1 replaced and superseded the original filing in its entirety.

⁵ See Securities Exchange Act Release No. 57923 (June 4, 2008), 73 FR 33479 (June 12, 2008).

organization that executed orders on an agency basis (“Former Floor Participants”). When Phlx replaced its equity trading floor with XLE, an electronic trading system, certain persons became Off-Floor Traders by definition, and consequently subject to the requirement to pass the Series 7. Phlx did not intend for this category of persons to be subject to the Series 7 requirement.

Therefore, Phlx proposed to exempt these persons from the Series 7 by expanding the exemption in Rule 604 to include Market Maker Authorized Traders (MMATs) and Off-Floor Traders who only handle and/or make trading decisions regarding agency orders and any bona fide errors related to those agency orders.

Phlx believes the proposed rule change will make the administration of the Series 7 requirements for Off-Floor Traders more efficient, because under the current rule, the exemption applies to persons “primarily engaged” in submitting orders to XLE or making trading decisions with respect to XLE, which requires the Former Floor Participant and the Exchange’s enforcement staff to make a judgment call. Under the proposed rule, however, an XLE participant needs to register with the Exchange in order to be an MMAT, so the determination of MMAT status is straightforward. In addition, Phlx staff can examine what type of orders (agency or proprietary) Off-Floor Traders handle for net capital purposes and could identify whether Off-Floor Traders would qualify for the proposed exemption. Finally for the same reasons, the proposed rule change should improve Phlx’s enforcement efforts, because Phlx and its members will be able to more easily determine which persons are subject to the Series 7 requirement.

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a

national securities exchange.⁶ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁷ which requires, among other things that the rules of an exchange be designed 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. The Commission believes that this proposed rule change will better capture the floor-based activities of Former Floor Participants by focusing on the status of, or type of, activity performed by those persons. In addition, it should provide a clearer standard that should allow Exchange staff, as well as members and individuals, to better determine who is subject to the Series 7 requirement. This should make the administration, as well as compliance and enforcement, of the Series 7 requirement more efficient.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Phlx-2008-12), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Acting Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).